



## OFFICE OF POLICE ACCOUNTABILITY

### Closed Case Summary

Complaint Number 2017OPA-0147

Issued Date: 09/11/2017

| Named Employee #1 |   |
|-------------------|---|
| Allegation #1     | <u>Seattle Police Department Manual</u> 5.001 (9) Standards and Duties: Employees Shall Strive to be Professional at all Times (Policy that was issued April 1, 2015) |
| OPA Finding       | <b>Not Sustained</b> (Inconclusive)   |
| Allegation #2     | <u>Seattle Police Department Manual</u> 5.120 (IV) Secondary Employment: Secondary Employment Permit (form 1.30) (Policy that was issued March 19, 2014)              |
| OPA Finding       | <b>Sustained</b>  |
| Final Discipline  | Oral Reprimand  |

#### **INCIDENT SYNOPSIS**

The Named Employee was directing traffic and encountered a shuttle that the complainant was on.

#### **COMPLAINT**

The complainant alleged the Named Employee did not step aside to make room for a shuttle to turn, and when the shuttle's mirror made contact with the Named Employee, he overreacted and behaved unprofessionally. Additionally, OPA discovered during intake that the Named Employee had an expired Secondary Work Permit.

## **INVESTIGATION**

The OPA investigation included the following actions:

1. Review of the complainant
2. Search for and review of all relevant records and other evidence
3. Interview of SPD employee

## **ANALYSIS AND CONCLUSION**

The complainant stated that he was riding on a bus operated by SP-Plus. The shuttle was required to take a right turn onto a street. Due to its size, the bus took wide turns. The complainant stated that there was usually an officer at this intersection directing traffic, and that the officer would step out of the way to allow for the bus to make its turn. On the date in question, the officer directing traffic was Named Employee #1. While the complainant did not see exactly what happened, the complainant stated that Named Employee #1 did not move completely out of the way and the side mirror of the bus made contact with Named Employee #1's uniform.

At that point, the officer rapped on the bus's window with his flashlight. The driver, who the complainant did not know and was not able to identify, rolled down his window and Named Employee #1 lectured the driver "on the crime of assaulting a police officer and the potential legal consequences for the driver and the people on the bus." While the complainant recognized some fault on behalf of the driver for contacting the officer with the mirror, he believed that "the officer's reaction was overblown and patronizing to the driver." Named Employee #1 threatened to have the bus driver arrested and have his license taken away, and "despite repeated apologies, the officer continued to imply that the driver was purposefully assaulting an officer, was demonstrating 'unacceptable' behavior, and deserved to face punishment under the law." Ultimately, the complainant asserted that Named Employee #1's failure to make way for the bus, and his "subsequent authoritarian and patronizing demeanor in addressing the bus driver, reflected poorly on his conduct and on the SPD."

For his part, Named Employee #1 stated that he was directing traffic at the intersection in question. Named Employee #1 set up traffic cones in his immediate vicinity, was wearing a yellow traffic vest, had a whistle in his pocket, and was holding two illuminated traffic wands. Named Employee #1 stated that, as a general matter, he would stand on the double yellow line to direct traffic. Here, however, due to the size of some of the Amazon buses, he stood a little off of the lines to give the buses more room to turn. Doing so caused Named Employee #1 to be more exposed to traffic coming from behind him. Named Employee #1 indicated that "a significant piece of the driver's side mirror" hit his shoulder. Named Employee #1 stated that he walked up to the driver's side window and tapped the glass with his traffic wand. When the driver opened the window, Named Employee #1 introduced himself and said "the reason I'm stopping you is because you hit me with your mirror." Named Employee #1 addressed the driver with a "strong" tone, but did not yell. The driver then stated to Named Employee #1: "well

normally you move out of the way.” In response, Named Employee #1 indicated that he was properly standing to the right of the yellow lines and asked the driver for his license and registration. However, based on traffic that was beginning to back up, Named Employee #1 made the decision to let the driver go with a warning. Named Employee #1 stated: “I’m gonna let you off with a warning but if this happens again I’m either gonna either cite you, arrest you, and file a complaint ag—with your company.” Named Employee #1 then told the driver that he was free to go and that was the end of their interaction.

Manual Policy 5.001(9) reads as follows: “Regardless of duty status, employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers. Employees will avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” The policy further states that: officers “shall not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.”

If the complainant’s account was true, Named Employee #1’s behavior would likely have been in violation of policy. However, Named Employee #1’s behavior, as he relayed it, would not be contrary to policy. Based on the fact that there was no video or audio recording of this incident, the name of the driver of the bus was not known by the complainant or later determined by OPA, and there were no identified witnesses to the incident except for the complainant and Named Employee #1, the OPA Director could not conclude, by a preponderance of the evidence, that Named Employee #1 violated policy.

SPD policy requires officers who seek secondary employment to fill out a secondary employment form and mandates that the form be approved by the employee’s supervisor and by the Captain of the precinct in which the work is to occur. The employee may only perform the secondary work authorized by the permit. Permits last for one year, after which they expire. If an employee seeks to continue secondary work, the employee must submit a new permit for approval. Notably, “[e]mployees are responsible for ensuring that their permit is renewed annually and is current.”

Here, on the date of incident, Named Employee #1’s secondary work permit was expired. At his OPA interview, Named Employee #1 indicated that he simply forgot to renew his permit. As such, Named Employee#1 was working without Department approval and, in doing so, was in violation of policy.

## **FINDINGS**

### **Named Employee #1**

#### **Allegation #1**

There was not a preponderance of the evidence either supporting or refuting the allegation. Therefore a finding of **Not Sustained** (Inconclusive) was issued for *Standards and Duties: Employees Shall Strive to be Professional at all Times*.

Allegation #2

A preponderance of the evidence showed that Named Employee#1 was working without Department approval and, in doing so, was in violation of policy. Therefore a **Sustained** finding was issued for *Secondary Employment: Secondary Employment Permit (form 1.30)*.

**Discipline Imposed:** Oral Reprimand

*NOTE: The Seattle Police Department Manual policies cited for the allegation(s) made for this OPA Investigation are policies that were in effect during the time of the incident. The issued date of the policy is listed.*