



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 30, 2017

CASE NUMBER: 2017OPA-0454

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Training Referral)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	5.001 - Standards and Duties 6. Employees Engaged in Department-Related Activities Identify Themselves When Requested	Not Sustained (Inconclusive)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant alleges that Named Employee #1 would not intervene when the Complainant was being sexually harassed, even after the Complainant confronted NE#1 about it. The Complainant further alleges that NE#1’s response to the situation was unprofessional, and included "air high fiving" the subjects making the comments and laughing. The Complainant lastly alleges that NE#1 would not provide his name when asked and, in response to the Complainant's concerns, stated "I don't think that there's anything that makes you people happy."

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

The Complainant alleged that on the date in question she was sexually harassed by a number of men who were sitting in an SUV. She recalled that, at one point, NE#1 thought the men were speaking to him and when he approached them, one of the men told NE#1: "I’m talking to that beautiful piece of ass over there." The Complainant asserted that NE#1 laughed at these demeaning statements and gave the men an "air high five." The Complainant stated that she was disturbed not only by the comments, but by NE#1’s conduct in laughing about them and, by doing so, ratifying what was being said to her. The Complainant confronted NE#1 about his actions and was further upset by his response. The Complainant reported that NE#1 told her, "ma’am, you just have laugh sometimes." The Complainant indicated that when she asked NE#1 for his identification he initially refused to provide it. She further stated that when she explained her concerns to NE#1, he told her that "I don’t think that there’s anything that makes you people happy."



NE#1 recounted that he was at a fast food restaurant with his partner, getting food. A number of males in a SUV began talking to him about burgers and he walked over to their car and spoke with them. He then walked back to the line of people waiting for food. At that time, he looked back at the SUV and laughed. The Complainant, who was standing nearby, asked NE#1 if he thought what the men were saying was funny. She told NE#1 that she was being sexually harassed and asked what he was going to do about it. NE#1 recalled hearing the men say to the Complainant at that time “do you date outside of your race.” NE#1 also recalled the Complainant asking him if he was going to protect her and reporting to him a prior instance of sexual harassment where the police did not take any action. NE#1 recalled telling the Complainant that he was sorry about that but he knew nothing about her prior situation. NE#1 did not remember whether he told the Complainant that she “just had to laugh sometimes” or whether the Complainant told him (as she reported) that she had a right to stand in line and not be sexually harassed. NE#1 also did not remember the men saying to him: “I’m talking to that beautiful piece of ass over there.” Lastly, NE#1 recalled that, at the end of their interaction, he told the Complainant: “I don’t think there’s anything I can do to make you happy right now,” which is slightly different than the Complainant’s recollection. NE#1 did not take any action as to the complaint as he did not believe what he heard the men say was criminal in nature and because the men had driven away at that time. NE#1 did not address the men concerning their statements at any point. NE#1 stated that he showed the Complainant his name tag when she asked to see it and that he did not say “are you happy now” after he showed it to her.

The partner officer also heard the men state “do you date outside of your race.” He, like NE#1, did not hear the men state: “I’m talking to that beautiful piece of ass over there.” The partner officer saw NE#1 and the Complainant engaging in conversation, but could not hear most of what they were saying. He stated that NE#1 showed his name tag and spelled his name upon request. The partner officer did not recall NE#1 walking away and covering up his name tag or laughing. The partner officer stated that he later asked NE#1 why the Complainant asked for his name; however, he could not remember any of the substance of that conversation or what NE#1 may have told him.

SPD Policy 5.001-POL-9 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-9.)

As explained above, the Complainant and NE#1 disagree as to much of their interaction. However, a number of pertinent facts are either agreed or cannot reasonably be disputed:

- The men in the SUV asked the Complainant whether she dated outside of her race, which is compelling evidence that other harassing statements were made.
- NE#1 interacted with the men in the SUV and smiled in their direction at approximately the same time as the above statement was made.
- The Complainant told NE#1 that she believed she was being sexually harassed and NE#1 took no law enforcement action.
- The Complainant was upset and expressed her belief that NE#1 had acted inappropriately.
- NE#1 stated to the Complainant that he could not make her happy.

The Complainant was clearly upset by the harassment she believed she was subjected to. This feeling of powerlessness and anger was amplified by the fact that NE#1, who she viewed as there to protect her as a function of his job, appeared to her to be endorsing the statements that were made. The Complainant, like any community



member, should have confidence that when SPD officers see conduct that is morally reprehensible they will act – even if that conduct is not illegal. She should also be secure in the belief that officers will protect her from harm or harassment. Here, however, the Complainant walked away from this incident with the opposite conclusions.

When asked at his OPA interview whether he could empathize with what the Complainant might have been feeling, NE#1 stated that he could. However, I conclude that he could have done a better job displaying such empathy on the date in question. Had NE#1 taken the time to explain to the Complainant that he was not laughing with her harassers, apologize for any perception that she might have had that he was doing so, and to engage with her to try to understand what she might have been experiencing, this complaint almost certainly would not have been filed.

That being said, I do not find that NE#1's conduct, or failure to act, rose to the level of a violation of policy. However, I believe that NE#1 would benefit from additional training and counseling from his chain of command.

- **Training Referral:** NE#1 should receive training and counseling from his chain of command concerning the Department's expectations for his conduct should he face this type of situation again and the requirements of the Department's professionalism policies. This training and counseling should be reflected in a PAS entry. I also request that NE#1's chain of command contact the Complainant to discuss the resolution of this matter with her and to explain to her what action the Department took in response to her complaint.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #1 - Allegation #2

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

As indicated above, the Complainant's allegations against NE#1 could plausibly be construed as asserting that NE#1 failed to take law enforcement action because of her gender. However, based on my review of the evidence, I conclude that the Complainant's gender did not inform NE#1's lack of action. Instead, it was based on NE#1's belief that the statement he heard did not rise to the level of criminal conduct and that the men who made the statement had already left the scene.

While, as discussed above, I have concerns with NE#1's conduct in this case, I do not find that he engaged in biased policing. As such, I recommend that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 6. Employees Engaged in Department-Related Activities Identify Themselves When Requested

SPD Policy 5.001-POL-9 requires SPD employees engaged in Department-related activities to identify themselves, including disclosing their names and serial numbers, when requested. The policy further requires that sworn officers display their badges upon request. (SPD Policy 5.001-POL-9.)



The Complainant alleged to OPA that when she asked to see NE#1's name tag, he first refused and walked away covering the tag. The Complainant stated that when she again asked to see NE#1's name tag, he showed it to her. The Complainant asserted that, after doing so, NE#1 stated: "are you happy now." NE#1 claimed that he showed the Complainant his name tag when requested and that he did not say "are you happy now" afterwards.

While portions of the Complainant's and NE#1's interaction is captured on video, there is no audio. As such, I cannot determine what was said. Moreover, from a review of the video, I cannot determine whether NE#1 engaged in conduct consistent with covering his name tag and walking away. I note that for virtually the entirety of his interaction with the Complainant, NE#1's hands were crossed in front of his chest. It does not appear that by doing so he was trying to prevent the Complainant from reading his name tag, but I cannot make a conclusive determination on this point.

For these reasons, I recommend that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**