



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 9, 2018

CASE NUMBER: 2017OPA-0689

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication	Not Sustained (Unfounded)
# 3	4.010 - Employee Time Off 2. Employees Schedule Time Off With Their Sergeant/Supervisor	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.130 - Supervisor/Employee Relationships I. Policy	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication	Not Sustained (Unfounded)

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:

An anonymous complainant alleged that Named Employee #1 (NE#1) may have engaged in the theft of wages, inaccurate time reporting, and a potential relationship interest with an Unknown Employee Supervisor that would or could supersede or interfere with the interests of the Department.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

SPD employees are required to properly enter their time. Where an employee fails to do so and seeks compensation for time that employee did not work, such behavior constitutes wage theft. This conduct, if proved, would be in violation of City and State law, as well as with City and Department policies.

The anonymous complainant alleged that NE#1 engaged in a pattern of wage theft over a longer than 10-year period. The anonymous complainant did not provide any specific details as to when this wage theft may have occurred or any evidence supporting these allegations. Moreover, OPA did not learn the identity of the anonymous complainant and thus was unable to secure an interview.



NE#1 has worked in high activity assignments for much of his career. He presently works as a bicycle squad supervisor. He has staffed many demonstrations and other events that require extensive overtime. He is also a member of the Force Review Board (FRB), which is another assignment that regularly requires overtime.

Based on his numerous years of service, the scope of the allegations, and the dearth of information indicating when the alleged violations occurred, OPA picked three months at random – January, February and June of 2017 – and examined NE#1's timekeeping during those months for substantial anomalies. Had those months exhibited such anomalies, it would have provided a basis to conduct a further in depth analysis of all of NE#1's timekeeping. OPA believes this to have been a sound methodology and one that was necessitated by OPA's limited resources.

During its review, OPA found that eight days out of the 89 days worked by NE#1 contained anomalies. Those anomalies amounted to 31.5 overtime hours. Of those eight anomalous days, three involved large scale demonstrations for which NE#1 would have worked substantial overtime. The five other days involved either narcotics buy/bust operations or FRB responsibilities, which would have required mid-shift adjustments.

Given that 31.5 anomalous overtime hours were identified during this three-month period, it is likely that many more hours would be identified were the analysis to be extended to cover a ten-year period. However, this does not, in and of itself, mean that NE#1 violated policy. From OPA's examination, it seemed more likely that the anomalies were the result of the extensive overtime that is a function of NE#1's role in the Department, mid-shift adjustments, and possible gaps between logging in when he changed call signs (as suggested by NE#1's Guild representatives).

Ultimately, OPA conducted the most thorough investigation it could, but the scope of this investigation was limited in scope by the realities of OPA's resources and staffing. Based on this investigation, OPA uncovered no evidence establishing that NE#1 intentionally inappropriately recorded his time or engaged in wage theft.

As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

5.001 Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication

Had NE#1 improperly sought compensation for time he did not work and/or had unauthorized absences, he would have engaged in dishonesty by submitting inaccurate timesheets. However, as explained above, I find that there is insufficient evidence to establish that NE#1 engaged in such conduct. For the same reasons, I similarly find that there is insufficient evidence to establish that NE#1 engaged in dishonesty.

As such, I recommend that this allegation be Not Sustained – Unfounded.

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



Named Employee #1 - Allegation #3

4.010-Employee Time Off 2. Employees Schedule Time Off With Their Sergeant/Supervisor

This allegation was classified based on the allegation that NE#1 had unauthorized absences.

At his OPA interview, NE#1 expressly denied taking such unauthorized absences. During its investigation, OPA further interviewed two of NE#1's supervisors – Lieutenant #1 and Lieutenant #2. Lieutenant #2 was NE#1's direct supervisor during the period of time used for OPA's investigation. Lieutenant #1 told OPA that he had no concerns regarding NE#1's time keeping and did not believe that NE#1 had engaged in conduct that would have violated policy. Lieutenant #2 was not NE#1's direct supervisor, but had supervised him during demonstration management. Lieutenant #2, like Lieutenant #1, had no concerns regarding NE#1's timekeeping and did not believe that NE#1 violated policy.

Based on OPA's investigation, there is insufficient evidence to establish that NE#1 had unauthorized absences that would rise to the level of a policy violation. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #1

5.130 - Supervisor/Employee Relationships I. Policy

The anonymous complainant further alleged that NE#1 had been engaged in a sexual relationship with an unnamed supervisor who had control over approval of his overtime. The anonymous complainant stated that the relationship was with NE#1's "daytime supervisor who oversees the majority of his overtime work." While the anonymous complainant was not identified and thus not interviewed, from a review of the submitted written complainant it appeared that this alleged sexual relationship could have occurred at any point during the past 10 years.

At his OPA interview, NE#1 was asked whether he had engaged in a sexual relationship with a supervisor who had control over his overtime over the past 10 years and he stated that he had not. There is no evidence in the record contradicting NE#1's assertion. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #2

5.001 Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication

Presumably, this allegation was classified based on the alleged failure of an unnamed supervisor to report a sexual relationship with a subordinate employee. As indicated above, there is no evidence that such a relationship existed. Moreover, this supervisor was never identified.

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

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