



ISSUED DATE: DECEMBER 27, 2018

CASE NUMBER: 2018OPA-0595

Allegations of Misconduct & Director’s Findings

Named Employee #1

| Allegation(s): | | Director’s Findings |
|----------------|--|-----------------------------------|
| # 1 | 5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing | Not Sustained (Unfounded) |
| # 2 | 5.120 - Off-Duty Employment 4. Employees Must Request Approval for all Law Enforcement Related Off-Duty Employment and Business Activities | Not Sustained (Lawful and Proper) |

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 alleged that the Named Employee engaged in biased policing towards two unidentified African-American men. Based on its intake investigation, OPA further alleged that the Named Employee may not have had a secondary employment permit as required by policy.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant reported that she was shopping at a drug store when she observed Named Employee #1 (NE#1) talking to several African-American men who were also inside of the store. She felt that this was a negative interaction that was motivated by these individuals’ race. The Complainant initiated this OPA complaint in which she alleged her belief that NE#1 engaged in biased policing.

SPD policy prohibits biased policing, which it defines as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual.” (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*)

As part of its investigation, OPA interviewed NE#1. He stated that he was working off-duty at the drug store and that, in this capacity, he was responsible for identifying and deterring potential shoplifters. NE#1 told OPA that, while working off-duty, he engaged with people of many different races throughout the day. He further stated that he did not specifically recall the individuals that the Complainant was referring to and he explained that he contacted between five to fifteen potential shoplifters during shift. When he contacted those individuals, he based his decision to do so on their behavior, not on their races. He stated that he observed these individuals engaging in



what he perceived to be suspicious behavior, including pacing back and forth between aisles, repeatedly looking over their shoulders, and furtively glancing around the store.

OPA attempted to identify the individuals referenced by the Complainant; however, given the limited information available, OPA was unable to do so.

While this allegation is certainly serious, the evidence in the record is insufficient to establish that NE#1 engaged in biased policing during this incident. There is no evidence disproving NE#1's assertion that he, instead, contacted a number of individuals based on his reasonable belief that they were engaging or attempting to engage in illegal activity. Moreover, even if the Complainant observed NE#1 engage with two African-American men, NE#1 stated that he interacted with at least three and potentially 13 other individuals. Without knowing the races of these other individuals, it cannot be proven that NE#1 was disparately targeting African-American men.

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

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

Named Employee #1 - Allegation #2

5.120 - Off-Duty Employment 4. Employees Must Request Approval for all Law Enforcement Related Off-Duty Employment and Business Activities

As part of its intake investigation, OPA contacted SPD Human Resources to determine whether NE#1 had a valid permit for his off-duty employment. Human Resources conducted a search, but could not locate the permit. Accordingly, OPA initiated an investigation into the absence of the permit.

SPD Policy 5.120(IV) requires that, prior to working secondary employment, Department employees must have first obtained a Secondary Work Permit. This permit must contain detailed information concerning the secondary employment the employee seeks to engage in. It must further be submitted to and approved by a supervisor.

At the time of his OPA interview, NE#1 provided a valid permit. It is unclear why Human Resources did not also have or could not find this permit. Regardless, as NE#1 had a valid permit on the date in question, I recommend that this allegation be Not Sustained – Unfounded.

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