



## CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 28, 2020

CASE NUMBER: 2019OPA-0754

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Sustained

**Imposed Discipline**

Suspension Without Pay: 20 days/hrs

*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:

It was alleged that the Named Employee engaged in unprofessional conduct while off-duty at the Puyallup Fair, as well as made statements that potentially violated the Department’s biased policing policy.

### SUMMARY OF INVESTIGATION:

OPA received an anonymous complaint concerning the conduct of Named Employee #1 (NE#1) while off-duty. The complaint referenced a Puyallup Police Department (“PPD”) incident number and alleged that NE#1 had engaged in “belligerent [and] inappropriate behavior while identifying as SPD.”

OPA obtained documentation from PPD concerning this incident. The CAD Report indicated that PPD Officer #1 responded to a verbal dispute between two individuals at the Puyallup Fair. It was believed that the individuals were married and, thus, that the dispute was domestic in nature. Two other officers – PPD Officer #2 and PPD Officer #3 – were listed on the CAD as responding to the scene, as was PPD Sergeant #1. OPA determined that one other PPD employee – PPD Officer #3 – also witnessed this incident. OPA interviewed all of the PPD employees involved in this matter. OPA also interviewed NE#1 regarding his actions and the allegations classified against him. The substance of all of these interviews is set forth below.

### PPD Officer #1

PPD Officer #1 told OPA that he saw a man – who he later learned was NE#1 – arguing with his wife. He said that he and another officer began to watch the couple to make sure that their argument did not become physical. PPD Officer #1 described that other fair goers were watching the argument and that it was a “spectacle.” PPD Officer #1 approached NE#1 and his wife and told them that they would be detained while the officers investigated the domestic disturbance. PPD Officer #1 recalled that NE#1 was very intoxicated. He stated that NE#1 “could barely



stand,” was “loud,” “slurred his speech,” appeared “hammered,” was a “belligerent jerk,” and was “unbelievably wasted.” PPD Officer #1 stated that NE#1 immediately identified himself as an SPD officer and made statements such as: “you can’t detain me, I know my rights, I’m a Seattle Police Officer.” The PPD officers separated the Complainant and his wife and questioned them about the incident. Another PPD officer told NE#1 that he was going to frisk him because of the nature of the disturbance, NE#1’s apparent level of intoxication, and NE#1’s statement that he was a law enforcement officer, which made the officers concerned that NE#1 could be armed. NE#1 protested the search, saying that he was with SPD and that the PPD officers “couldn’t do anything to him.” NE#1 was ultimately frisked without incident and he was not armed.

The PPD officers determined that the argument was based on a prior agreement between NE#1 and his wife that he would be the designated driver so that she could consume alcohol. However, she relayed that NE#1 disappeared for a period of time and, when he returned, he was intoxicated. This upset the wife. PPD Officer #1 indicated that the wife also appeared to be extremely intoxicated. Ultimately, it was determined that no crime had been committed and NE#1 and the wife indicated that they would be getting a ride from the scene. PPD Officer #1 described NE#1’s conduct as extremely unprofessional. PPD Officer #1 did not specifically recall whether NE#1 used profanity but said that “he probably did.” PPD Officer #1 also did not recall NE#1 making disparaging comments about homeless people but remembered the wife telling him that NE#1 suffered from PTSD and was upset about the “homeless crisis.” Lastly, PPD Officer #1 could not remember whether NE#1 used disparaging language towards PPD.

#### **PPD Officer #2**

PPD Officer #2 was working at the Puyallup Fair when he heard NE#1 yelling at PPD Officer #1. PPD Officer #2 said that NE#1 was with a woman who he believed to be NE#1’s wife. PPD Officer #2 perceived both NE#1 and the wife as being very intoxicated. He learned that NE#1 and his wife were fighting about who the designated driver was. PPD Officer #2 described that NE#1 was yelling, screaming, and “posturing” towards them. He recalled that NE#1 identified himself as a Seattle Police Officer at least six times and that he told the officers that they needed to be respectful towards him because he was “one of us.”

At one point, PPD Officer #4, who was currently employed by SPD, came over to assist after the officers could not de-escalate NE#1. However, even though PPD Officer #4 tried to build a rapport, this did not calm NE#1 down. To the contrary he started to act aggressively towards PPD Officer #4, including saying to him: “I have two years on, did you just become a cop?” The officers investigated the incident, including interviewing NE#1 and the wife separately, but ultimately did not find sufficient probable cause to make an arrest.

PPD Officer #2 could not recall if NE#1 used profanity, but said it was possible. He stated that it took five officers to calm the situation down. PPD Officer #2 described NE#1’s behavior as “acting like a drunk idiot.” He believed that NE#1’s actions “gave a bad light” to law enforcement, particularly as he was shouting that he was employed by SPD in the middle of the fair.

#### **PPD Officer #3 and PPD Sergeant #1**

While both PPD Officer #3 and PPD Sergeant #1 were listed in the CAD Report as being present at the scene, both denied firsthand knowledge of this incident



PPD Officer #3 stated that, while he was at the Puyallup Fair, he was too far away from the incident to specifically know what occurred. He did, however, hear yelling coming from where NE#1 was standing with the other PPD officers.

Similarly, PPD Sergeant #1 stated that he was at the Puyallup Fair but explained that he did not actually witness the incident. Accordingly, he had no information to share with OPA.

#### **PPD Officer #4**

As discussed above, PPD Officer #4 was formerly employed by SPD. He was working at the Puyallup Fair when he heard a disturbance, as well as a radio transmission asking for backing officers. He observed NE#1, who he described as yelling and belligerent. PPD Officer #4 also noted that NE#1 was swaying and was clearly intoxicated. He learned that NE#1 and his wife had been yelling at each other for a sustained amount of time.

PPD Officer #4 recalled that NE#1 was screaming at the officers and his wife and was using profanity towards all of them. He stated that, when officers tried to get him to calm down, NE#1 refused to do so and said that he was an SPD officer. PPD Officer #4 informed NE#1 that he had once been an SPD Officer and was familiar with SPD policies. He told NE#1 that he was acting contrary to SPD's professionalism policy and that, if he did not stop his behavior, he would get into trouble. PPD Officer #4 spoke with NE#1's wife. She indicated that their argument was based on NE#1 becoming intoxicated when he had previously agreed to drive them home. She told PPD Officer #4 that NE#1 drinks too much and that this was based, at least in part, on his experiences in the military.

PPD Officer #4, who also served in the military, approached NE#1 and referenced NE#1's military service. He again told NE#1 that he needed to calm down and to get a ride home. He stated, however, that NE#1 continued to yell and use profanity. He recalled that NE#1 stated: "Fuck Puyallup PD" and "Puyallup PD is a bunch of posers." He also stated that, at one point, NE#1 yelled: "fuck the homeless." PPD Officer #4 found this to be peculiar given that there were no homeless people in the near vicinity. He explained that the officers came very close to arresting NE#1 for disorderly conduct. He further noted that there were thousands of people at the Puyallup Fair and, given how loud NE#1 was yelling, his statements could have been heard by many of those individuals.

PPD Officer #4 told OPA that he had never been treated in this manner by another officer or veteran. He described NE#1's conduct as "one of the most unprofessional things I've ever seen in my life." He indicated that he later learned from former colleagues at SPD that NE#1 was "drunk texting" people about the incident and commenting negatively about PPD on Facebook. He stated that he relayed what he observed and his concerns regarding NE#1's conduct to an officer at the North Precinct who he did not name.

#### **Named Employee #1**

When asked whether his behavior was professional during this incident, NE#1 admitted that it was not. He stated that it was embarrassing and that it "painted a bad picture" for officers. NE#1 acknowledged being intoxicated during this incident and stated that he did not remember what he said. He told OPA that he probably used profanity, as well as language towards people that was contemptuous and derogatory.

NE#1 stated that he may have said "fuck the homeless" in his "drunken state." He could not think of a rationale for why he would have said that except for "being drunk and stupid." He indicated that this incident did not involve any



homeless individuals and that, as far as he knew, there were no such individuals around at the time. NE#1 agreed that the statement “fuck the homeless” could express prejudice. However, he denied that his saying of this statement could affect his ability to provide fair and unbiased law enforcement services to homeless individuals in Seattle. He told OPA that, as part of his responsibilities in the North Precinct, he often works with homeless individuals and assists them in getting services and shelter.

NE#1 concluded by stating that he was sorry for embarrassing himself, his wife, and the Department, as well as for being disrespectful to the PPD officers. He stated that, since this incident, he had reached out to Peer Support and requested counseling for things that had been bothering him personally and for things he had seen on the street.

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegations #1**

***5.001 - Standards and Duties 10. Employees Shall Strive to be Professional***

SPD Policy 5.001-POL-10 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-10.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

The evidence is abundantly clear that NE#1 engaged in unprofessional behavior. He engaged in a loud verbal argument at the Puyallup Fair that required a police response and that almost resulted in his arrest. He used profanity and other disrespectful language towards his wife, the homeless, and Puyallup officers, including calling them “posers” and saying: “fuck Puyallup PD.” He did so while repeatedly identifying himself as an SPD officer and while in plain view of potentially thousands of people. All of the Puyallup officers interviewed by OPA asserted that NE#1’s behavior was unprofessional and nearly all were shocked and disappointed with how he conducted himself. Indeed, NE#1, himself, acknowledged that he behaved inappropriately during this incident.

Ultimately, officers are held to a high standard of behavior. This standard applies no matter whether on or off duty. Here, NE#1 engaged in conduct that constituted a significant breach of the Department’s expectations of his conduct and of SPD’s professionalism policy. Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #2**

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



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PPD Officer #4 recounted to OPA that, at one point during this incident, NE#1 stated: “Fuck the homeless.” As discussed above, this surprised PPD Officer #4 as there were no homeless individuals in the near vicinity and the incident did not involve anyone who was homeless. While no other officers expressly indicated that they heard this statement, PPD Officer #1 described that NE#1’s wife stated that he was upset about the homelessness crisis in Seattle, which corroborates that the statement was made. Moreover, NE#1 did not deny making the statement. SPD Policy 5.140-POL-2 expressly provides as follows: “Employees shall not express—verbally, in writing, or by other gesture—any prejudice or derogatory comments concerning discernible personal characteristics.” Here, NE#1 did just this. He made a derogatory comment regarding a protected class – the homeless.

OPA further struggles to find any explanation for why he did so. While NE#1’s wife said that he was upset with the homelessness crisis, it is unclear why this would cause him to say: “fuck the homeless.” This explanation would be significantly more believable had he said: “fuck homelessness.” While perhaps he was “drunk and stupid,” as NE#1 himself asserted, this does not excuse such a statement. If anything, this is a mitigating factor for discipline, not an out from a finding that he violated the policy. Moreover, while NE#1 asserted that, even had he made the statement, it would not impact his ability to serve homeless individuals, OPA cannot reach the same conclusion. Given NE#1’s statement, OPA is concerned that his apparent animus could very well impact how he treats the homeless and, in any event, would affect other peoples’ perception of his potential bias.

OPA does not reach this decision lightly, but OPA sees no other result under the circumstances of this case. Indeed, if any other race or religion were substituted into NE#1’s statement, it would clearly constitute bias. OPA does not believe that the outcome should be different simply because the protected class at issue is housing status. Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**