



CLOSED CASE SUMMARY

ISSUED DATE: MAY 16, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0231

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 (Inconclusive)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	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 alleged that Named Employee #1 made a statement that was unprofessional and indicated bias towards him.

SUMMARY OF INVESTIGATION:

The Complainant alleged that Named Employee #1 (NE#1) referred to him as “you people” while issuing a citation. He asserted that this constituted unprofessional and biased conduct on NE#1’s part. The Complainant’s allegation was referred to OPA by a supervisor and this investigation ensued.

As part of its investigation, OPA interviewed the Complainant. The Complainant, who is of African descent, said that he was emerging from an African specialty store when he was cited by NE#1. He said that, during his interaction with NE#1, she referred to him using the term “you people” or “you guys.” The Complainant felt that NE#1 was referring pejoratively to African people. The Complainant was not aware of any other witnesses to the incident.

OPA looked for video that recorded what occurred but could find none. As a Parking Enforcement Officer, NE#1 was not assigned Body Worn Video (BWV) or In-Car Video. There was BWV of the responses to the scene by an officer and sergeant to document the Complainant’s bias allegation; however, this was after the fact and did not capture the initial interaction between NE#1 and the Complainant.

This sergeant’s BWV indicated that he was dispatched to the scene to investigate the bias allegation. When he arrived, he spoke with the officer, who was already there. The officer stated that the Complainant, who was cited for parking in a peak zone, asserted that NE#1 made a biased comment. The sergeant then spoke with NE#1 who denied making the comment. He then talked with the Complainant. The Complainant said that he was a registered nurse and was picking up food. When he came out, he was receiving a citation. He told the sergeant that she then said: “you people.”



He considered this to be referring to African people who were shopping at the store and he felt that this was racist. The Complainant also referenced NE#1 being a woman and waving her arms around. However, he later clarified, when the sergeant raised confusion with what he was saying, that he was focused on her statement. The Complainant asked if the ticket would be waived and the sergeant said that it would not be and that he could contest the ticket in court.

Lastly, OPA interviewed NE#1. She said that she was conducting enforcement activity in that area because of multiple complaints. When she arrived, she noticed multiple vehicles parked illegally. She waited for a period of time with her lights on to allow people to voluntarily leave. She cited the vehicles that remained, one of which belonged to the Complainant. When he observed her citing his vehicle, the Complainant said that he was handling an emergency. He clarified that he was a registered nurse and was picking up groceries. NE#1 told the Complainant that he could contest the ticket in court. The Complainant then gestured towards his skin and said that she was only writing the ticket because of this. NE#1 interpreted the Complainant as saying that she only wrote him the ticket because he was Black. NE#1 told him that she began citing the vehicle when he was inside of the store and she did not know his skin color at the time. She then broadcasted a request for an officer to respond to the scene because of the bias allegation.

NE#1 denied saying “you people” or “you guys”; however, she said that she told the Complainant that people kept parking in that location. She opined that he could have misheard what she said. She contended that she did not engage in biased policing during this incident or make any statements that were unprofessional.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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.*)

As discussed above, the Complainant asserted that NE#1 referred to him as “you people” while issuing him a citation. He believed that this constituted bias because NE#1 was referring to people of African descent who shopped at the African specialty store. NE#1, to the contrary, denied making the statement in question and posited that the Complainant may have misunderstood her. She said that she did not engage in biased policing.

Without the benefit of video or any other witnesses and given this dispute of fact between the parties, OPA cannot reach a conclusive determination concerning what occurred. If NE#1 made the statement attributed to her, it very well could have constituted biased policing depending on the context in which it was made. However, if she did not, no allegation of biased policing could be found. Accordingly, and due to the evidentiary limitations of this case, OPA recommends that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #2

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.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers” whether on or off duty. (SPD Policy 5.001-POL-10.) The policy also states: “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.*)

As with Allegation #1, if NE#1 made the statement in question, she very likely would have violated this policy. However, the disputes of fact and the absence of video or a witness prevents OPA from reaching a determinative finding. Accordingly, OPA recommends that this allegation be Not Sustained – Inconclusive.

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