



## CLOSED CASE SUMMARY

ISSUED DATE: JULY 2, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0511

### **Allegations of Misconduct & Director’s Findings**

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	4.020-POL-1 Reporting and Recording Overtime/Out of Classification Pay 3. Employee Work-Hour Maximums	Sustained
# 2	4.020-POL-1 Reporting and Recording Overtime/Out of Classification Pay 2. Employees Require Pre-Approval from a Supervisor to Work Overtime	Not Sustained (Lawful and Proper)
# 3	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	Not Sustained (Inconclusive)
# 4	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Inconclusive)
# 5	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Inconclusive)

**Imposed Discipline**

Suspension Without Pay – 1 Day
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**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	4.020-POL-1 Reporting and Recording Overtime/Out of Classification Pay 4. Supervisor Responsibilities for Monitoring Overtime Use	Not Sustained (Management Action)

### **EXECUTIVE SUMMARY:**

It was alleged that the Named Employee may have violated SPD policies governing overtime work. It was further alleged that he may have violated the law by receiving compensation for more hours than he worked and, when doing so, that he engaged in unprofessionalism and dishonesty.

### **SUMMARY OF INVESTIGATION:**

The Seattle Times ran a series of articles concerning officer compensation, officer overtime work, and the potential lack of Department oversight over such work and sufficient record keeping. It specifically identified that Named Employee #1 (NE#1) was paid \$414,536.06 in 2019. His salary included \$128,716 in base pay, \$214,544 in overtime, and \$70,000 in back pay (pursuant to the newly agreed upon collective bargaining agreement). He was paid for 4,149 hours of work, not including vacation or sick time. He was paid for an average of 80 hours per week. For seven straight weeks over the summer, he was paid for working between 90 and 123 hours. Lastly, he was compensated for working more than 24 hours in a single day six times.



As part of its analysis into NE#1's pay and, particularly, his overtime compensation, The Seattle Times noted that SPD could not audit NE#1's hours because it still logged overtime on paper forms that were largely unsearchable. The article cited to a database that would better track overtime that was scheduled to go live within the next year.

Based on the possibility that NE#1 violated SPD's policies concerning the amount of hours worked in a week and the seeking of approval for overtime, as well as the potential that his conduct was dishonest, in violation of law, and unprofessional, OPA commenced this investigation. OPA also added an allegation against the unknown SPD supervisors who may have failed to sufficiently monitor NE#1's overtime.

OPA additionally made a criminal referral due to the possibility that NE#1 may have engaged in time theft. However, that investigation remains open and OPA chose to run its administrative investigation simultaneously based on the need to complete its review within the contractual timeline.

As part of its investigation, OPA conducted an examination of relevant timekeeping records for 2019. OPA reviewed the following: (1) NE#1's timesheets, pay records, overtime, and leave usage; (2) Event Summaries and Overtime Requests for the Training Unit (where NE#1 worked as an adjunct trainer), the North Precinct (his home precinct), the Traffic Section (which tracked some overtime), SPOC (which manages staffing and overtime for special events, such as demonstrations), and the Human Resources Section (where Overtime Requests and permits were housed); and (3) staffing sheets for North Precinct's Third Watch.

OPA identified 15 weekly pay periods where NE#1 worked more than 90 hours. OPA focused on these 15 pay periods to determine whether NE#1 violated the SPD policies and the law. The premise behind doing so was that these weeks would contain the best evidence of potential inaccuracies in NE#1's timekeeping and compensation.

OPA created tables (titled "A" through "R") in which OPA charted: the work date; the SPD earn code(s); the number of hours NE#1 was compensated for; a description of the work; and miscellaneous investigator comments (for example, the actual hours worked, total hours not working, and time between shifts). On these tables, OPA also highlighted those dates that were NE#1's regular furloughs (days off).

For each of these weeks, NE#1 worked all seven days, including his furloughs. Moreover, for the vast majority of days, he worked a regular shift (marked with an "AA" earn code) and some sort of overtime or shift augmentation. For multiple days on each of these seven weeks, NE#1 worked 18 hours or more. In addition, he either worked 20 hours or more consecutively or was paid for more than 20 hours of work on 10 occasions (21.5 hours on April 10; 28.5 hours on April 16; 20 hours on May 7; 24.5 hours on May 16; 22.5 hours on July 24; 21.5 on August 7; 29.5 hours on August 28; 21.5 hours on August 29; 24.5 on November 4; 22.75 hours on November 5). OPA was not able to verify NE#1's overtime for eight days. In addition, OPA identified only two days during which OPA could verify that the overtime was mandatory (January 26 and April 16).

OPA further interviewed NE#1. He was aware of the article in The Seattle Times but had not read it. NE#1 told OPA that the main overtime he worked was as an adjunct trainer and augmenting shifts. With regard to adjunct trainer overtime, NE#1 explained that he would list his availability on a spreadsheet and someone else would assign shifts. He also worked special events, football games, and concerts, as well as multiple augmented shifts. Lastly, NE#1 was a field training officer and, as such, was provided 29 hours of guaranteed overtime for that role. He pointed out that these 29 hours constituted extra compensation and evaluations of student officers performed by the field training officers were expected to be completed during regular work hours. As such, he asserted that this should subtracted



when assessing the hours worked in a given week (this reduced his hours worked in one weekly period – see Table E – from 96 to 76).

NE#1 indicated that he documented his overtime by writing down the date, hours worked, and the type of overtime assignment. He further contacted SPD Human Resources on multiple occasions (6 times from OPA’s review of emails) to ensure that he was being compensated for all the hours he worked. OPA showed NE#1 the charts it created documenting NE#1’s hours, including the fifteen periods where he worked more than 90 hours in a given week. Based on his review, NE#1 did not dispute the hours that OPA documented him working.

With regard to exceeding the 90 hour work week rule, NE#1 pointed to the exceptions from the rule, including where “public safety” interests support working more than 90 hours or where he was required to work mandatory overtime. He specifically identified that, in his opinion, working as an adjunct trainer to carry out trainings required under Consent Decree, augmenting shifts, and working special events, concerts, and sporting events all fell under the public safety exception. NE#1 acknowledged that he did not seek the approval of a captain or captain-equivalent prior to working overtime that caused him to exceed the 90-hour limitation. As with adjunct trainer overtime, he listed his availability on a spreadsheet and was selected by supervisors to work.

NE#1 denied that he was ever compensated for hours he did not work. He stated that all of his timesheets were accurate and were all approved by supervisors. He noted that no supervisor had ever spoken to him about inappropriate overtime work or called his high number of hours into question. He stated that he grew accustomed to working long shifts while he was in the military and that he was able to do so proficiently and without exhaustion impacting his performance. He noted that he only needed four hours of sleep a night. NE#1 disagreed that his behavior was unprofessional, as he said that he was able to perform his job appropriately.

**ANALYSIS AND CONCLUSIONS:**

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

***4.020-POL-1 Reporting and Recording Overtime/Out of Classification Pay 3. Employee Work-Hour Maximums***

SPD Policy 4.020-POL-1(3) states that: “No employee may work more than 90 hours in one week, from 0300 hours on Saturday until 0300 hours the following Saturday.” The policy further indicates that: “These hours include all hours worked (i.e. regularly scheduled shifts, overtime, court time, paid details, compensatory time, secondary employment).” The policy explains that: “Exceptions to these limitations on maximum hours worked may be made only in the interest of public safety, court appearances, and mandatory overtime.” Lastly, the policy instructs that: “These exceptions must be pre-approved by a captain or civilian equivalent or higher-ranking individual.”

OPA’s investigation determined that NE#1 did not seek approval of a captain or captain equivalent to work hours that exceeded the 90-hour limitation. OPA’s investigation further revealed, and NE#1 confirmed, that he worked in excess of the 90-hour rule on 15 different occasions. In his defense, NE#1 stated that his exceeding the 90-hour rule was justified under the public safety and mandatory overtime exceptions. With regard to the latter, OPA could only identify two days upon which NE#1 worked a shift that would qualify as mandatory overtime; however, even if that overtime was subtracted, he still would have exceeded the 90-hour limitation.

With regard to the former, OPA concludes that NE#1 overstated the scope of the public safety exception. Even if augmenting shifts could theoretically be justified as furthering public safety given current staffing limitations, the



same does not apply for working overtime at a concert or sporting event. Moreover, while training is very important, NE#1 is not the only adjunct trainer in the Department and there are numerous other capable officers who could have worked in his stead to ensure his hours were in line with policy. In addition, had the Department intended instructors to be exempt from the 90-hour requirement, it would have explicitly stated this in policy. It did not.

As discussed below in the context of the professionalism allegation, OPA could not conclusively establish that the amount of hours NE#1 worked was detrimental to his productivity or created a dangerous working condition. This is the case even though the great weight of the scientific analyses of officer wellness have pointed to overwork and the lack of sleep as leading to worse decision-making, increased uses of force, and more complaints. It is important to note that, while this is the general rule, OPA did not find that NE#1 had a higher level of complaints or uses of force than his peers, indeed he had few of both with four Type I uses of force and two OPA complaints (neither of which went to investigation or resulted in discipline). This could be because NE#1 was less proactive than his fellow officers due to being overtired, but this is impossible for OPA to assess.

Ultimately, the difficulty of determining the impact of working in excess of 90-hours in a given week on a specific officer and how it, if at all, negatively affects the officers, his co-workers, and the community is exactly why the hourly limitation exists in the first place. The Department has made the judgment, weighing all the risks and benefits, that officers should not work more than 90-hours. It is not within NE#1's discretion to act contrary to that judgment as he did in the 15 weekly periods identified by OPA. This constituted a violation of policy.

For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

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

#### ***4.020-POL-1 Reporting and Recording Overtime/Out of Classification Pay 2. Employees Require Pre-Approval from a Supervisor to Work Overtime***

SPD Policy 4.020-POL-1(2) requires that "employees require pre-approval from a supervisor to work overtime." This policy is purposed to ensure that supervisors are aware of the nature and the amount of overtime their employees are working.

Based on OPA's analysis of the records of NE#1's overtime, there is no evidence indicating that he worked overtime without supervisory approval. The larger issue, which is discussed more fully below, is that there does not appear to be any coordination between the various supervisors assigned to multiple units who collectively approved NE#1's overtime. This also highlights the lack of any centralized database in which these approvals could be housed and that would trigger alerts when weekly hour limits would be exceeded by approval of specific overtime.

For these reasons, while OPA believes that systemic change is needed in this area, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against NE#1.

Recommended Finding: **Not Sustained (Lawful and Proper)**



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**Named Employee #1 - Allegation #3**

***5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication***

It was alleged that NE#1 may have been paid for hours he did not work and, as such, that he acted contrary to law and documented his time in an intentionally inaccurate manner, constituting dishonesty.

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. This would include laws criminalizing wage theft. In addition, SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications.

As indicated above, OPA's investigation was able to assess the amount of hours NE#1 itemized working in a given week, the source of those hours, and whether or not the time was approved by a supervisor. However, despite NE#1's contention that he was not compensated for any hours he did not work and that his timekeeping was accurate, OPA could not conclusively determine that this was the case. This is predominantly based on limitations in how time-in and time-out of work is monitored. For example, while NE#1 would presumably be present at roll call at the commencement of a shift, his work performance after that would be difficult to verify. While GPS would track NE#1's patrol vehicle, it does not indicate what he was doing at each given moment. Moreover, if NE#1 was logged at a premise, he might not activate his Department video, preventing OPA from determining what work he was performing. Similarly, if NE#1 indicated that he was at the North Precinct working overtime on a case, this would be virtually impossible for OPA to confirm, particularly now two years later.

With regard to the days where NE#1 was paid for more than 24 hours, he explained that he used overtime relating to his field training officer duties. This technically did not violate policy. However, the scope of the hours he worked – on multiple occasions 20 hours or more straight or with only short breaks in between, raises the specter of misconduct and OPA cannot conclusively disprove it or, for that matter, exonerate NE#1.

As discussed herein, this points to the need to reform how overtime is being monitored, as well as to better chart how SPD employees are carrying out their shifts and what hours they are actually working. However, with regard to NE#1's specific conduct, OPA finds that it is simply not provable given the available evidence and, thus, recommends that this allegation and Allegation #4 both be Not Sustained – Inconclusive.

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

**Named Employee #1 - Allegation #4**

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

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Not Sustained – Inconclusive.

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

**Named Employee #1 - Allegation #5**

***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.)

This allegation has two components. First, whether NE#1’s repeated working over the 90-hour limitation was unprofessional. Second, whether NE#1 violated the public’s trust and confidence by overworking and thus undermining his effectiveness as an officer, as well as by seeking compensation for time he did not work.

With regard to the first component, it is already fully addressed in the context of Allegation #1. With regard to the second component, OPA is unable to conclusively confirm or deny the conduct alleged and, as such, reaches the same inconclusive determination as set forth in Allegation #3 and Allegation #4.

For these reasons, OPA recommends that this allegation be Not Sustained – Inconclusive.

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

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

***4.020-POL-1 Reporting and Recording Overtime/Out of Classification Pay 4. Supervisor Responsibilities for Monitoring Overtime Use***

SPD Policy 4.020-POL-1(4) generally states that supervisors are responsible for monitoring officers’ overtime work. It instructs that: “Supervisors shall ensure that overtime requests are completed in accordance with the procedures established in this policy and that the appropriate reason for the overtime is recorded on the documentation.” Lastly, it mandates that: “As feasible, supervisors shall ensure that individuals do not work in excess of the maximum allowable overtime hours as established by paragraph 3 of this policy or the appropriate collective bargaining agreement.”

Throughout its investigation, OPA identified a number of gaps in SPD’s policies in this area, records management, and supervisory oversight. These gaps not only prevented sufficient supervisory oversight of NE#1’s overtime and overall work hours, but also made clear the inability to truly assess the scope of the problem.

First, an overarching issue is that timekeeping records, including overtime requests and approvals and Event Summaries, are not kept in a centralized database. Moreover, virtually all overtime records are in paper form. This makes it extraordinarily difficult to quickly, efficiently, and/or accurately audit the hours worked by an employee and to assess whether the hours logged are consistent with those worked. This was clear here where SPD could not ultimately conclusively verify how many hours NE#1 worked in 2019. It is clear that a centralized database is needed and that, as part of the creation and implementation of this database, all overtime records must be kept electronically. It is OPA’s understanding that this is in progress; however, OPA is not aware of what the expected roll out date is, what this database will look like, and what functionalities (including searches) it will have.

Second, there is a significant gap in supervisory oversight and approval of overtime. For example, the supervisor who approves NE#1’s timesheet does not have access to the documentation of all the overtime he worked. Thus, the supervisor cannot verify that it was entered appropriately and was consistent with other timekeeping records. In addition, given the lack of a centralized database, there are multiple supervisors across disparate units who would select NE#1 for overtime assignments given his provided availability; however, each supervisor would not have



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visibility into what the others were approving. Accordingly, even if unintentional, they would work together to approve more overtime than NE#1 was permitted to work. Again, a database that works as a one stop shop for all things overtime and the requirement that a supervisor checks overtime hours worked thus far during the week prior before approving would likely remedy this issue.

Third, the Department should consider allocating the responsibility to manage this database and oversee overtime to SPOC. This would ensure consistency across employees. Moreover, in OPA's general experience, if there is no single entity in charge of making sure that a project is successful, it will often fall short of its mark. This would ideally prevent that from occurring.

Fourth, while there are arguments as to whether this must be bargained with the police unions and to what extent, the Department should move to bring off-duty work – non-SPD overtime – under this umbrella. Without doing so, SPD will still lack visibility and control over the work of its employees. As has been expressed in a number of audits and reports, it is a significant interest and need of the Department to do so.

Fifth, in the absence of a centralized database, SPD Human Resources should keep data on employee start time and end time of regular shifts, overtime, off-duty, and furloughs. SPD Human Resources should also be empowered and expected to flag employees who may be working excess hours. In addition, SPD Human Resources should alter supervisor timesheet access to allow an employee's direct supervisor to view all hours an employee is compensated for prior to approving a timesheet.

Sixth, SPD should modify its policies in this area to reflect the above recommendations. The policies should also more clearly define what qualifies under the public safety and mandatory overtime exceptions to the 90-hour rule, should shift the current measuring of a week (Saturday 0300 hours to Saturday 0300 hours) to one that more closely mirrors the Wednesday to Wednesday pay periods used by SPD, should clearly define overtime versus off-duty work and have separate policy provisions governing each, and should expressly delineate maximum hours that can be worked in a single shift and the mandatory breaks that must be taken between shifts/workdays.

Seventh and last, SPD and the City should strive to reconcile any current conflicts between the collective bargaining agreements and SPD policy, as well as seek to successfully negotiate any of the changes above that are mandatory subjects of bargaining.

Recommended Finding: **Not Sustained (Management Action)**