



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 21, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0023

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
Imposed Discipline		
Oral Reprimand		

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.140 – Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	8.400 – Use of Force Reporting and Investigation 1. Officers Shall Document in a Use-of-Force Report All Uses of Force Except De Minimis Force	Not Sustained (Training Referral)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	8.400 – Use of Force Reporting and Investigation 1. Officers Shall Document in a Use-of-Force Report All Uses of Force Except De Minimis Force	Not Sustained (Training Referral)

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 Named Employee #1 made unprofessional statements and that Named Employee #2 made a comment that suggested potential bias on his part. It was further alleged that Named Employee #2 and Named Employee #3 failed to report and document a complaint of pain.

SUMMARY OF INVESTIGATION:

A Seattle Times reporter reviewed Department video recorded by Named Employee #1 (NE#1) and Named Employee #2 (NE#2). That video captured the officers’ discussions about a host of issues. The reporter identified portions of the conversation that may have contained unprofessional language – on NE#1’s part – and language that could suggest bias – on NE#2’s part. This investigation ensued.



As part of its investigation, OPA reviewed the video in question, as well as other video. During this review, OPA identified that NE#2 and a third officer – Named Employee #3 (NE#3) – may have failed to report and document a complaint of pain made by an arrestee. An allegation of failing to properly report and document force was added against both NE#2 and NE#3. OPA further interviewed all of the Named Employees.

BWV captured the entirety of the conversation between NE#1 and NE#2. At the time, NE#2 was a student officer in his “checkout” phase (the last part of field training). They discussed the handling of a call and then discussed policing in general. NE#1 told NE#2 that, based on his age, it will take him longer to let the job change him, but he will eventually “come to the dark side.” NE#1 referred to the job as “soul sucking” and told NE#2: “it starts to beat you down.” She advised him to “try and have a positive attitude.” NE#2 stated to NE#1 that people had told him that jobs would change him in the past. He explained that, when he joined the military, people told him that he would “start hating brown people.” NE#1 asked why. NE#2 provided the following anecdote:

[I did] have one moment when I went to my brother’s wedding, uh, he married, his wife’s Pakistani and her family’s Pakistani and they had a traditional Pakistani wedding where they got, I don’t know what they’re called (inaudible). Everyone was wearing (Pakistani attire), etc., and there was a moment where I kinda rounded the corner and I was like (exhales), because all my training is like the minute you see that, it’s a bad guy.

NE#2 continued that, while he had been hearing for years that eventually things would wear him down and he would “start hating people,” it “hasn’t happened yet.” NE#1 replied that she does not “hate people,” but that she was “very frustrated with what we’re dealing with.” She discussed community members’ perceived biases toward police officers. NE#2 later opined that you could not judge people as a “whole” and that each individual person needs to be judged by their own actions and “not as a group.”

They then changed topics and NE#1 noted a man who they believed might be about to pull his genitals out in public. They then drove by Cal Anderson Park and NE#1 identified it for NE#2. NE#1 remarked: “This is Cal Anderson. This is the shithole. Isn’t this lovely. These fucktards. This should be fucking impounded. It’s such bullshit. If we start putting the hammer down on these fuckers...yeah.” NE#2 noted that they were recording and NE#1 said: “I’m already on the chopping block. No, I’m just kidding.” They drove by a person who NE#1 recognized, and she remarked: ““Oh that guy’s a dick. Sorry.” The BWV ended shortly thereafter.

A separate interaction involving NE#1 and NE#2 was also recorded. At that time, they responded to an arrest. They discussed potential resources with the arrestee. A group of bystanders who were observing the arrest began to tell the officers to let the arrestee go and one bystander opined that the officers just wanted to arrest Black men. When asked for her badge number, NE#1 provided it. She noted that the bystanders did not actually want to discuss what was going on but only wanted to “scream and yell.” NE#1 told NE#2 that some of the bystanders were making fun of him and that they did not like officers who were in good shape. She referred to the bystanders as “soup sandwiches” and “obnoxious.”

OPA’s video review further indicated that, during the handcuffing of the arrestee by NE#2 and NE#3, he said “ow” and told NE#3 that she was being “rough.” As she continued to try to handcuff him, he again yelled “ow.” NE#2 was also in the immediately vicinity of the arrestee at that time. From a review of BWV, neither of the officers screened the arrestee’s complaint of pain or the statement that NE#3 was being “rough” with a supervisor. In addition, neither officer documented the complaint of pain, which, pursuant to SPD policy, constituted reportable force.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #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.*)

After reviewing the BWV, OPA finds that the totality of NE#1’s comments were unprofessional. Her statements included pejorative language and profanity concerning specific individuals and directed towards the City of Seattle. While not made in the presence of anyone but NE#2, NE#1 knew very well that they were being recorded and that the video could be accessed and heard by the public. Indeed, this is what happened here. Her statements ultimately reflected negatively on both her and the Department and, in this respect, diminished public trust and confidence.

Notably, NE#1 acknowledged that this was the case. She understood that she should not have made the comments in question and was regretful. While OPA recognizes that NE#1 took accountability for her statements, the scope and nature of the comments were significant enough to warrant a finding that she violated policy.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #1

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

It was alleged that NE#2 may have made comments that suggested bias on his part. 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.*)

When reviewing NE#2’s statements in context, it is clear to OPA that they did not constitute biased policing. During his conversation with NE#1, they talked about the job of being a police officer changing people. NE#2 said that he had been told previously that jobs would change him and provided the example of the military. His anecdote about the wedding was not purposed to point out his bias, but to show how he may be conditioned to think a certain way by a job or by training. He immediately thereafter explained that he did not, in fact, change his thinking based on that training and that he believed that all individuals needed to be assessed on their own merit and not due to their membership in a particular group. This is the opposite of biased policing.

As OPA concludes that NE#2 did not make statements that constituted biased policing, OPA recommends that this allegation be Not Sustained – Unfounded.

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



Named Employee #2 - Allegation #2

8.400 – Use of Force Reporting and Investigation 1. Officers Shall Document in a Use-of-Force Report All Uses of Force Except De Minimis Force

SPD Policy 8.400-POL-1 requires that officers report all uses of force except de minimis force. The Complainant's complaint of pain during his handcuffing constituted reportable force that NE#2 and NE#3 were required to report.

Both NE#2 and NE#3 denied hearing the arrestee say "ow." NE#2 also denied hearing the arrestee refer to NE#3 as being "rough." NE#3 did hear that comment but admittedly did not report it to her supervisor. She said that she did not believe that the statement needed to be reported as she was not holding the arrestee's wrist with any force at that time. She further stated that, based on prior experiences with the arrestee, he often made comments like that.

Even discounting the arrestee's statement that NE#3 was "rough," SPD policy is clear that a complaint of pain must be reported to a supervisor and documented. NE#2 and NE#3 did not do so here and, thus, acted contrary to policy.

However, OPA recognizes that both officers were new to SPD at the time. Indeed, NE#2 was still a student officer. Moreover, both officers stated that they did not hear the "ow" comment. Lastly, neither officer has been disciplined or counseled previously on failing to report force. For these reasons, OPA finds that retraining rather than discipline is the appropriate result. However, both officers should be on notice that future violations of this policy will result in a recommended Sustained finding and the imposition of discipline.

- **Training Referral:** NE#2 and NE#3 should be reminded to be aware of complaints of pain and retrained on the obligation to reports such complaints to a supervisor and to document them in a use of force report. In addition, both officers should be instructed that best practice is to screen a statement that they are being "rough" with a supervisor, as it could be construed to constitute an allegation of excessive force. Lastly, both NE#2 and NE#3 should be told that future violations of this policy will likely result in discipline. This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #3 - Allegation #1

8.400 – Use of Force Reporting and Investigation 1. Officers Shall Document in a Use-of-Force Report All Uses of Force Except De Minimis Force

OPA recommends that this allegation be Not Sustained and refers to the above Training Referral (see Named Employee #2 – Allegation #2).

Recommended Finding: **Not Sustained (Training Referral)**