



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 8, 2022

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0334

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 Will Strive to be Professional	Sustained

Imposed Discipline

Written Reprimand

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 made an unprofessional and biased comment.

SUMMARY OF INVESTIGATION:

SPD Officers, including Named Employee #1 (NE#1), were tasked with standing by while Parks Department employees were cleaning up Denny Park. Demonstrators, including the Complainant, came to the park to complain about police moving people from therein. NE#1 and other officers worked to escort demonstrators out of the park.

As NE#1 did so, an individual – who OPA believes to be the Complainant in this case – continually squeaked a plastic toy shaped like a pig in the immediate vicinity of NE#1. Demonstrators also shouted derogatory comments at officers as they performed their work. Lastly, there appeared to be a confrontation ongoing in the area behind the person squeaking the plastic pig toy.

At one point, NE#1 asked for the assistance of any other officer. He stated to that officer: “As long as you’ll...um handle whatever that is.” At the time of the statement, NE#1 appeared to move his hand up and down in the direction of the person and the confrontation going on behind them. The Complainant believed this to be a transphobic comment directed at them.

Body Worn Video (BWV) also captured NE#1 making other comments to demonstrators, including the following: “I want to hear more insults. I want to see what they (protestors) got” and “I’ll be your coach the whole time, you’re gonna do fine, your defiance is so brave, so brave. You’re doing a great job...I’m going to coach you along.”



As part of its investigation OPA interviewed NE#1 and a witness officer. NE#1 said that, when he said “whatever that is,” he was referring to the overall incident that was going on. He said that he was not referring to a specific person. He told OPA that he did not identify anyone as being transgender and no one expressed their gender identify to him at the time. He further stated that everyone in the near vicinity was wearing masks. The witness officer similarly believed that NE#1 was referring to an event not a person. He also opined that NE#1 could have been referring to the squeaking of the pig by the person near them. The witness officer did not believe that NE#1 was making a statement concerning the person’s gender identity.

With regard to his other statements, NE#1 said that me made them in order to coax the crowd back. He did not believe that they 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.)

The Complainant alleged that NE#1 engaged in biased policing when he stated, “whatever that is”. The Complainant interpreted this statement as a transphobic comment. As discussed above, NE#1 and the witness officer denied that this was the case and, instead, asserted that NE#1 was referring to an event and conduct, not an individual.

While OPA can see why the Complainant may have felt that the comment was transphobic, OPA has insufficient evidence to establish that this was the case. Stated differently, OPA cannot disprove that NE#1 was referring to conduct or an event, as he claimed. The lack of definitive evidence informs OPA’s conclusion that this allegation should be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #2

5.001 – Standards and Duties. 10. Employees Will 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.)

With regard to the other statements made by NE#1, OPA finds that they were unprofessional. While they did not include profanity, they were unnecessary and potentially escalatory under the circumstances. His statements were also not consistent with his stated claim that he was trying to coax the crowd away. If anything, his words made it more likely that they would stay and engage in further conflict with him and other officers.



Officers are held to a higher standard than those that they interact with. This includes not goading or engaging negatively with community members, regardless of the circumstances. This is what NE#1 did here. Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**