



## CLOSED CASE SUMMARY

ISSUED DATE: MAY 4, 2018

CASE NUMBER: 2017OPA-1036

### 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	Sustained
# 2	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Sustained
# 3	5.120 - Secondary Employment IV. Secondary Employment Permit (form 1.30)	Sustained
# 4	5.120 - Secondary Employment II. Responsibilities	Sustained
<b>Imposed Discipline</b>		
Termination		

***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 Complainants alleged that, while working secondary employment, Named Employee #1 made a number of racial slurs towards African-Americans in the presence of Seattle City Light employees.

**ANALYSIS AND CONCLUSIONS:**

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

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

Named Employee #1 (NE#1) was working secondary employment flagging traffic at a Seattle City Light (SCL) jobsite. He was working with a retired SPD employee. On that date, there was a minor disturbance between a SCL employee and an African-American male. The retired officer resolved the conflict and returned to work. After the fact, NE#1 approached several SCL workers and engaged in a diatribe that included multiple racial slurs towards African-Americans. During that same conversation, NE#1 also specifically used a racial slur towards an African-American SCL worker who he said talked “too much,” and threatened to harm an African-American individual. I note that the slurs that NE#1 used were abhorrent and I have chosen not to write them in this DCM. For the full recitation of what he said, I refer to the Case Summary for this matter.

Included among the individuals who witnessed NE#1’s behavior were three African-American SCL workers and the retired officer. The retired officer took no action. In addition, another retired officer who was informed of NE#1’s statements by the SCL workers also took no action. The second retired officer told the SCL employees to “tell your crew chief.” The SCL employees did so and SPD was notified of this matter by the Human Resources Manager for SCL. SPD then referred this case to OPA and this investigation ensued.



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During its investigation, OPA interviewed two of the SCL employees who witnessed NE#1's behavior. Both confirmed his use of racial slurs. OPA also interviewed both retired officers. The retired officer who was present when the slurs were made by NE#1 confirmed that he heard at least one of the slurs. At that time, the first retired officer said that he walked away. He did not report this matter to either the Department or OPA. The second retired officer confirmed that he told the SCL employees to report this matter to their crew chief. The second retired officer stated that he did not feel that he had any personal obligation to report this matter to SPD or OPA.

After this incident occurred, NE#1 left the employment of the Department. When the OPA investigator assigned to this case called NE#1 to set up an interview, NE#1 informed him that he no longer worked for the Department and was not required to give a statement. The OPA investigator offered to conduct the interview over the phone after NE#1 refused to come to OPA's office; however, NE#1 ultimately declined that invitation and did not participate in an interview despite OPA's best efforts. I do not find it coincidental that NE#1 retired shortly after this incident occurred and OPA initiated his investigation. Instead of facing the consequences for his actions, he avoided OPA and this disciplinary process.

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.*)

I find that the undisputed evidence conclusively establishes that NE#1 engaged in biased policing by using racial slurs towards African-American individuals and by combining those slurs with the threat to use force. His conduct and comments have no place in the profession of policing, let alone in modern society. By engaging in this behavior, NE#1 betrayed the trust placed in him by the community and violated our collective norms of decency.

I further note that it seems to me to be unlikely, if not implausible, that NE#1 had not engaged in this conduct before, as I do not believe that this type of racism simply appears out of the blue. I imagine that had his co-workers heard him make such comments, he would have been referred to OPA long ago and I hope that the fact that we have not seen such cases previously means that they were unaware. Regardless, the unfortunate reality is that these allegations reflect poorly on the Department as a whole, even though they are only attributable to NE#1. For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

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

***5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times***

SPD Policy 5.001-POL-9 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-9.)

As discussed more fully above, NE#1 made repeated racial slurs and also threatened violence against an African-American man. He engaged in this behavior openly and in front of multiple other individuals, many of whom had no affiliation with the Department. Aside from his behavior being clearly racist, NE#1 acted in a manner that



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undermined public trust in himself, other officers, and in the Department as a whole. For these reasons, I find that the evidence conclusively establishes that NE#1 was unprofessional and that his conduct not only embarrassed and diminished himself, but also the entire Department.

As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

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

***5.120 - Secondary Employment IV. Secondary Employment Permit (form 1.30)***

SPD Policy 5.120(IV) requires that, prior to working secondary employment, Department employees must have first obtained a Secondary Work Permit. This permit must contain detailed information concerning the secondary employment the employee seeks to engage in. It must further be submitted to and approved by a supervisor.

Given that the allegation in this case occurred when NE#1 was working secondary employment for SCL, OPA investigated whether he had a valid permit that permitted him to do so. OPA determined that NE#1 did not and, thus, his secondary employment in this case violated policy. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

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

***5.120 - Secondary Employment II. Responsibilities***

SPD Policy 5.120(II) sets forth, among other requirements, that: "Each employee is responsible for seeking approval of and accurately reporting all off-duty and secondary employment, including business activities, through their immediate chain of command to their precinct or section Captain"; and "All employees working off-duty or secondary employment must be equipped with their portable radio and shall log in with radio at the beginning of their shift giving their appropriate 'Victor' call sign, the address and business name of the event or job that they are working, the hours that they are working the job and must indicate if they are working in uniform or plain clothes. Employees will log off at the end of their shift."

The evidence in this case is abundantly clear that NE#1 did not comply with either of these requirements. As discussed above, he did not have a valid and approved permit for his secondary employment. Moreover, there was no indication in the record that he ever notified a supervisor that he was working secondary employment on the date in question. For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**