



## CLOSED CASE SUMMARY

ISSUED DATE: JUNE 4, 2018

CASE NUMBER: 2017OPA-1152

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 13. Retaliation is prohibited	Not Sustained (Unfounded)

**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 13. Retaliation is prohibited	Not Sustained (Unfounded)

***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 Employees retaliated against him when they filed an OPA complaint naming him rather than contacting Code 4 on his behalf. The Complainant added that he fears that the Named Employees will retaliate against any officer who stands up to or opposes their will.

#### **STATEMENT OF FACTS:**

The Complainant was investigated by OPA in a prior case for allegedly threatening to assault a fellow officer (see 2017OPA-0624). That case was referred to OPA by Named Employee #1 (NE#1), who is the Complainant’s lieutenant. NE#1 learned of the threats from other officers in the Complainant’s squad. While NE#1 considered contacting Code 4 (a counseling service for SPD employees), he, in consultation with OPA, deemed the threat to be potential serious misconduct and he referred it to OPA. During his OPA interview in that prior case, the Complainant alleged that the Named Employees engaged in retaliation against him. The Complainant contended that the retaliation occurred when NE#1 initiated this prior case against him instead of simply referring him to Code 4.

The Complainant opined that the retaliation stemmed from a case against NE#1 in which the Complainant was a witness (see 2016OPA-1459). That case resulted in a Sustained finding against NE#1. After that point, the Complainant recounted that the Named Employees created an adversarial environment where they would scrutinize everything that officers did and look for issues to refer to OPA. The Complainant stated that Named Employee #2 (NE#2), who was his sergeant at the time, made threats to send matters to OPA and it was clear that NE#1 backed him up in this regard. The Complainant sent an email outlining these concerns to his precinct captain and, in that email, stated that he was stressed, disheartened, and demoralized. He relayed these concerns in a meeting with his captain (where NE#2 was also present), during which he was told that things would get better. However, according to the Complainant, his working conditions did not substantially improve.

The Complainant pointed to three other incidents that he believed supported his allegation of retaliation. In the first, he was sitting in his patrol vehicle with his eyes closed on his lunch break. NE#1 knocked on his window and “yelled”



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at the Complainant for sleeping. The Complainant denied doing so. The Complainant asserted that he had a positive conversation the next day with NE#1, but that, later, NE#1 had NE#2 generate a Performance Appraisal System (PAS) entry for him. In the second and third incidents, he was lectured by NE#2 concerning clearing a scene and for logging out of his shift both without express permission. The Complainant received “negative” PAS entries for both. The Complainant stated that all three of these PAS entries were issued after he was a witness in the OPA case against NE#1.

The Complainant stated that NE#2 had since been reassigned from the watch. NE#1 was still the lieutenant and his approach had “softened.”

When interviewed by OPA, NE#1 denied that he used OPA as a tool against his officers. He stated that, contrary to the Complainant’s recitation of the facts, certain officers, not the supervisors, were adversarial. Among those officers were the Complainant and others on his squad. While NE#1 was aware that the Complainant was a witness in the case that resulted in discipline against him, he denied that it played any part in NE#1 referring the Complainant to OPA for his alleged threat against fellow officers. Prior to making that referral, NE#1 discussed the matter with NE#2, who believed it should have been a Frontline Investigation. However, NE#1 believed that it was potential serious misconduct and screened it with OPA. After that screening, he referred the matter to OPA.

NE#1 stated that he had discussed the Complainant and other problematic officers on the watch with the precinct captain and that he had the captain’s support. NE#1 recounted the incident when the Complainant had his eyes closed in the car differently. NE#1 stated that the Complainant was sleeping and that this was clearly inappropriate. He instructed NE#2 to complete a PAS entry, instead of a Frontline Investigation, when the Complainant spoke to him the next day and was contrite. NE#1 denied engaging in any retaliation against the Complainant.

NE#2 told OPA that there were significant performance issues with a number of the officers in his squad, including the Complainant. When he first took over that squad, he was under directions from the precinct captain to make them more proactive and to increase their activity. However, he got push back from several officers, including the Complainant. He was then required to start correcting performance and more closely supervising the officers. While the officers felt that he was being hard on them, his orders came directly from the captain.

With regard to the OPA referral concerning the threats allegedly made by the Complainant, NE#2 stated that he called peer support, but that NE#1 told him that OPA had been consulted and the matter was going to be referred to OPA. NE#2 stated that he issued the PAS entry to the Complainant for sleeping in his vehicle and instructed his entire squad not to do that based on potential dangers. NE#2 recounted the other incidents in which he allegedly yelled at the Complainant and stated that he did not do so.

NE#2 denied using OPA as a threat against his officers. He further denied ever engaging in any retaliatory actions against the Complainant.



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**ANALYSIS AND CONCLUSIONS:**

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

***5.001 - Standards and Duties 13. Retaliation is prohibited***

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-13.) SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, “oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy” or “who otherwise engages in lawful behavior.” (*Id.*) Retaliatory acts are defined broadly under SPD’s policy and include “discouragement, intimidation, coercion, or adverse action against any person. (*Id.*)

Based on my review of the record, it is clear that there were difficult and unfortunate dynamics between the Complainant (and potentially other officers in his squad) and his supervisors. That being said, I find insufficient evidence to establish that the Named Employees engaged in retaliation against him.

With regard to the OPA referral made by NE#1 against the Complainant, while it might have been preferable to notify Code 4, I do not believe it unreasonable that NE#1 thought that the alleged threats made by the Complainant constituted serious misconduct. Moreover, when he screened this matter with an OPA lieutenant, he was advised that he should make an OPA referral. He then did so.

The other incidents cited by the Complainant similarly do not rise to the level of retaliation. Based on my review of the evidence, they appear at most to be the result of a disconnect between the Complainant and his supervisors.

NE#1 denied engaging in retaliation and, applying a preponderance of the evidence standard, I reach a similar finding. For these reasons, I recommend that this allegation be Not Sustained – Unfounded against NE#1.

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

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

***5.001 - Standards and Duties 13. Retaliation is prohibited***

As with NE#1, I find insufficient evidence to establish that NE#2 engaged in retaliation. Notably, NE#1, not NE#2, made the decision to initiate the OPA referral against the Complainant. According to NE#2, he called peer support and intended on doing a Frontline Investigation until he was informed otherwise by NE#1. With regard to the other incidents pointed to as retaliation by the Complainant, NE#2 explained that he was trying to increase the performance of his squad based on directions given to him by the precinct captain. He denied that his actions in those incidents were retaliatory. When applying a preponderance of the evidence standard, I agree.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against NE#2.

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