



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 12, 2018

CASE NUMBER: 2018OPA-0144

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties - POL - [...] refraining from language, demeanor, and actions that may result in the individual feeling belittled, ridiculed, or intimidated.	Sustained
# 2	5.001 - Standards and Duties - 13. Retaliation is prohibited	Sustained
# 3	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Inconclusive)
Imposed Discipline		
15 day - Suspension without Pay		

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’s behavior was unprofessional, harassing, retaliatory, and potentially biased in nature.

STATEMENT OF FACTS:

A. The Complainant’s Emailed Complaint

OPA received an emailed complaint from the Complainant. The Complainant stated that Named Employee #1 (NE#1) was “harassing” citizens in the vicinity of an Auto Zone store in Seattle. The Complainant relayed that NE#1 was sitting outside of the store and was waiting for a “private citizen to apologize to him for a previous incident.” He recounted that “other citizens aware of the situation were upset that the officer was sitting outside of businesses at this location waiting for the mentioned citizen.” The Complainant asserted that this behavior constituted “a complete waste of tax payer money and promotes poor relations with the community.” The Complainant wrote that: “the community should not have to navigate a police officer who deems it appropriate to station himself outside a business to wait for a private citizen in order to receive an apology.” He further stated that: “This is harassment of the entire local community and potentially impacts local businesses due to citizens feeling uncomfortable patronizing said businesses.” The Complainant, who is White, noted that the community member at issue was African-American and he questioned: “whether the same treatment would be given to a citizen if...they and the community were predominantly white.”

B. OPA’s Investigation and Review of the Body Worn Video



After receiving the Complainant's email, OPA initiated this investigation. A review of the CAD Call Report indicated that, at approximately 0638 hours, NE#1 on-viewed a parking violation. He issued an infraction and called a tow company to impound the vehicle. NE#1's Body Worn Video (BWV) captured him speaking to the tow truck driver when he was approached by an unknown male, who is referred to herein as the subject. The subject asked why the vehicle was being towed and NE#1 responded: "because it's parked on the street, and it's very expired, that's why." He then asked the subject if he was the registered owner. The subject said that he was not and told NE#1 that it was his girlfriend's ex-boyfriend's car and that the ex-boyfriend was in jail. The subject explained that he used the car for work. At this point, the subject, who was clearly upset about the tow, said to NE#1: "you aint got shit better to do, all I'm doing is trying to make money to pay bills and shit, and you aint got anything better to do." He then stated, while walking away: "fuck with my car, over some goddamn tabs." The subject's girlfriend came out of her apartment and began speaking with NE#1. The girlfriend, who was also upset, said to NE#1: "I just got paid today, I was going to put it in my name." NE#1 responded that the tabs had been expired "forever" and that she and the subject had still been driving the vehicle around. She told NE#1 that she previously had not had sufficient money to register the car. She explained that her son's birthday and Christmas had exhausted her financial resources and that she was finally able to afford to register the car now. NE#1 told her that he was not going to release the car and that it was going to be towed. At this point, NE#1 referenced the car being parked in front of the Auto Zone store and the girlfriend indicated that the subject drove the car to work there.

The girlfriend opened the door and NE#1 told her to stop and step away from the car. She eventually explained that she needed to get some things for her work. The subject walked back to the car and NE#1 shined his light on him. The subject told him to stop doing so and stated, regarding NE#1: "he's a ho." The subject and his girlfriend continued to complain, with the girlfriend telling NE#1 that he should not "mess with broke ass people." NE#1 responded to the subject: "you're a big man, huh. You're talking all kinds of smack." As he walked away, NE#1 stated to them: "think about all the times you've gotten away with it." He then drove from the scene. As he drove away, the girlfriend called him a "bitch," told NE#1 that towing the car when they were sleeping was a "bitch move," and called NE#1 a "punk." NE#1 rolled down his window and responded: "I'll see you guys, goodnight." He further stated to the subject, "I'll see you for sure."

Nearly three hours later, at approximately 0915 hours, NE#1 logged himself to a premise at Auto Zone. His BWV was activated at this time. The BWV showed NE#1 walk to the rear passenger side of his car and take a rolling chair from his backseat. He rolled the chair to the front of the Auto Zone and sat down. Shortly thereafter, an individual asked NE#1 what he was doing and whether he was "posted" there now. NE#1 responded: "for now, I got a little disrespected earlier today, so I'm going to hang out." Approximately five minutes later, another patrol unit pulled in front of the store. In response to the other officer's greeting, NE#1 stated: "I'm just cold kicking it." He further stated: "just doing some community oriented policing stuff." NE#1 asked the other officer if he knew why NE#1 was there and the other officer said that he did. NE#1 remarked, apparently about the subject: "this guy's freaking out..." The officers discussed how there were less people than usual in the vicinity of the store. NE#1 stated: "I was hoping more people would be out here."

Someone who NE#1 appeared to know walked by NE#1 while walking his dog. They began to discuss why NE#1 was there and NE#1 told him: "I got called a ho and a bitch, I think I'm going to hang around here until I get an apology." NE#1 told the individual that the person who insulted him was "one of the guys who's usually around here."



Another patrol unit drove up and NE#1 spoke with that officer. The officer asked NE#1, who was this officer's sergeant, what he was doing. NE#1 responded: "I'm just hanging, I don't know if I told yah, I got a little disrespected earlier today, I think I deserve an apology. Do you know that broke down purple crown vic?" NE#1 continued: "that's not his car, that's his girlfriend's ex-boyfriend's who is currently in jail. You would think he would have enough pride not to be driving around his girlfriend's ex-man's car. I think I'm owed an apology."

Approximately 23 minutes after he first sat down, NE#1 was approached by the Complainant. The Complainant stated to him: "I've just heard the story of what you're doing out here, I just wanted to tell you, I think it's harassment is what you're doing." NE#1 responded "ok." In response to a request from the Complainant, NE#1 provided his badge number and the spelling of his last name. The Complainant told NE#1: "I just think it's a bad representation." NE#1 responded: "hanging out with the public." The Complainant stated: "No man, they know why you're here." When NE#1 asked who "they" were, the Complainant said: "you think you're owed an apology for a person whose vehicle got towed...it's just bad form in general." NE#1 again stated that he did not know who "they" referred to and the Complainant responded: "It's from one of the customers inside the store, they're fully aware of why you're here." NE#1 said "ok," and the Complainant walked away.

Around eight minutes after his interaction with the Complainant, NE#1 began wheeling his chair back to his patrol vehicle. He interacted with an individual sitting in a vehicle who asked him what was going on and NE#1 said that someone was calling him names earlier. Another individual responded: "that's a sign of being pissed off, you brought an office chair out." NE#1 said: "I'm just hanging out."

At nearly that same time, an older African-American male walked out of the Auto Zone store. He discussed NE#1's behavior and counseled him about unnecessarily escalating the interaction with the subject. He provided NE#1 with guidance on how to avoid conflict and communicate with the subject. The male told NE#1 that the behavior that NE#1 was currently engaging in was the wrong thing to do and that it would be better to wait and let the situation settle down. NE#1 thanked the male for his advice, shook his hand, and walked back to his vehicle. He then drove from the scene and de-activated his BWV. All in all, NE#1 was seated in front of the store while on duty for more than 30 minutes.

C. OPA's Interview of the Complainant

OPA interviewed the Complainant. The Complainant stated that he was inside Auto Zone when he overheard some other customers talking about an officer who was sitting outside waiting for someone to apologize to him. The Complainant recalled that multiple other people came into the store and were also talking about the officer's behavior. The Complainant recounted that he went outside and told NE#1 that he did not think NE#1 sitting around and waiting for someone to apologize to him was an appropriate use of taxpayers' dollars. While NE#1 was polite to the Complainant, the Complainant still believed that it was a poor usage of City of Seattle and Department resources for NE#1 to be sitting outside of the store for at least 30 minutes. OPA asked the Complainant about his assertion in his email that NE#1's conduct could be based on bias. The Complainant noted that the area in which this incident occurred was predominantly African-American and he was skeptical that the same conduct would have occurred in a majority White neighborhood.

D. OPA's Interview of Named Employee #1



NE#1 told OPA that he stationed himself in front of the Auto Zone on the date in question in order to keep his eyes on a historically high-crime location. He stated that he will “spend a lot of time there” and “try to interact with people in the plaza.” He indicated that he knew the subject was a “mobile mechanic” at Auto Zone and was there often. The subject was the individual who NE#1 felt “disrespected” him. He recalled the earlier incident and that the subject got upset with him and that the subject and his girlfriend were calling NE#1 “names” and “just belittling me and cussing and swearing at me for the action that I was taking, towing the car.”

NE#1 stated that he went to the Auto Zone frequently to be “seen” and to let people know that there is a “police presence.” However, he acknowledged that pulling out a chair and sitting in front of the business was not something that he would normally do and that he did so because he wanted to be visible. Because he was planning on staying there for over 30 minutes, he wanted to be “comfortable and approachable.” He told OPA that he was not there to contact the subject to obtain an apology and that he had “no intention of initiating contact” with him. He then told OPA that, had the subject shown up at the business, he would have revisited the earlier towing with him. NE#1 did not opine as to how his behavior could have made the subject feel.

NE#1 acknowledged that his conduct could have possibly been perceived as trying to belittle or demean the subject. However, he stated that he felt like he does a “very good job building bridges with the community – the local community there, at that exact location.” He said that he was not at that location to retaliate against the subject. NE#1 denied engaging in biased policing and stated that it was insulting, in part, because he is in a “mixed race marriage.” He stated that he would have acted the same way regardless of where this incident occurred.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties - 9. Employees Shall Strive to be Professional

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.) The policy states that: “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.*) Lastly, the policy proscribes: “unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

As discussed below, I find that NE#1 violated virtually every aspect of the Department’s policy.

With regard to NE#1’s conduct at the time he towed the car, he made two statements that served to the escalate this situation. The statements were the following: when he told the subject “you’re a big man, huh. You’re talking all kinds of smack”; and when he later stated to the subject and his girlfriend “I’ll see you guys, goodnight,” and added to the subject, “I’ll see you for sure.” These statements were gratuitous and unnecessary. The first statement served no purpose other than to further rile the subject up and could have very well resulted in a physical altercation under different circumstances. The second statement was geared, in my opinion, to inform the subject that NE#1 would be looking for him later. This was or, at the very least, could have been interpreted as a threat. Moreover, NE#1’s conduct in waiting outside of the store for an apology from the subject escalated the situation. Notably, this issue was raised by the man who counseled NE#1 on his behavior near the conclusion of the incident. The individual



expressly referenced the fact that NE#1's was doing the wrong thing by waiting outside of the store and the situation would be diffused if NE#1 left and allowed things to settle down. It is embarrassing for both NE#1 and the Department that a community member was required to convince NE#1 that his actions were inappropriate and escalated the situation. I note that even though multiple other officers came to the scene, none found it necessary to do so, even given their extensive collective training on professionalism, community oriented policing, and de-escalation.

NE#1's statements were also contemptuous and disrespectful towards the subject. The most notable among these was when NE#1 told him: "You would think he would have enough pride not to be driving around his girlfriend's ex-man's car."

Further, NE#1's conduct and statements were not associated with any legitimate law enforcement purpose and only served to undermine public trust in NE#1, his fellow officers, and in the Department as a whole. I am disappointed that NE#1 did not understand, either due to ignorance or deliberate obfuscation, how inappropriate his conduct was. This is particularly the case given that NE#1 is a Department sergeant who is responsible for being a leader and setting an example for other officers. I find it equally concerning that multiple officers drove by the scene, interacted with NE#1, and apparently saw nothing wrong with his actions. These officers should have recognized that his conduct was inordinately unprofessional and they had a personal obligation to notify a supervisor or OPA of what they observed. Lastly, NE#1 repeatedly referenced that he was engaging in "community policing" during the incident. If NE#1 truly believed that he was doing so, that is incredibly problematic in and of itself. If not, it demonstrates that he was purposefully and sarcastically undercutting a crucial SPD program. The various community members who interacted with NE#1 during this incident may now believe that "community policing" is simply a code word for inappropriately disrupting and harassing a community member who "insulted" an officer. This is simply antithetical to the entire purpose and philosophy behind community policing. In OPA's opinion, this type of behavior creates a divide between the Department and the community it serves. It further sets back the efforts of the Department to develop trust and mutual respect and appreciation with the public.

Lastly, I note that, at the beginning of his OPA interview, NE#1's Guild representative objected to this case on the grounds that it concerned "minor misconduct," the investigation of which violated, in the representative's opinion, a prior "agreement between the Guild and City of Seattle. First, I know of no contractual provision that prevents OPA from investigating minor allegations of misconduct. Indeed, OPA has jurisdiction over any type of misconduct, regardless of severity. Moreover, the assertion that the behavior in this case constituted minor misconduct is frankly absurd. First, SPD policy defines "minor rudeness (absent bias)" as non-serious. However, the rudeness here was not minor and there was a bias allegation made by the Complainant. Further, even if the behavior was minor rudeness, SPD policy explicitly states that "repeated minor policy violations" constitute serious misconduct. NE#1 has had 12 separate investigations in to his professionalism over the past 18 years, two of which have resulted in Sustained findings. As such, this constituted a repeated violation that was mandated to be referred to and investigated by OPA. Second, the allegation of professionalism in this case was accompanied by allegations of retaliation and bias. Both of these constituted serious misconduct.

For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**



Named Employee #1 - Allegation #2

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 “exercises a constitutional right” and “publicly criticizes an SPD employee or the Department.” (*Id.*) Retaliatory acts include “discouragement, intimidation, coercion, or adverse action against any person. (*Id.*)

Here, the subject exercised a constitutional right when he expressed his frustration concerning the vehicle being towed. This was the case even though he did this in angry manner. Moreover, as discussed in the policy, the subject had the absolute right to critique NE#1, even by using terms such as “ho.” In response to the subject’s actions, NE#1 brought a rolling chair to the subject’s place of employment and sat outside waiting for an apology from the subject. This was certainly intimidating to the subject who, as explained by community members during the incident, remained inside his place of employment in order to not interact with NE#1. This feeling that NE#1’s behavior was intimidating to the subject was also articulated by the Complainant. Moreover, the evidence shows that NE#1 himself knew of the impact his behavior was having on the subject. This was expressed in his statement to two other officers that the subject was “freaking out” inside the store. The Complainant further stated that NE#1’s behavior was harassing towards the subject. I agree. I further conclude that harassing behavior constitutes “adverse action against any person” as contemplated by this policy.

I find that NE#1’s conduct was retaliatory in nature and violated the express language of this policy. For these reason, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

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

The Complainant alleged that NE#1’s behavior was potentially biased in that the Complainant doubted that NE#1 would have acted the same way in a predominantly White neighborhood. NE#1 disagreed with this, stating that he would have done the same thing regardless of where he was and referencing his “mixed race marriage.”

I share the same doubts as the Complainant in that I do not believe that NE#1 would have engaged in the same conduct had this incident occurred in Queen Anne, Magnolia, or in the middle of Capitol Hill. I am also concerned by NE#1’s comment, when asked what he was doing at the store by another officer, that he was: “just cold kicking it.” If not racially motivated, that statement was certainly not well thought through under the circumstances.

However, I ultimately find that there is inconclusive evidence in the record to either prove or disprove this allegation. As such, and while I still maintain significant concerns, I recommend that this allegation be Not Sustained – Inconclusive.

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