



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 5, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0352

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 (Unfounded)
# 2	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	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	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:

It was alleged that the Named Employee made a statement heard on radio that was alleged to have been unprofessional and biased.

SUMMARY OF INVESTIGATION:

On the evening of June 6, 2020 through to the early morning of June 7, 2020, Named Employee #1 (NE#1) was assigned with other officers to staff demonstrations surrounding the East Precinct. During the course of her shift, NE#1 stood on a line in front of the precinct for multiple hours. At that time, demonstrators yelled at the officers, used profanity towards them, and made a number of other insulting statements.

At approximately 2:46 a.m., after multiple hours at the precinct and on the line, NE#1 took a break with another officer – referred to here as Witness Officer #1 (WO#1). They sat together and talked in a patrol vehicle. At around that same time, an SPD communications employee overheard a statement made over the radio by an officer. The statement overheard was: “well if I wasn’t racist before...I’m getting there now.” It was determined that the statement was made over an open mic by NE#1. The communications employee notified a communications supervisor who, in turn, notified one of the incident commanders. The incident commander concurred that the statement warranted an OPA referral. NE#1 was taken off the line and relieved of duty.



As part of its investigation into this matter, OPA confirmed with the communications section that NE#1 was correctly identified as the officer who made the statement. OPA further interviewed WO#1 and NE#1.

WO#1 recalled working next to NE#1 on the line. WO#1 said that there were thousands of demonstrators facing them. WO#1 said that it was terrible and that officers were “on the line, holding the line, and just getting yelled at.” He indicated that demonstrators were saying “horrible” things to him, NE#1, and other officers. WO#1, who is Hispanic, described what he experienced as follows:

They would pick on whoever, like a female or a black officer, or me, um, just being brown and being on the line, I guess I was on the wrong side I don’t know, yeah, they would call us pigs, racist, Nazis, different terrible words.

As a former Marine, he was able to tune out what was being said; however, he saw that other officers, including NE#1, were significantly more affected. He noted that this was occurring every night and that, in addition to the insults, the officers were having objects thrown at them by demonstrators. He said that this was the context when he and NE#1 took their break.

While in the patrol vehicle together, he and NE#1 were joking with each other to de-stress when she made the statement. They then realized that her mic had been open. WO#1 recalled that NE#1 immediately understood that she had made a mistake and that what she said was unprofessional. He recalled that, soon thereafter, she was taken off of the line and was sent home.

WO#1 told OPA that NE#1 was joking when she made the statement. He denied that she was racist and said that he had known her since the academy and had never heard her expressing bias or acting in any way that suggested racist tendencies on her part. He felt that her statement was a result of the pressure and frustration she experienced by being on the line and getting repeatedly yelled at. WO#1 confirmed that the statement was unprofessional.

NE#1 similarly described the experience of being on the line at the East Precinct. She said that, at that time, she had worked six days in a row, each day being on duty for 12 to 13 hours, if not longer. She stated that all of the officers there were “miserable” and “tired.” NE#1 told OPA that officers: “had been having bottles full of urine thrown at us, rocks, small explosive devices, stones, and having some pretty horrible stuff said to us.” She recalled that, on the evening in question:

[T]here were some comments made about us being Nazis and being the kind of people who would have held the door open -- would have just taken orders under the Nazis or by Hitler and who would have held the – you know, the door open at a concentration camp.

NE#1 said that, as a person of Jewish descent with relatives who had been murdered in concentration camps, she found this to be extremely insulting and upsetting.

She said that, shortly after experiencing this, she was sitting in a patrol vehicle with WO#1. She acknowledged making the statement in question and said that she did so jokingly and while she and WO#1 were de-stressing. NE#1 provided the following context surrounding the statement:



I think the comment that I made, I made as a joke to a friend. We were stressed out. It was gallows humor. I do think the comment's objectionable. I – it was a human moment in which, you know, after having listened to a lot of people say a lot of horrible things and truly horrible things, people telling us to put our gun in our mouth and just shoot ourselves and no one would miss us, and our families were all ashamed of us, and then the Nazi stuff, which really -- none of this stuff really gets under my skin until they start saying stuff like that, just because it has such a personal connection for me.

She continued by explaining:

And so, I made a very dark joke that, you know, between me and my -- my friend...who is a, you know, Salvadoran brown man, right? It was a hundred percent irony, sarcasm. I knew that he understood that. Said it totally facetiously. I mean, that doesn't excuse it at all, but it is certainly not -- in the context of having people heard it, is not professional. It doesn't reflect, I think, the values that I hold as an officer. It certainly doesn't reflect the standards of the department. It could have caused a lot of embarrassment for the department had it not been over an encrypted channel.

NE#1 acknowledged that her statement was inappropriate and unprofessional in violation of Department policy. She denied, however, that it constituted biased policing on her part. Again, she said that it was a misplaced joke that she made to a friend. She noted that both her and WO#1 belonged to minority groups and that he understood that the statement was not meant to be racially pejorative in any way.

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.*)

As discussed more fully below and as recognized by both NE#1 and WO#1, NE#1’s statement was clearly unprofessional. However, with regard to bias, OPA finds NE#1’s explanation convincing and does not believe that his allegation has been established.

In reaching this decision, the context of the statement is significant. At that time, NE#1 and WO#1 had stood through hours of verbal abuse, including allegations that both of them were racist, Nazis, and evil based solely on their employment. In a moment of decompression, NE#1, a Jewish woman, made a joke to her partner, a Hispanic man. WO#1 perceived her statement to be a joke. Indeed, it makes no sense that NE#1 would express her genuine racist beliefs while on duty to a law enforcement officer of color and someone who is her friend. OPA believes it to be much more likely that NE#1 made a regretful statement without thinking and without understanding its implications. While a bad decision, this does not constitute biased policing.



For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

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.)

It is abundantly clear to OPA that NE#1’s statement was inappropriate and violated the Department’s professionalism policy. Indeed, both NE#1 and WO#1 recognized that this was the case. The statement, even if a joke, served to undermine public trust and confidence in both NE#1 and the Department as a whole. It was unacceptable and incompatible with the expectations of SPD employees.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations

SPD Policy 5.002-POL-6 concerns the reporting of misconduct by Department employees. It specifies that minor misconduct must be reported by the employee to a supervisor, while potential serious misconduct must be reported to a supervisor or directly to OPA. (SPD Policy 5.002-POL-6.) The policy further states the following: “Employees who witness or learn of a violation of public trust or an allegation of a violation of public trust will take action to prevent aggravation of the incident or loss of evidence that could prove or disprove the allegation.” (*Id.*)

OPA initially added this allegation against an unknown SPD employee based on the possibility that another officer was aware of misconduct but did not report it. However, OPA determined that this was not the case and that NE#1’s statement was contemporaneously identified as being in violation of policy.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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