



## ***CLOSED CASE SUMMARY***

ISSUED DATE: MAY 3, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2019OPA-0286

### **Allegations of Misconduct & Director's Findings**

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties - 10. Employees Shall 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 was unprofessional towards him at a ferry terminal.

### **ANALYSIS AND CONCLUSIONS:**

#### **Named Employee #1 - Allegations #1**

#### ***5.001 - Standards and Duties - 10. Employees Shall Strive to be Professional***

OPA received a complaint from an individual (referred to herein as the Complainant) who alleged that Named Employee #1 (NE#1) was unprofessional towards him. The Complainant asserted that he was driving his truck off of a ferry at the terminal in Fauntleroy. He told OPA that, at that time, he was with his wife and five-year old child. He stated that he approached a point where the traffic moved either left or right. He recalled that NE#1 was directing traffic. The Complainant stated that he was planning on turning right and was confused by NE#1's hand signals because he believed that NE#1 was motioning him to go the other way. He briefly stopped his truck at a stop sign to take a moment to figure out what was going on. He stated that he turned left and, at this time, NE#1 looked directly at his truck and started "very angrily waving his hands impatiently." The Complainant opined that they must not be moving fast enough for NE#1 and stated that NE#1 yelled at them to "move it!" in a "nasty, pissed-off attitude." The Complainant asked NE#1 who he was yelling at and said that NE#1 responded: "it's my job to get you guys moving!"

The Complainant stated that when he turned around to get back onto the ferry (he was simply taking the ferry trip) and approached an employee at the terminal to ask how he could find out what NE#1's name was. The terminal employee told the Complainant that he did not know and that the Complainant should contact SPD. At that time, NE#1 walked over to where the Complainant was and the Complainant, after saying "excuse me, sir," asked NE#1 for his name, badge number, and his supervisor's name. In the alternative, the Complainant asked NE#1 for a business card. The Complainant recounted that NE#1 responded with his serial number but provided no other information. NE#1 again told the Complainant that it was his job to keep vehicles moving. The Complainant told OPA that he replied by saying that, as long as he was in control of his truck, he would drive it at a safe speed. He relayed that



NE#1 rolled his eyes and walked off. The Complainant stated that he and his wife were stunned by NE#1's behavior and posturing and were concerned with NE#1's "serious temper" given his authority and position. The Complainant wanted NE#1 to understand that he worked for the people and that he should not react so angrily when a community member had not done anything wrong.

The Complainant denied that NE#1 used any profanities towards him. He also did not see NE#1 act rudely towards any other motorists. He did, however, see NE#1 talking with other terminal employees and pointing towards his truck. He recalled that the other terminal employees were looking over at his truck. This occurred after he asked for NE#1's identifying information.

As part of its investigation, OPA obtained information concerning staffing at the ferry terminal on the date in question. OPA determined that the officer in question was NE#1 and that NE#1 was working off-duty employment at the time.

OPA interviewed NE#1. He recalled interacting with the Complainant. NE#1 stated that the Complainant was in the right-turning lane but that the Complainant stopped his truck. NE#1 contended that he waved at the Complainant to go, but that the Complainant's truck stayed stationary for around 10-15 seconds. NE#1 told OPA that vehicles stopping at the stop sign happened "every once and a while." NE#1 said that he told the Complainant that he could go, but that the Complainant responded: "no, we don't have to go, we'll go when we want to go." NE#1 stated that he then told the Complainant that he needed to go. NE#1 acknowledged that he may have said the statements relayed by the Complainant. NE#1 did not recall whether there were other vehicles in line before or after the Complainant's truck. However, he stated that there usually was traffic that he was directing. He contended that he was firm with the truck's occupants. He stated that he did not approach the truck and spoke with them from where he was standing. He stated that he may have been yelling at them but that he frequently yelled when directing traffic given noise and to ensure that motorists heard him.

NE#1 stated that the Complainant then turned around and came back – which NE#1 characterized as "unusual" – and that there was now a female in the truck who was not there initially. NE#1 stated that the Complainant asked him for his name and serial number and that he provided this information. NE#1 denied gesturing at the Complainant's truck while speaking with terminal employees.

NE#1 did not know why the Complainant reacted to this incident the way that he did. NE#1 stated that he dealt with thousands of vehicles a week and that, with 99% of those interactions, there were no issues or concerns raised by the motorists. NE#1 opined: "I can't speak for [the Complainant], you know, if he doesn't – you know, when he's stopped, doesn't like being told he needs to go...I don't know what kind of mood he was in that day...I don't know if he had [an] argument with the female that day, I don't know what's going on in his life."

NE#1 ultimately denied engaging in unprofessional behavior and being rude towards the Complainant.

In addition to its interview with NE#1, OPA interviewed the Complainant's wife and spoke with two supervisory employees of the terminal.

The Complainant's wife told OPA that she was inside of the truck for the roundtrip ferry ride and that she was present for and recalled the interaction with NE#1. She corroborated the Complainant's account of the incident. Like



the Complainant, the wife asserted that NE#1 was rude and unprofessional during this incident. She, like the Complainant, raised significant concerns regarding NE#1's demeanor and approach to this situation.

Supervisor #1 stated that he was not aware of or present for the incident. However, when asked about the incident and NE#1's behavior, Supervisor #1 said that he had witnessed NE#1 become "grumpy" with terminal employees. Supervisor #1 relayed that, because of this, terminal supervisors and employees had discussed the possibility of no longer allowing NE#1 to work off-duty at the terminal.

Supervisor #2 also did not witness the incident. She did mention two other incidents involving NE#1 in which she contended that he displayed a "short temper" and got "very angry." She recalled that the first involved a "heated argument" between NE#1 and a male and that he asked her to call police to the scene. The second involved a bias complaint made against NE#1 by a female motorist, for which officers also had to be summoned to the scene. Supervisor #2 provided the following observations concerning NE#1's actions and demeanor during his off-duty employment at the terminal: "in general, he yells a lot"; NE#1's "hand motions can be confusing especially when ferries are off-loading; NE#1 "stands out from other officers" who work at the terminal in a negative way; and that NE#1 has "a short fuse."

A review of OPA's files reflected that NE#1 has received at least seven complaints concerning his off-duty work at the terminal. By OPA's estimation, this is significantly more than any other officer employed by the terminal. Moreover, many of these complaints concerned NE#1's alleged unprofessional behavior. These included the following cases:

- **2016OPA-0870:** NE#1 was alleged to have engaged in unprofessional behavior while directing traffic at the terminal.
- **2018OPA-0477:** NE#1 was alleged to have treated a driver rudely while directing traffic at the terminal. The Driver contended that NE#1 gave her inconsistent directions and then yelled at her.
- **2018OPA-0783:** NE#1 was alleged to have yelled at motorists and was unprofessional and impatient.

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.*) Lastly, the policy instructs Department employees to "avoid unnecessary escalation of events even if those events do not end in reportable uses of force." (*Id.*)

When evaluating the totality of the evidence and when applying a preponderance of the evidence standard, OPA concludes that NE#1 engaged in unprofessional behavior during this incident. Based on OPA's interpretation of the record, it does not appear to be disputed that the Complainant stopped his truck at a stop sign and that, in response to him doing so, NE#1 yelled at the Subject to "move it" and told him "it's my job to get you guys moving." The Complainant asserted that this was done rudely and inappropriately; however, NE#1 asserted that, while he treated the Complainant firmly, he did not act unprofessionally during this incident.

Several factors inform my decision to give the Complainant's account more weight than that provided by NE#1. First, I found the Complainant's recounting of the incident to be more detailed and more credible than that provided by



---

NE#1. In this regard, one specific issue stands out. During his recall of the initial contact between himself and the truck, NE#1 explicitly refers multiple times to it having multiple occupants. However, later during his interview, he remarks that, when he viewed the Complainant immediately after their initial interaction, he had a female in the car who had not been there before. The Complainant repeatedly affirmed that he was together with his wife and child during the entirety of the incident and that they had taken a planned ferry ride together. The Complainant's wife, who was also interviewed by OPA, confirmed this fact. While perhaps a minor inconsistency, OPA believes it to be sufficient to indicate that the Complainant's account is the more accurate. Second, and while not determinative, the behavior alleged by the Complainant is consistent with at least three other complaints concerning NE#1's off-duty work at the terminal. Third, and again while not determinative by itself, the terminal supervisors interviewed by OPA noted that NE#1 could be "grumpy" towards other terminal employees and remarked that he stood out negatively in the way that he yelled at motorists, had a short fuse, and used confusing hand motions.

Given that I credit the Complainant's account when applying a preponderance of the evidence standard, I conclude that NE#1's statements and demeanor towards the Complainant and his family during this incident were unprofessional. As such, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**