



## ***CLOSED CASE SUMMARY***

ISSUED DATE: JUNE 2, 2020

CASE NUMBER: 2019OPA-0900

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

#### **Named Employee #1**

<b>Allegation(s):</b>		<b>Director's Findings</b>
# 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	Not Sustained (Inconclusive)

***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 the Named Employee issued them a parking ticket rather than a warning based on their race, age, gender, and for engaging in protected speech.

### **SUMMARY OF INVESTIGATION:**

On December 12, 2019, the Complainants and a friend parked their vehicle in a 30-minute commercial load zone near a US Post Office. One of the Complainants (Complainant #1), who was the owner and driver, exited the vehicle and went inside the Post Office while the other Complainant (Complainant #2) and the friend remained in the vehicle. While Complainant #1 was inside the post office, Named Employee #1 (NE#1) passed by while working traffic enforcement duty and assigned to identify and cite vehicles parked improperly. NE#1 noticed the violation, parked his vehicle, and exited his vehicle to begin processing the ticket.

While NE#1 was processing the ticket, Complainant #2 exited the vehicle and took issue with NE#1's decision to write a ticket for their vehicle. While NE#1 and Complainant #2 were talking, Complainant #1 returned from the Post Office. The parties differ on the interaction's specifics (summarized below). As NE#1 is a Parking Enforcement Officer (PEO) and is not equipped with Body-Worn Video, OPA reconstructs the essential features of the conversation from interviews with the Complainants and the Named Employee.

#### **A. Complainants' Accounts**

Complainant #1, the driver, agreed that she was parked in a commercial load zone and that the zone was painted and marked with a yellow sign which was visible from her vehicle. Complainant #1 also stated that she observed a white "Pay 8am-8pm" sign mounted perpendicular to the commercial load sign so that it faced the street. Complainant #1 stated that she interpreted this sign to mean that she could park in the space. It is undisputed that neither of the Complainants nor the other passenger paid for parking.



When interviewed by OPA, the Complainants stated that NE#1 told Complainant #2 and the friend that he would be issuing a parking ticket to “educate” them regarding the commercial load zone; namely that private vehicles were not permitted to park therein. Complainant #2 stated that she had the keys to the car and could have moved the vehicle. The Complainants stated that they asked NE#1 why he could not issue a warning instead. Complainant #1 stated that she explained that, as a student, the financial penalty would be onerous. They characterized the interaction as “terse” and negative. At one point, Complainant #2 told NE#1: “I’m sorry you are having a bad day.” She stated that NE#1 believed the statement came from Complainant #1, the driver, and that NE#1 replied to the effect that he had been planning to issue a warning but that instead, he would now be issuing a citation. Both Complainants identified as Asian females and stated that both they and their friend were women of color. The Complainants asserted that NE#1’s apparent mistaken belief that Complainant #1 made the statement rather than Complainant #2 was “cross-racial identification” and thus evidence of bias. The Complainants theorized that NE#1 was willing to assign Complainant #2’s speech as an Asian woman to another Asian woman (Complainant #1) because in his eyes they were “basically the same person” and “all Asian people are the same.”

The Complainants characterized NE#1’s conduct as rude and unprofessional, and stated that he appeared to write them the ticket because he disliked them and because he wanted to teach them a lesson.

#### **B. Named Employee’s Account**

NE#1 acknowledged that as a PEO, he has discretion to issue verbal warnings instead of tickets. When he contacts drivers who are parked illegally but in their vehicles, he stated that he will often honk his horn or flash his lights to give them the opportunity to move. NE#1 denied that it is his practice to issue tickets when individuals fail an “attitude test.” He stated that when drivers do not move their cars in response to a warning, he is unable to simply overlook violations.

NE#1 stated that, on the date of the incident, he observed Complainant #1’s car illegally parked. He stated that he did not initially see Complainant #2 or the friend in the car, and that he focused on processing the ticket until Complainant #2 got out and began speaking with him. NE#1 stated that Complainant #2 told him the car belonged to her friend (Complainant #1) who would be returning shortly. He stated that Complainant #2 grew frustrated and accused him of harassing students. At that time, Complainant #1 returned from the Post Office.

NE#1 stated that the Complainant explained she did not realize parking in the zone was illegal. He said Complainant #1 told him she was a student and that he did not have to give tickets to students who could not afford them. He stated that to his recollection, both of the Complainants told him they were sorry he was having a bad day and that this statement occurred in the context of a negative interaction between the three of them. NE#1 said that he replied that he was not having a bad day but was tasked with enforcing the Seattle Municipal Code.

NE#1 did not recall Complainant #2 stating that she had the keys and could move the vehicle. He said that had she so stated he would likely have allowed her to without issuing a ticket. NE#1 denied that it was his practice to write tickets to “teach a lesson” or that he did so to “educate” the Complainants.



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**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.*)

The parties dispute the exact circumstances of the conversation, and OPA is unable to conclusively state which account is closer to the truth on the evidence available. However, even taking the Complainants’ account in the light most favorable to them, OPA is unable to find that NE#1’s actions constituted evidence of bias.

The Complainants cited NE#1’s apparent mistake regarding which of them told him they were sorry he was having a bad day as evidence that NE#1 treated all Asian females as interchangeable. There are many plausible alternative explanations for NE#1’s alleged mistake. Most notably in the context of a negative interaction, it is plausible that NE#1 was simply upset, as they were. Absent additional evidence suggesting that NE#1 would not have taken the actions he did had the Complainants been of a different race, OPA finds insufficient evidence to impute racial bias.

Likewise, OPA finds no evidence to sustain a finding that NE#1 wrote the ticket because of the Complainants’ age or gender. While these are protected classes, the Complainants did not allege any facts suggesting that their age or gender were relevant to the interaction.

Finally, OPA does not find that NE#1 issued them the ticket because they engaged in protected speech. Based on OPA’s review of the evidence, NE#1 was legally correct that the Complainants’ vehicle was illegally parked. That the Complainant was confused about the signage and markings does not relieve her of liability. While NE#1 has discretion to issue warnings and conceivably could have done so here, he was not under any obligation to do.

For the above 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 at all Times***

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.*)



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As discussed above, OPA cannot determine the exact substance of what was said between NE#1 and the Complainants. This is due to the lack of video and the contradictory accounts provided by the involved parties. As such, OPA cannot establish via a preponderance of the evidence that NE#1 engaged in unprofessional behavior or made inappropriate statements towards the Complainants. As such, OPA recommends that this allegation be Not Sustained – Inconclusive.

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