



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 17, 2020

CASE NUMBER: 2020OPA-0118

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 (Inconclusive)
# 2	5.001 - Standards and Duties 14. Retaliation is prohibited	Sustained
# 3	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 retaliated against him by leaving a negative review about his food truck on Yelp. The Complainant further alleged that the Named Employee engaged in unprofessional conduct and make a statement indicating bias against Asians.

SUMMARY OF INVESTIGATION:

The Complainant is the owner of a food truck. He stated that, on January 29, 2020, one of his employees parked his vehicle in the vicinity of the food truck with the intent of picking something up. The employee's vehicle was then ticketed by Named Employee #1 (NE#1), a Parking Enforcement Officer (PEO). At the time the citation was issued, the Complainant said that he pointed out to NE#1 that the employee was just there to pick something up, was still in the vehicle, and would be leaving soon. However, NE#1 still wrote the ticket. The Complainant recounted commenting to others in the vicinity about NE#1. He said that he and NE#1 then had an exchange during which NE#1 was unprofessional. He stated that, at one point, NE#1 muttered something along the lines of: "You Asians can't park wherever you want." The Complainant said that he confronted NE#1 about this but NE#1 did not respond. The Complainant reported that he then watched NE#1 get on his cell phone and post a negative Yelp review about his business. The Complainant knew that this was the case because he was notified of the review contemporaneously and because of the substance of the review.

The Complainant contacted 911 to report what had occurred. He ultimately spoke to NE#1's supervisor. The supervisor then had a discussion with NE#1. According to the supervisor, NE#1 said that he cited a vehicle at the food truck and that, when he was driving away, an employee of the food truck called him a "dick." He said that he did not see who this was and did not know the race of the individual. NE#1 did not volunteer that he had made the Yelp review and the supervisor asked him about it. NE#1 replied that the employee had called him names and said: "that guy had it coming." When the supervisor mentioned that this might not go well for NE#1, referring to a



potential OPA investigation, he responded: “oh well.” Based on what he learned, the supervisor believed that NE#1 had engaged in potential misconduct and made an OPA referral. This investigation ensued.

As part of its investigation, OPA reviewed the citation that NE#1 issued, as well as the photographs he took of the parked vehicle. The citation was issued at 10:31 a.m. In addition, the photographs indicated that there was no one in the vehicle at the time. OPA further reviewed the 911 call made by the Complainant. During that call, he reported allegations similar to those discussed above and also referenced the comment about Asians allegedly made by NE#1.

OPA obtained the Yelp review posted by NE#1. The review stated the following: “Servers apparently hate law enforcement. When they call SPD personal [sic] Dicks. Will not be eating there.” The review was signed by an individual with NE#1’s first name and using the first letter of his last name. The review was made at 11:22 a.m.

OPA also interviewed the Complainant and NE#1. The Complainant’s account was consistent with the facts stated above. He acknowledged to OPA that he called NE#1 a “fucking dick.” He told OPA that he eventually had to contact Yelp and ask them to take down the review, which they ultimately did. He lastly verified that the name of his food truck was Seoul Bowl.

NE#1 recalled citing the vehicle in question and said that it was parked illegally. He did not see anyone in the vehicle at the time the citation was issued. He said that an employee working at the food truck insulted him. He specifically recalled the employee calling him a “dick.” He denied engaging with the employee or the driver of the illegally parked vehicle, except to notify them that their tabs were expired. He said that he did not see the employee and did not know that individual’s race. He denied making the comment attributed to him concerning Asians. NE#1 acknowledged posting the negative Yelp review during a break. He said that he did so because of what the employee said to him and to let other PEOs and law enforcement officers know that the business was not friendly towards them. NE#1 denied acting unprofessionally towards the Complainant and did not believe that his posting of the review was inappropriate or retaliatory.

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.*)

If NE#1 made the statement attributed to him by the Complainant, this would have, in OPA’s opinion, constituted a violation of SPD’s bias-free policing policy.

OPA notes that, while there are some inconsistencies with the Complainant’s account – namely, concerning the time the review was written and concerning whether the employee was inside of the vehicle at the time of the citation, he remained consistent with his assertion that NE#1 made a pejorative comment concerning Asians.



NE#1, like the Complainant, had areas of his account that raised questions for OPA. For example, OPA finds it unlikely that NE#1 did not know the race of the employee as he contended. Indeed, NE#1 drove by the business and knew that it was named Seoul Bowl. This name suggested, at the very least, an Asian affiliation that could have put him on notice of the employee's race.

Ultimately, given the disparate accounts provided by the parties and the inconsistencies identified by OPA, as well as in the absence of other witnesses and/or video evidence, OPA cannot definitively determine whether NE#1 made the statement attributed to him. As such, OPA recommends that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 14. Retaliation is prohibited

SPD Policy 5.001-POL-14 prohibits SPD employees from engaging in retaliation. The policy specific instructs that SPD employees do not take retaliatory actions against community members because those community members have exercised their “constitutional rights” or “publicly criticize[d] an SPD employee or the Department.”

Unfortunately, this is exactly what NE#1 did here. He posted a negative Yelp review for a business because one of its employees exercised his First Amendment rights by publicly criticizing NE#1. This analysis does not change even where the criticism was in the form of an insult, here: “fucking dick.”

NE#1 confirmed at his OPA interview that his decision to post the negative review was based solely on the insult. As such, retaliation in violation of SPD policy has clearly been established. For the above reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

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.) 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.*)

The parties dispute whether or not NE#1 made unprofessional statements towards the Complainant. As such, and similar to Allegation #1, OPA cannot conclusively determine this issue.

However, OPA has no difficulty finding that NE#1 acted unprofessionally when he created the negative Yelp review. While SPD employees may, at times, have negative interactions with members of the public, engaging in such action in response is simply inappropriate. SPD personnel, as public employees, must rise above such situations and avoid the very behavior that NE#1 engaged in here. Moreover, OPA is very concerned with the cavalier response that



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NE#1 had to his supervisor and his failure at his OPA interview to recognize the problems with his conduct. This is even more evidence to OPA that he acted contrary to policy and inconsistent with the Department's expectations.

OPA concludes that NE#1's actions undermined public trust and confidence in himself and in the Department. For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**