



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 25, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0414

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 14. Retaliation is prohibited	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to Be Professional	Not Sustained (Training Referral)

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:

An anonymous Complainant alleged that the Named Employee may have engaged in retaliation and unprofessional behavior towards another SPD supervisor.

SUMMARY OF INVESTIGATION:

OPA received an anonymous complaint concerning an interaction between Named Employee #1 (NE#1) – a Lieutenant – and a Sergeant who was then under his supervision. The Sergeant had filed a lawsuit against the City of Seattle based on injuries he received on the job and while assigned to a bicycle unit at the West Precinct. The Sergeant alleged that bicycles were not appropriately maintained and that was the cause in chief of his injury. The anonymous Complainant contended that, after the lawsuit was filed, NE#1 spoke to the Sergeant privately. During that conversation, NE#1 was alleged to have suggested that the Sergeant consider seeking a position outside of the bicycle unit and/or to seek a position at another precinct. The anonymous Complainant conveyed that the Sergeant was “shocked” and “demoralized” by this conversation and that NE#1 told him that his work performance was excellent and not the reason for the suggestion that the Complainant seek to leave his position.

OPA commenced this investigation. OPA determined that there were only two witnesses to the conversation – NE#1 and the Sergeant. As such, OPA interviewed both individuals.

1. Sergeant's OPA Interview

The Sergeant recalled that NE#1 asked him to have a private meeting. During that meeting, NE#1 suggested that the Sergeant consider finding a new position outside of the bicycle unit or that the Sergeant think about leaving the West Precinct altogether. The Sergeant stated that he was “shocked” by this statement and asked some questions to determine what the reasoning was behind it. NE#1 denied that the issues raised by the Sergeant (an injury while biking and a miscommunication of an order) were driving the suggestion. NE#1 confirmed to the Sergeant that his overall performance was good.



The Sergeant asked if the issue was concerning his taking leave during the demonstrations over the summer. NE#1 responded: “don’t you think your people needed you then?” The Sergeant said that he did not think so as the decision had already been made by SPD to give up the East Precinct and they were no longer working the same long shifts. NE#1 then told the Sergeant: “It just seems like you don’t want to be here.” NE#1 brought up that both the Sergeant and another bicycle squad supervisor had young families and may not be able to put in the same hours as other employees in different situations. The Sergeant again asked if his job performance was an issue and NE#1 said that it was not. The Sergeant reiterated that the vacation he took was authorized by NE#1. Near the end of the conversation, the Sergeant told NE#1 that he was “shocked” by NE#1’s suggestion. NE#1 was skeptical of this and told the Sergeant to think about it.

The Sergeant stated that this was the only conversation he had with NE#1 about possibly leaving the bicycle unit. He stated that NE#1 did not mention his lawsuit during their conversation; however, he said that the lawsuit had been made public and was known about within the precinct. The Sergeant could not say whether the lawsuit motivated NE#1 to have this discussion. He said that, after the conversation occurred, he began exploring other positions because he was concerned that he could be moved involuntarily. He ultimately remained in the squad. The Sergeant recalled asking another supervisor whether he had a similar conversation with NE#1. The Sergeant stated that, as far as he knew, NE#1 did not speak to that other supervisor.

2. NE#1’s OPA Interview

NE#1 said that, as a general matter, he had a positive view of the Sergeant and his work performance. He said that he often provided “impromptu” feedback to supervisees in lieu of formal evaluations. He would meet with supervisees to provide both positive and negative feedback. He stated that he also tried to be aware of what was going on in the personal lives of supervisees, as he felt that this helped him to better manage his team.

NE#1 told OPA that he was aware of the Sergeant’s lawsuit and that it related to an injury he suffered while riding a Department bicycle; however, he did not know the specifics of the Sergeant’s claims. He said that he was served with a notice of a deposition for the lawsuit, but that this occurred after his meeting with the Sergeant. He stated that he had not discussed the lawsuit with other supervisors.

NE#1 said that there was some friction between members of the Sergeant’s squad and the Sergeant because the Sergeant took time off during the ongoing demonstrations. NE#1 characterized those squad members as feeling that the Sergeant had “dropped out of the demonstrations.” NE#1 also noted another incident during the demonstrations where there was the belief that the Sergeant may not have performed an assignment with maximum effort. NE#1 expressed the concern, which he indicated was held by others, that the Sergeant may be having motivation problems potentially caused by personal issues.

NE#1 explained that he asked the Sergeant to meet with him because he felt that the Sergeant was “having some personal issues” and “was not engaged in the unit.” The Sergeant had expressed some frustration in the field and, while that was not out of the ordinary given what was going on, he felt that something seemed “out of sorts” for the Sergeant. NE#1 said that, given this and his observations, he asked the Sergeant if he still wanted to stay with the unit or if he wanted to find a new assignment. NE#1 told the Sergeant that, if he did, NE#1 would help him do so. The Sergeant stated that he wanted to stay on as a bicycle unit supervisor and he was permitted to do so. NE#1



indicated that he spoke to other supervisees about what other assignments they might be interested in and sent several officers home to recover during this same time frame.

NE#1 recalled that the Sergeant seemed surprised by the discussion; however, given the questions that the Sergeant asked him, NE#1 was, himself, surprised at the Sergeant's response. NE#1 felt that his meeting with the Sergeant was consistent with Department policy. He asserted that he would not have been doing his job if he did not check on the wellbeing of officers and try to preemptively address prospective problems. NE#1 said that he did not feel that this matter was better handled by SPD Human Resources and believed that this was within his discretion to address. NE#1 told OPA that he would have been willing to help the Sergeant find another job but also was equally committed to helping him succeed if the Sergeant wanted to stay. He said that he did not make any attempt to try to force the Sergeant from the bicycle unit and took no steps to do so.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 14. Retaliation is Prohibited

The anonymous Complainant asserted that NE#1's conversation with the Sergeant was improper as it was based on the Sergeant's filing of a lawsuit against the Department, not due to concern regarding the Sergeant's wellbeing.

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-14.) SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, "oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy" or "who otherwise engages in lawful behavior." (*Id.*) Retaliatory acts are defined broadly under SPD's policy and include "discouragement, intimidation, coercion, or adverse action against any person. (*Id.*)

Based on its evaluation of the statements provided by NE#1 and the Sergeant, who were the only witnesses to their discussion, OPA finds insufficient evidence to establish retaliation on NE#1's part. Most notably, it was undisputed that NE#1 did not mention the lawsuit during the discussion and, as even the Sergeant recognized, he could not conclusively determine NE#1's motive. As such, it is equally (if not more) possible that NE#1's intent in having the conversation was, as NE#1 stated, motivated by concern for the Sergeant and purposed to carry out his supervisory responsibilities. This is buttressed by the fact that NE#1 never brought this up again and took no steps to try to remove the Sergeant from the unit.

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

The anonymous Complainant also alleged that NE#1's discussion with the Sergeant was unprofessional.



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 lack of evidence of improper motive to establish retaliation also informs OPA’s determination that NE#1’s discussion with the Sergeant did not violate SPD’s professionalism policy. Again, there was no evidence that NE#1 made statements to the Sergeant that undermined trust and confidence in NE#1 or in the Department as a whole.

The above being said, OPA has concerns with the lack of documentation by NE#1 of his performance evaluations of supervisees. Failing to complete formal reviews and to memorialize feedback, whether positive or negative, is, in OPA’s opinion, essential to ensuring appropriate and consistent supervision. Indeed, had such documentation been generated here, it is possible that this complaint could have been avoided. At the very least, it would have provided evidence in support of NE#1’s assertion that he had no improper motive.

Accordingly, OPA recommends the below Training Referral, which is purposed to ensure that he completes comprehensive performance review documentation moving forward.

- **Training Referral:** It is OPA’s understanding that supervisors, whether sworn or civilian, are required to complete performance evaluations for supervisees. NE#1 should be instructed to do so, as well as to document both positive and negative feedback where appropriate. This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**