



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 14, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0558

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	Not Sustained (Unfounded)
# 2	5.001 – Standards and Duties 14. Retaliation is Prohibited	Not Sustained (Unfounded)
# 3	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	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:

The Complainant alleged that the Named Employee made biased statements towards himself and several women of African descent. The Complainant further alleged that, when he confronted the Named Employee about this, she retaliated against him by issuing him a citation. Lastly, the Complainant alleged that the Named Employee was unprofessional towards both him and the women.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 – Standards and Duties 10. Employees Shall Strive to be Professional

The Complainant reported to OPA that he observed Named Employee #1 (NE#1), a Parking Enforcement Officer, interacting with several women of African descent. They were discussing a parking ticket. The Complainant recounted that NE#1 spoke to the women in an offensive and racially charged manner. He said that, at one point, the women began to prostrate themselves on the ground in front of NE#1. He told OPA that he was dismayed by NE#1's conduct and confronted her. He recalled that he told her that she had been unprofessional and that she should find another career. He said that he then got into his car and moved it from the area, even though he had not been parked illegally.

He stated that, shortly thereafter, NE#1 began issuing a citation to his vehicle, even though he was again parked legally. He said that NE#1 used profanity and racial terms towards him, including calling him the N-word. He stated that she told him that she was "the law" and that he was "in trouble now."



The Complainant told OPA that his car was the only one that NE#1 ultimately cited. He said that he videorecorded portions of the incident; however, he claimed that his phone needed to be reset and that he would have to visit a specialist to recover the video. He also stated that there were witnesses to the incident and offered to provide their names to OPA. However, the Complainant did not ever actually provide the names to OPA or, for that matter, produce any video.

As part of its investigation, OPA interviewed NE#1. She said that she was at the location in question when she viewed three vehicles that were illegally parked in a disabled parking zone. She observed that none of the vehicles had a placard legally permitting parking in those spots. NE#1 began issuing a citation to the first vehicle, a White Chrysler, that was parked in front of her. While she was doing so, the Complainant and two young women ran over. She recalled that the Complainant stated: "You're not writing me a ticket." She told him that the ticket was already in her handheld device. She said that, if they remained there, she would give them the citation information. The Complainant called her a "fat ass bitch" and got into his car and began to pull out. She stated that she told the Complainant that, if he left, the ticket would have an extra amount added to it. The Complainant cursed at her through his open window. She further noticed that the Complainant's tabs were expired and told him that he should not park anywhere else. The Complainant drove away. She spoke to the women, who said that they were sorry and asked where they could park without being cited. NE#1 told them. She then walked away and continued performing her parking enforcement duties.

While doing so, NE#1 noticed a vehicle with expired tabs. She asked around to see whose vehicle it was. She then realized that it was the same vehicle that she had just cited and that it belonged to the Complainant. NE#1 recalled that the Complainant approached her and again called her a "fat ass bitch." She said that she debated whether to cite his vehicle but decided to do so, as she had just told the Complainant that he could not park publicly with expired tabs.

NE#1 denied making any unprofessional or racially derogatory statements towards either the Complainant or the two young women. She further denied that the women ever kneeled before her as the Complainant asserted. Lastly, NE#1 said that she had a lawful basis to cite the Complainant's vehicle and did not do so in order to retaliate against him. NE#1 told OPA that there may have been a Ring security camera at the home across the street from where the Complainant's car was illegally parked.

OPA went to the scene and made contact with the resident of the home with the Ring security camera. The resident said that people often parked illegally in her neighborhood and that she regularly called to ask for assistance and had interacted with NE#1 before. She described NE#1 as competent and professional. She recalled the incident in question. She said that a male was acting aggressively and erratically towards NE#1, including calling NE#1 a "fat bitch." The witness denied that NE#1 was unprofessional towards the male or anyone else and also denied hearing NE#1 make any racially derogatory or unprofessional statements. The witness said that she videotaped the incident via her Ring security camera, but that it had since recorded over.

Lastly, OPA reviewed the citations issued by NE#1. The citations were accompanied by photographs that verified that the Complainant's car was illegally parked in a disabled parking spot and that the car's tabs were expired.

There are three policies at issue here.



First, 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.*).

Second, 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 engages 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.*)

Third, SPD Policy 5.140-POL-2 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.” This includes different treatment based on the race of the subject. (SPD Policy 5.140.)

OPA’s investigation revealed that all of the Complainant’s allegations were without merit. With regard to retaliation, the citations and accompanying photographs indicated that the Complainant’s car was illegally parked and had expired tabs. Notably, while the Complainant denied that he was parked illegally at any time, his claims were disproved by the photographs, undermining his credibility. With regard to professionalism and bias, the witness to the incident directly contradicted the Complainant’s claims and corroborated the account provided by NE#1. While the Complainant asserted that he had video and witnesses supporting his assertions, he never provided this information to OPA. OPA finds this concerning particularly given the seriousness of the allegations he made against NE#1. Indeed, the evidence ultimately indicates that the Complainant’s allegations may have been entirely fabricated.

Ultimately, for the reasons stated above, OPA recommends that this allegation and Allegations #2 and #3 all be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

5.001 – Standards and Duties 14. Retaliation is Prohibited

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #3

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing



For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Unfounded.

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