



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 15, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0229

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 – Standards and Duties. 10. Employees Will Strive to be Professional	Not Sustained (Inconclusive)
# 2	5.140 – Bias-Free Policing. 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	5.140 – Bias-Free Policing. 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing.	Not Sustained (Lawful and Proper)
# 4	5.140 – Bias-Free Policing. 7. Employees Will Document All Allegations of Bias-Based Policing	Allegation Removed

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.140 – Bias-Free Policing. 6. Supervisors Conduct Preliminary Inquiry into Bias-Based Policing	Not Sustained (Management Action)
# 2	5.140 – Bias-Free Policing. 7. Employees Will Document All Allegations of Bias-Based Policing	Not Sustained (Management Action)

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 Named Employee #1 treated her unprofessionally and subjected her to biased policing. OPA further alleged that Named Employee #1 may have failed to report the allegation of bias to her supervisor and that they supervisor did not investigate the allegation.

SUMMARY OF INVESTIGATION:

The Complainant reported that, while unloading wood chips at a community garden, she was approached by Named Employee #1 (NE#1), a Parking Enforcement Officer (PEO). She said that NE#1 wrote her a ticket for parking on the sidewalk. When she tried to speak with NE#1 about the ticket, NE#1 commanded her to move her vehicle. The Complainant wrote that she “decided to finish unloading [her] last load.” The Complainant alleged that NE#1 continued to harass her by telling her to move her vehicle, and that NE#1 threatened to call a tow truck. NE#1 asked the Complainant whether she had to call the police. The Complainant said to NE#1: “What’s your problem? Are you



racist or something?” The Complainant recounted that NE#1 replied: “Oh no, we’re not going there.” The Complainant felt that this exemplified NE#1’s racism.

After receiving this complaint, OPA initiated an investigation. OPA interviewed the Complainant, who provided additional detail concerning her allegation. OPA also reviewed the citation completed by NE#1, which included a photograph showing the Complainant’s vehicle parked on the sidewalk. OPA could not locate any video of the incident (PEOs are not equipped with Body Worn Video or In-Car Video).

During its initial review of this case, OPA could not find any indication that the Complainant’s allegation that NE#1 was racist was reported to a supervisor or documented. As such, OPA also added allegations against NE#1’s supervisor – Named Employee #2 (NE#2).

Lastly, OPA interviewed NE#1 and NE#2 concerning the allegations made against them.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 – Standards and Duties. 10. Employees Will 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.*) 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.*)

During her OPA interview, NE#1 said that she observed the Complainant’s vehicle illegally parked and that she began issuing a citation. At that point, the Complainant approached her and said that she was told by her boss that she could park on the sidewalk. NE#1 told her that she could not and asked her to move her car. When she did not do so, NE#1 said that she would be required to call for a tow truck. NE#1 recalled that the Complainant asked her if she was being racist, and she replied that they were not going to go there. NE#1 denied that she was rude to the Complainant or that she was escalated during the incident.

As discussed above, there is no video of this incident and OPA is not aware of any independent witnesses to what occurred. If NE#1 made the statements attributed to her while using an elevated voice and a rude tone, it could constitute unprofessionalism. However, NE#1 denies that she did so and OPA cannot disprove this. Moreover, simply refusing to engage with the Complainant concerning the allegation of racism does not, standing alone, constitute unprofessionalism.

Given the disputes of fact in this case, OPA recommends that this allegation be Not Sustained – Inconclusive.

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



Named Employee #1 - Allegation #2

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.*)

While the Complainant alleged that NE#1 engaged in biased policing, NE#1 denied that this was the case. NE#1 contended that she began citing the car when it was unoccupied and before she ever saw the Complainant. NE#1 further asserted that the car was clearly parked illegally at the time.

From a review of the documents, OPA agrees that the car was parked on the sidewalk and that the citation was validly issued. OPA further found no evidence suggesting that NE#1’s conduct was based on bias rather than on some other motivation.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #3

5.140 – Bias-Free Policing. 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing

SPD Policy 5.140-POL-5 requires employees to notify a supervisor when a bias allegation is made against them. This is purposed to allow the supervisor to timely investigate and document the allegation.

NE#1 told OPA that she notified her supervisor, NE#2, of what occurred. NE#2 confirmed that this was the case. Accordingly, OPA concludes that NE#1 complied with this policy and recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #1 - Allegation #4

5.140 – Bias-Free Policing. 7. Employees Will Document All Allegations of Bias-Based Policing

As NE#2, not NE#1, was responsible for documenting the Complainant’s bias claim, OPA recommends that this allegation be removed as against NE#1.

Recommended Finding: **Allegation Removed**



Named Employee #2 - Allegation 1

5.140 – Bias-Free Policing. 6. Supervisors Conduct Preliminary Inquiry into Bias-Based Policing

SPD Policy 5.140-POL-6 requires that supervisors investigate allegations into biased policing and that they go to the scene to do so. SPD Policy 5.140-POL-7 states that supervisors must either document those allegations in a Bias Review form or make an OPA referral.

At her OPA interview, NE#2 stated that, after SPD published the form on which bias allegations were supposed to be reported, the Parking Enforcement Unit supervisors met together to discuss it. They collectively decided that they would only complete a Bias Review to document the allegation of bias where the vehicle was unoccupied at the time the citation was issued and where the PEO did not observe the driver prior to issuing the citation. She stated that this was run by an SPD supervisor who concurred with the approach.

NE#2 recalled that NE#1 called her and told her what happened. She asked NE#1 questions about the incident and, based on NE#1's responses, she determined that she did not need to respond to the scene based on the protocol. NE#2 felt that what the Complainant said was a question not a statement and, thus, did not constitute an allegation of bias that needed to be investigated.

In assessing this allegation, OPA has significant concerns that a group of managers would unilaterally decide what bias allegations they would investigate and, more problematically, what they would not investigate. The policy states that all bias complaints are required to be investigated. The policy does not allow supervisors discretion to pick and choose.

OPA notes that this appears to be an issue that goes beyond NE#2 and her failure to comply with policy. This is a practice that is apparently widespread and is being applied by all supervisors. In addition, OPA notes that the PEOs and PEO supervisors no longer work for SPD and are not bound by the Department's bias investigation requirements.

Even though SPD and, by extension, OPA no longer have jurisdiction over these employees, OPA believes that there will be a continuing need for bias allegations against PEOs to be investigated. For this reason, OPA issues a Management Action to recommend to SDOT – the PEOs new employer – that it create a bias claim investigation policy and process. OPA suggests that SDOT make clear that this policy governs all allegations of bias and that supervisors are not permitted to pick and choose what they investigate.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #2 - Allegation #2

5.140 – Bias-Free Policing. 7. Employees Will Document All Allegations of Bias-Based Policing

For the same reasons as stated above (see Named Employee #2 – Allegation #1), OPA recommends that this allegation be Not Sustained – Management Action Recommendation.

Recommended Finding: **Not Sustained (Management Action)**