



## ***CLOSED CASE SUMMARY***

ISSUED DATE: OCTOBER 10, 2022

FROM: DIRECTOR GINO BETTS  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0113

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

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

Allegation(s):		Director's Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5.002-POL 5. Supervisors Will Investigate or Refer Allegations of Policy Violations [...]	Not Sustained - Lawful and Proper
# 2	SPD Policy 5.001 - Standards and Duties 5.001-POL 14. Retaliation is prohibited	Not Sustained - Unfounded

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5.002-POL 5. Supervisors Will Investigate or Refer Allegations of Policy Violations [...]	Not Sustained - Unfounded
# 2	SPD Policy 5.001 - Standards and Duties 5.001-POL 14. Retaliation is prohibited	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 Named Employee #1 (NE#1) and Named Employee #2 (NE#2) retaliated against him for reporting another officer the Complainant accused of "felony time theft."

### **ADMINISTRATIVE NOTE:**

The Complainant's initial email to OPA also implicated the officer (WO#1) he accused of "felony time theft" and an assistant chief (WO#2). However, as OPA previously investigated the "felony time theft"<sup>1</sup> allegations (2018OPA-0997) and the assistant chief's involvement in the present allegations was minimal, both are listed as witness employees.

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<sup>1</sup> This allegation was also reviewed for criminal charges, which was declined.



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**SUMMARY OF INVESTIGATION:**

On April 13, 2022, the Complainant emailed OPA alleging retaliatory and disparate treatment from his superiors in response to him whistleblowing against another officer. That email outlined the Complainant's account of relevant events ranging over a two-year period.

*Complainant's OPA Email (below summarizes the Complainant's account)*

On June 2, 2017, the Complainant, serving as temporary acting lieutenant at the Audit, Policy, and Research Section (APRS), confronted WO#1 about unapproved tardiness. WO#1 responded by threatening the Complainant with scissors. NE#1, WO#1's direct report and the unit's acting lieutenant, told the Complainant WO#1 threatened to report the Complainant for harassment. The Complainant told NE#1 he felt bullied by WO#1 and unsafe in the "hostile" office. Later, the Complainant elevated his concerns to WO#2. He also filed a complaint for WO#1's threats with the Office of Professional Accountability (subsequently, the Office of Police Accountability). That complaint was directed to the Department for a frontline review, where NE#1 declared the accusation "unfounded."

On August 29, 2017, the Complainant was listed on the Police Lieutenant Promotional Register. Nevertheless, the Complainant was told someone else would serve as acting lieutenant when NE#1 was out of office. Thereafter, WO#2 told the Complainant the Department was doing away with the "acting lieutenant" role. Subsequently, "acting lieutenant" was removed from the Complainant's timesheet. NE#1 told the Complainant he "did not have the right motivation to be the acting lieutenant," which NE#1 also told the command staff. The Complainant emailed NE#1 again noting the "hostile" environment and his disparate treatment.

In September 2017, NE#2 became captain of the Complainant's unit. NE#2 told the Complainant four of the top nine officers on the Police Captain Promotional Register were his former lieutenants. NE#2 offered to mentor the Complainant, which he accepted. Thereafter, the Complainant interpreted NE#2's behavior as threatening. Specifically, NE#2 would arrive to work late then "glare at (the Complainant) ..., as if to dare (the Complainant) to call him out on being tardy." NE#2 also referenced the Complainant's children during conversations, "as to remind (the Complainant) (he) had a family to provide for and that he had a certain amount of control over (the Complainant's) ability to do so." The Complainant further disapproved of NE#2 promoting WO#1 to acting sergeant and keeping NE#1 as acting lieutenant, after WO#2 informed him the acting lieutenant position would be discontinued. NE#2 suggested the Complainant had a negative reputation within the Department, and lieutenants objected to working with him. Other issues raised by the Complainant include:

- NE#2 called his personal cell while the Complainant was on vacation leave. NE#2 compared the Complainant's absence to the allegation the Complainant levied against WO#1.
- NE#2 questioned him about a photocopy "of an obscene gesture" WO#1 allegedly found on WO#1's desk.
- NE#2 said the Complainant struggled with conflict management.
- NE#2 "ignored a request" to attend a training on "how to deal with problem employees."
- NE#2 failed to address an issue one of the Complainant's detectives had with WO#1, excusing WO#1 as "just a rude person."
- Requiring the Complainant to return to patrol prior to promotion.
- NE#2 "chastis(ing)" the Complainant for helping WO#1's subordinates with tasks.
- The Complainant was skipped for promotion.
- NE#2 failed to intervene when WO#1 told others the Complainant falsely accused WO#1 of threatening him.



In July 2018, the Complainant was promoted to lieutenant, however, was displeased by his scope of duties. Later, the Complainant resigned from SPD. At that time, the Complainant was the named employee for an OPA investigation initiated by WO#1. The Complainant believed OPA leaked information about that investigation. The Seattle Times published two articles about the investigation, "citing sources within SPD." The Complainant heard a rumor WO#1 intended to leak information about the investigation to the press. The Complainant also learned rumors he was fired, rather than resigned, swirled the Department.

#### *OPA Investigation*

Following the Complainant's initial email, OPA investigated the matter. Specifically, OPA reviewed email correspondence between the Complainant and OPA staff, a frontline investigation by NE#1 of the Complainant's allegations of WO#1 "stealing time" and threatening him with scissors, his commendation and promotional review by NE#2, and a frontline investigation by NE#2 of WO#1's allegations against the Complainant. OPA also recorded interviews with both named employees. The Complainant declined an OPA interview, stating his emails outlining the allegations "can stand alone..."

#### *NE#1's Frontline Investigation*

On July 11, 2017, the Complainant made an OPA complaint about WO#1's unauthorized early departure from work. A week later, the Complainant made another OPA complaint alleging WO#1 threatened him with scissors about six weeks prior. OPA redirected both allegations to the Department for a Frontline Investigation, which NE#1 conducted. During that investigation, NE#1 reviewed relevant video, and WO#1's work card entry records. He also interviewed a witness officer, WO#1's supervisor, the Complainant, and WO#1. As for the first allegation, NE#1 found video surveillance and WO#1's work card records exonerated WO#1. For the second allegation, NE#1 found the Complainant gave partially inconsistent portrayals of the encounter at various times. Ultimately, both allegations were unfounded.

#### *Commendation*

On January 23, 2018, NE#2 emailed WO#2 praising the Complainant's value to the unit [subject line: Commendation for (the Complainant)]. NE#2 highlighted the Complainant's work under the consent decree, where he helped the Department achieve "full and effective compliance." NE#2 also noted the Complainant's attention to detail, work ethic, and thoroughness. NE#2 concluded by calling the Complainant "a tremendous asset to (the) unit."

#### *Promotional Candidate Review*

To support the Complainant's desire for a promotion, NE#2 assessed his leadership, communication, community, and tactical skills in a 'Promotional Candidate Review.' The report largely highlights the Complainant's abilities, noting his work on the consent decree, Department representation, communication skills, community outreach and extreme intelligence. While the report also notes "some errors" the Complainant made, NE#2 owns those missteps as his own failures:

*(The Complainant) has made some errors while assigned to APRS, but I assign limited responsibility to him for these errors. He has been operating without a hard lieutenant or captain for an extended period, and thus has been trying to do his best without day to day guidance for his decisions or direct coaching. Since my assignment to APRS, I have found (The Complainant) to be extremely accepting of feedback, and to have a sincere desire to grow and serve as a leader in this organization.*

#### *NE#2's Frontline Investigation*



On September 20, 2017, NE#2 was assigned APRS captain. WO#2 alerted him to ongoing issues between the Complainant and WO#1. Early in his tenure, NE#2 met separately with the Complainant and WO#1 to make expectations clear: “treat others professionally and respectfully...” NE#2 was also assigned to conduct a Frontline Investigation into allegations WO#1 made against the Complainant, including dishonesty, retaliation, insubordination, and unprofessionalism. NE#2’s investigation included interviewing the Complainant and WO#1 and reviewing documents OPA provided. NE#2 determined WO#1’s allegations of dishonesty, retaliation, and insubordination were unfounded. Further, the unprofessionalism allegation was “Not sustained.” NE#2 attributed the disfunction between the parties to a lack of direct leadership:

*These events took place during a time when there was no permanent lieutenant in the section, and there had been no captain for nearly a year, so there were no immediately available commanders to coach the supervisors in working through issues like these.*

### **ANALYSIS AND CONCLUSIONS:**

#### **Named Employee #1 - Allegation #1**

#### ***5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5.002-POL 5. Supervisors Will Investigate or Refer Allegations of Policy Violations [...]***

The Complainant alleged NE#1 failed to investigate or refer allegations of policy violations.

SPD employees are required to “assist any person who wishes to file a complaint.” *SPD Manual 5.002*. Further, “(s)upervisors will investigate or refer allegations of policy violations depending on the severity of the violation.” *Id. at (5)*. “All allegations of serious policy violations will be referred to OPA for investigation.” *Id.* The purpose of this policy and the related procedures is to provide a prompt, just, and open disposition of allegations of policy violation regarding the conduct of employees. *Id.*

Here, the Complainant alleged WO#1 threatened him with scissors when the Complainant confronted him about unapproved tardiness. On June 15, 2017, NE#1 told the Complainant WO#1 threatened to file an OPA complaint against the Complainant for harassment. The Complainant considered that threat “bullying,” and felt NE#1 should have intervened. However, policy explicitly states “(e)mloyees shall not discourage, interfere with, hinder, or obstruct any person from filing a complaint or conducting or cooperating with an investigation of an allegation of a policy violation.” *Id. at (3)*. Therefore, NE#1 had no authority to intervene, or otherwise discourage WO#1 from making an OPA complaint. Further, after the Complainant learned WO#1 intended to file an OPA complaint, on July 18, 2017, he filed an OPA complaint alleging WO#1 threatened him with scissors on June 2, 2017. OPA sent the time theft and threat allegations to the Department for a frontline investigation, which resulted in an extensive investigation and a 14-page report produced by NE#1. Ultimately, there is no indication NE#1 violated his duty to investigate the Complainant’s allegations.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**



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**Named Employee #1 - Allegation #2**

***5.001 - Standards and Duties 5.001-POL 14. Retaliation is prohibited***

The Complainant alleged NE#1, NE#2, WO#1, and WO#2 conspired against him in retaliation for the Complainant acting as a “whistleblower” against WO#1.

“No employee will retaliate against any person who...files a complaint or provides testimony or information related to a complaint of misconduct.” *SPD Manual 5.001(14)*. “Retaliation includes discouragement, intimidation, coercion, or adverse action against any person.” *Id.*

Here, OPA found no evidence NE#1 participated in a concerted effort to retaliate against the Complainant. While the Complainant disagreed with NE#1’s frontline investigation findings, there is insufficient evidence NE#1’s findings were rooted in retaliation. The Complainant cites secondhand information that NE#1 planned to make another officer temporary acting lieutenant in NE#1’s absence as evidence of retaliation. However, NE#1 had discretion to delegate duties as he saw fit. (*See SPD Manual 1.020(4): An employee may assign a subordinate employee the same authority and responsibility they possess to accomplish a specific task.*) Last, the Complainant identifies NE#1 telling “command staff that (the Complainant) did not have the right motivation to be the acting lieutenant” as evidence of retaliation. However, 1) if WO#2, an assistant chief, was part of the retaliation conspiracy as the Complainant alleged, it would have been unnecessary for NE#1 to report negative information about the Complainant to her, and 2) command staff are challenged to achieve “the highest level of performance possible.” *See SPD Manual 1.020(7)*. Here, it is possible NE#1 told the Complainant about his report to command staff to inspire greater performance.

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

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #2 - Allegation #1**

***5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5.002-POL 5. Supervisors Will Investigate or Refer Allegations of Policy Violations [...]***

The Complainant alleged NE#2 failed to investigate or refer allegations of policy violations.

SPD employees are required to “assist any person who wishes to file a complaint.” *SPD Manual 5.002*. Further, “(s)upervisors will investigate or refer allegations of policy violations depending on the severity of the violation.” *Id. at (5)*. “All allegations of serious policy violations will be referred to OPA for investigation.” *Id.* The purpose of this policy and the related procedures is to provide a prompt, just, and open disposition of allegations of policy violation regarding the conduct of employees. *Id.*

Here, upon NE#2’s assignment APRS captain, WO#2 gave him an overview of the issues and competing allegations between the Complainant and WO#1. WO#2 also assigned him to conduct a frontline investigation into a list of allegations WO#1 made against the Complainant. NE#2 complied, ultimately finding in favor of the Complainant. While



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the Complainant claims NE#2 “declined to take any further action” when the Complainant reported an issue a detective had with WO#1, there is no evidence NE#2’s assessment was unreasonable.<sup>2</sup>

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

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #2 - Allegation #2**

***5.001 - Standards and Duties 5.001-POL 10. Employees Will Strive to be Professional***

The Complainant alleged NE#2 made him uncomfortable and told him the Complainant had a “negative” reputation.

The Department expects all employees to treat all people with dignity. *SPD Manual 5.001.*

Here, the evidence suggests NE#2 went out of his way to help the Complainant achieve his desired promotion. Upon learning the Complainant sought to become a lieutenant, NE#2 told him “four of the top nine people on the Police Captain Promotional Register were (NE#2’s) former lieutenants.” NE then offered the Complainant mentorship. Further, he emailed WO#2, an assistant chief, praising the Complainant’s contribution toward implementing the consent decree. Moreover, NE#2 wrote a largely glowing Promotional Candidate Review on the Complainant’s behalf. The overwhelming evidence suggests NE#2 supported the Complainant’s desire for a promotion. Even NE#2’s suggestion the Complainant reassign to patrol was apparently motivated by the Complainant’s need for more operational practice, so he could become a stronger candidate for promotion. If NE#2 did tell the Complainant he had a negative reputation, there is insufficient evidence to show the comment amounted to treating the Complainant in an undignified manner, rather than transparent mentorship.

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

Recommended Finding: **Not Sustained - Unfounded**

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<sup>2</sup> The Complainant did not describe the issue the detective had with WO#1.