



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 4, 2019

CASE NUMBER: 2018OPA-0638

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Inconclusive)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained

Imposed Discipline

4 Day Suspension

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	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:

It was alleged that Named Employee #1 may have violated the law and acted unprofessionally during an incident he was involved in while off-duty. It was further alleged that Named Employee #2 may have failed to report potential serious misconduct to OPA.

STATEMENT OF FACTS:

The Complainant told OPA that he was walking home from work when a white car came out of an alley and almost hit him. The Complainant stated that he told the driver: “Whoa bro, watch where you’re driving.” NE#1 recalled that the driver then called him a “bitch.” The Complainant reported that he then threw a container of food onto the hood of the car. The Complainant recalled that the driver got out of the vehicle and that the driver was wearing a shirt with “Seattle police” written on it. The Complainant told OPA that the driver – who was later identified as Named Employee #1 (NE#1) – approached him and “swung” at him. The Complainant said that this caused him to fall down onto some rocks and scrape his knee. The Complainant said that he then “swung” at NE#1. According to the Complainant, neither his nor NE#1’s punches connected. The Complainant recalled that he walked away and found an officer wearing a yellow vest who was in front of the West Precinct. The Complainant told that officer what had occurred, but he did not feel that the officer was taking him seriously. The Complainant reported that NE#1 then came out of the precinct and came at him “all irate.” The Complainant stated that NE#1 got within an inch of his face



and was “trash talking.” The Complainant told OPA that he “cussed out” the officers who were present and then walked away.

NE#1 told OPA that he was driving down the alley on his way to the West Precinct when he saw the Complainant who was, as NE#1 described, “animated.” NE#1 stated that the Complainant was speaking to him, but NE#1 continued to drive and asked the Complainant if he was okay. NE#1 said that he then heard a loud impact on the side of his car. NE#1 stated that he got out of his vehicle and grabbed onto the Complainant by his shirt sleeve, but that the Complainant pulled out of his shirt and fled from the scene. NE#1 then continued driving to the precinct. He got out of his car and spoke to another officer. At that time, he observed that there was food on the side of his car. NE#1 stated that he screened this issue with Named Employee #2, who was a supervisor, and was told to document the incident in a report. NE#1 denied that he swung at or pushed the Complainant. He also denied seeing the Complainant fall. NE#1 did not recall the Complainant pushing him.

NE#1 denied engaging in law enforcement activities during this incident. He stated that, instead, he was acting as a private citizen and tried to detain the Complainant because NE#1 believed that he was the victim of a crime. He did not identify himself as a police officer at that time. NE#1 recalled that he went inside of the precinct and, when he exited, he saw the Complainant and again engaged with him. He stated that he was heated at the time. He confirmed that he told the Complainant: “I’m off duty now.” He stated that he probably used profanity towards the subject and he recognized that he got physically close to the Complainant. NE#1 told OPA that he was “very upset” and “lost [his] bearings.” When asked whether his actions escalated the situation, NE#1 responded that he did not think his actions did so, but stated that: “it wasn’t the smartest choice.” When asked whether he believed that his actions were professional, NE#1 stated “no” and told OPA that he was “embarrassed.” At the time of the incident, NE#1 was wearing a shirt with the SPD logo and a skull. The shirt had a message on it that read: “The best defense against evil men is good men who are skilled in violence.” NE#1 did not believe that this shirt or its message were unprofessional or undermined the public’s confidence or trust in SPD.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

This matter was initially referred by OPA for criminal investigation to determine whether NE#1’s actions in this matter violated the law. Specifically, the issue was whether NE#1 engaged in an assault of the Complainant. The criminal investigator determined that there was insufficient evidence to find that NE#1 did so. This matter was referred back to OPA and this administrative investigation ensued.

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy.

If the Complainant’s account of the incident is true, it appears that NE#1 may have assaulted him without a legal justification to do so. However, NE#1 denied striking, pushing, or otherwise assaulting the Complainant. There was no third-party surveillance video of this incident. Moreover, there were no witnesses other than NE#1 and the Complainant. As such, given the dispute of fact between the parties, OPA cannot conclusively determine what occurred in the alley and whether NE#1’s actions were contrary to law.



For these reasons, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #2

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

It was further alleged that NE#1's behavior during this incident violated the Department's professionalism policy.

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.*)

As discussed above, NE#1 acknowledged that his behavior was unprofessional during this incident. I agree. I find that his behavior was unprofessional in three main respects. First, his words and tone were aggressive, disrespectful, and contemptuous towards the Complainant. Second, NE#1 used profanity directed towards the Complainant. Third, NE#1's conduct impermissibly and unnecessarily escalated this situation. I conclude that the totality of his conduct was inconsistent with the express terms of the Department's professionalism policy.

I also find that NE#1's wearing of a shirt with the SPD logo that contained a message referencing the use of violence was unprofessional. The message displayed on the shirt served, in OPA's opinion, to undermine the Department in the view of the public. This is particularly the case given the tenuous place that law enforcement, including SPD, has found itself in when officers have engaged in shootings of community members. These shootings, even if ultimately justified, can create distance and mistrust between officers and the community. By wearing a shirt referencing violence and associating that violence with SPD, NE#1 potentially caused that distance to widen and that mistrust to deepen. This is expressly contrary to the stated goals and mission of the Department.

For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation

This allegation was classified for investigation against NE#2 based on his failure to report NE#1's conduct to OPA. At the time of the incident, NE#2, a Sergeant, was working off-duty in front of the precinct. The Complainant approached him and informed him of NE#1's conduct. NE#2 summoned other patrol officers to the scene and those officers interacted with the Complainant and eventually took a report. NE#2 took no further action and did not refer any of NE#1's conduct to OPA.



SPD Policy 5.002-POL-5 requires supervisors who become aware of a potential policy violation to investigate or refer the allegations depending on their severity. Minor allegations of misconduct may be investigated by a supervisor, while allegations of serious misconduct – such as the use of excessive force – must be referred to OPA. (SPD Policy 5.002-POL-5.)

NE#2 told OPA that he did not hear the Complainant state that he had been assaulted by NE#1. He stated that, had he heard this, he would have ensured that an on-duty Sergeant came to the scene and that this allegation was fully investigated. He noted that, had he been faced with this situation again, he still would have called for an on-duty Sergeant even though he did not hear the assault allegation.

With regard to NE#1's professionalism, NE#2 stated that, while he found NE#1's behavior unnecessary and problematic, he did not believe that it represented serious misconduct that he was required to report to OPA. In this respect, I disagree with NE#2. As indicated above, I find that NE#1's behavior represented a clear and significant violation of SPD's professionalism policy. Moreover, while not all unprofessional behavior rises to the level of serious misconduct, the conduct in this case did. NE#2 should have known this.

That being said, I recommend that he receive a Training Referral instead of a Sustained finding for two main reasons. First, NE#2 was off-duty at the time of the incident. He called for other officers to come to the scene and those individuals interviewed both the Complainant and NE#1 and were fully aware of what had occurred. As such, I find that it was reasonable for him to believe that the on-duty employees were going to report this misconduct to OPA. Second, another Sergeant, who was aware of the same facts, also failed to report this misconduct to OPA. That other Sergeant is not a named employee in this case and it seems unfair to sustain this finding against NE#2 while taking no disciplinary action against the other Sergeant. However, I counsel NE#2 to be mindful to report misconduct in the future and to be more critical about recognizing when serious misconduct is present.

- **Training Referral:** NE#2 should receive retraining concerning SPD Policy 5.002-POL-5 and should be reminded of his obligation to refer potential serious misconduct to OPA. He should be counseled concerning his failure to recognize that NE#1's lack of professionalism during this incident was potential serious misconduct that he was required to report. NE#2 should be directed to more closely comply with this policy in the future. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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