



CLOSED CASE SUMMARY

ISSUED DATE: MAY 21, 2018

CASE NUMBER: 2017OPA-0465

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	Professionalism - 5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Inconclusive)
# 2	Bias-free Policing - 5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Inconclusive)
# 3	Retaliation and Harassment - 5.001 - Standards and Duties 13. 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 that the Named Employee harassed him and retaliated against him by giving him tickets. The Complainant further alleged that the Named Employee engaged in unprofessional behavior towards him.

STATEMENT OF FACTS:

The Complainant made an allegation of misconduct against Named Employee #1 (NE#1) to the Seattle Customer Service Bureau (CSB). The CSB referred this matter to NE#1’s supervisor. Given the nature of the allegations made against NE#1 – namely, harassment, retaliation, and unprofessionalism – the supervisor in turn referred this matter to OPA.

OPA interviewed the Complainant. He stated that he was the owner of a flower shop with his husband. He told OPA that he loads and unloads flowers in front of the shop and, to do so, he sometimes will park illegally. On the date in question, he recalled that he was parked when NE#1 rushed towards him and said “I got you now.” She then wrote him a ticket. The Complainant stated that NE#1 behaved like this frequently. He said that the Complainant also gave his husband a ticket and would not listen to his husband when he tried to tell NE#1 that he paid for the ticket using an app. While the Complainant’s initial OPA complaint alleged that NE#1 pushed him when she issued him a ticket, he told OPA during his interview that she “almost” pushed him. The Complainant stated that NE#1 was “contentious” and “aggressive” towards him and that this behavior was ongoing. The Complainant suggested that NE#1 had issued him and his husband multiple tickets over a prolonged period, some without any basis.

In a follow-up interview, the Complainant stated that, at the time she issued him one of the tickets, NE#1 called him “white boy,” which he found inappropriate and offensive. The Complainant is Caucasian.



OPA also interviewed NE#1. NE#1 stated that she issued citations to the white van on April 24 and April 27. NE#1 stated that, on April 24, the van was parked in a three-minute zone for approximately six minutes. NE#1 further recounted that, on April 27, the white van was parked in a zone reserved for community transit. NE#1 told OPA that she did not know or remember that this was the same van when she issued the tickets. NE#1 also stated that, at the time she issued the tickets, she did not know the name or race of the van's owner.

NE#1 indicated that, after she issued the April 27 ticket, the owner returned to the vehicle. NE#1 informed him that the ticket had already been issued and that she was about to place it on the vehicle. NE#1 stated that the driver was angry and "started to cuss [her] out." The owner would not take the ticket and when she tried to put it on the van's windshield, he blocked her from doing so. She told the driver that the ticket would be issued no matter whether he accepted it or not. NE#1 said that the driver responded by grabbing the ticket out of her hand, cursing again, and throwing the ticket.

When asked about the tickets issued to the BMW on April 24, NE#1 stated that both the BMW and the white van were parked in the load zone. She issued both vehicles a ticket and chalked their tires. When she came back approximately one and a half hours later, both vehicles were still there. Someone was sitting in the driver's seat of the van and it was running, so NE#1 believed that it was leaving and did not ticket it again. The BMW was unoccupied and NE#1 issued it another ticket. NE#1 stated that she did know of any connection between the van and the BMW until after she issued the April 27 ticket and she saw the van driver toss keys to someone who then moved the BMW. NE#1 told OPA that she also did not know the identity or race of the owner of the BMW.

NE#1 stated that she did not say "I got you" or "I got you now" when she issued the citations. She further stated that she did not call either the driver of the van or the BMW "white boy." She noted that the driver of the BMW did not appear to her to be Caucasian. Lastly, NE#1 denied making any other biased or unprofessional statements.

During its investigation, OPA determined that four citations had been issued to the Complainant's van. Of those four, NE#1 only issued the two April 2017 citations. Three citations were issued to the BMW in 2017. Of those, two were the April 2017 citations issued by NE#1. I note that this citation history does not appear to be consistent with the Complainant's allegations of ongoing harassment and ticketing of his vehicles by NE#1.

All four citations contained NE#1's notes concerning the conduct at issue. The notes are consistent with NE#1's recollection at her OPA interview. In her notes for the April 24 citation issued to the white van, NE#1 wrote: "20FT North of Sign/paced. Vehicle fully parked in white curb-passenger load zone. On view Since 1125 Hrs vehicle in sight at all times." In the April 27 citation issued to the white van, NE#1 wrote: "5 FT North of sign/paced. Parked between signs/ 4 signs on block. Fully parked in designated license specified zone/paced. Male returned to vehicle and asked why he was getting a ticket. I explained the violation and he told me well fuck you and wouldn't take the ticket then tried to block me from putting it on the windshield. He then took the ticket and threw it down saying he didn't give a fuck." The notes for these citations are consistent with NE#1's recollection at her OPA interview and support her account of the incident.

In her notes for the first April 24 citation issued to the BMW, NE#1 wrote: "3 FT North of sign/paced. Vehicle fully parked in white curb-passenger load zone. On View since 1125 Hrs vehicle in sight at all times." In the second citation she issued to the BMW, she wrote: "5Ft North of sign/paced. Vehicle fully parked in white curb-passenger



load zone. Chalked RR tire at 1132 Hrs Chalk intact. Driver came out of the shop which vehicle was parked in front of saying he was leaving. I stated I was issuing a citation and he drove away.”

While the notes generally support NE#1’s account of the incident, there is no video or audio recordings of what occurred.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

Professionalism - 5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

SPD Policy 5.001-POL-9 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-9.)

The Complainant alleged that NE#1 made a number of unprofessional statements towards him and continually acted aggressively. NE#1 denied doing so. This dispute of fact, which cannot be resolved given the lack of audio or video evidence, prevents me from reaching a conclusive determination on this allegation. If the Complainant’s allegations were true, it certainly would constitute unprofessional behavior; however, this is not established here by a preponderance of the evidence. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #2

Bias-free Policing - 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.*)

As with the above allegation, I cannot prove or disprove whether NE#1 called the Complainant a “white boy” when she issued him a ticket. He claimed that she did so and NE#1 denied it. Even if the Complainant’s allegation was true, he does not explicitly allege that NE#1 targeted him or issued him a citation because he was Caucasian. Indeed, the Complainant asserted that his husband, who is not Caucasian, was also harassed and ticketed by NE#1.

While I believe that the evidence tends to support a finding that no violation of this policy occurred, this issue is ultimately inconclusive. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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



Named Employee #1 - Allegation #3

Retaliation and Harassment - 5.001 - Standards and Duties 13. Retaliation is prohibited

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-13.) SPD employees are specifically prohibited from retaliating against a person who, among other activities: “opposes any practice that is reasonably believed to be unlawful or in violation of Department policy”; “files a complaint or provides testimony or information related to a complaint of misconduct”; 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.*) The policy further states that: “This prohibition will include any interference with the conduct of an administrative, civil, or criminal investigation.” (*Id.*)

Based on my review of the evidence, I do not believe that this policy is applicable to this case. While the Complainant alleged that he and his husband were harassed and targeted by NE#1, there is nothing suggesting that this harassment was due to NE#1 engaging in retaliation against the Complainant. If anything, the Complainant’s own account suggests that NE#1’s conduct was based, instead, on her desire to catch him illegally parking. While, if believed, this behavior is concerning, it does not constitute retaliation as contemplated by this policy.

As such, I recommend that this allegation be Not Sustained – Unfounded.

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