



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 4, 2018

CASE NUMBER: 2017OPA-1202

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Sustained
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Training Referral)
Discipline Imposed: 5 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	Sustained
Discipline Imposed: Oral Reprimand		

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 made unprofessional and biased comments regarding the Holocaust, Germans, and Jewish persons. The comments were made on two separate occasions and were heard by employees of the Southwest Precinct. It was further alleged that Named Employee #2 failed to report these comments to OPA as required by Department policy.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 – Standards and Duties 9. Employees Shall Strive to Be Professional at All Times

It was alleged that Named Employee #1 (NE#1) made an insensitive and potentially anti-Semitic joke after attending an anti-bias training titled: “Law Enforcement and Society: Lessons of the Holocaust.” That training focused on the role of German law enforcement in the years that led up to the Holocaust and provided opportunities for SPD officers to learn from that history and apply those lessons to their current work. After one such training, NE#1 was overheard making a joke to an officer in the precinct. The joke was something along the lines of NE#1 saying: “I lost family in the Holocaust too, they fell from the guard tower.” NE#1 relayed to others in the precinct that he was of



German descent. The officer who heard this joke told other officers, including one who was Jewish. While not all officers knew about the joke, most of the officers who had heard or learned about it found it to be offensive and inappropriate. A number of these officers were interviewed by OPA and confirmed that they believed that NE#1 had engaged in unprofessional behavior in this instance.

NE#1 was also recounted to have said, after another session of the training that he attended: "If there's one thing that I can take away from this training, it's that we Germans know how to rally together for a cause." One of the officers interviewed by OPA who relayed this comment stated that the comments were stunning and it appeared to him that NE#1 was making light of the extermination of six million Jews by the Nazis.

When interviewed by OPA, NE#1 admitted making the joke concerning a family member falling from the guard tower of Auschwitz. He told OPA that he made the joke to an Officer when they were alone in his office. He stated that he meant it to be humorous. NE#1 denied making the comment about Germans rallying together for a cause and he acknowledged that this comment would have been unprofessional. However, later at his OPA interview, he remembered that he said about Germans that "as a group we tend to rally." He denied engaging in unprofessional conduct or bias. NE#1 further contended that this matter had been initiated with OPA not because of the nature of his comments, but as retaliation by one of the officers who learned of the joke.

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 policy further states that: "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.*)

Here, the comments made by NE#1 were not only clearly unprofessional but were arguably derogatory. Multiple officers who heard or learned about his comments found them insulting and inappropriate, including a Jewish officer. I agree with them and believe that these comments violated Department policy. Moreover, I am greatly concerned that NE#1 does not also see this to be the case.

Lastly, I find NE#1's defense that this matter was initiated based on retaliation to be unsupported by the evidence. Multiple officers, not just the one he alleged to be acting in retaliation, reported hearing his comments and believing them to be unprofessional. Moreover, and notably, there is no evidence that these other officers engaged in retaliation against NE#1 when they told OPA that they found his comments to be inappropriate and unprofessional.

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

Recommended Finding: **Sustained**

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.*) The policy further states that: “Employees shall not express—verbally, in writing, or by other gesture—any prejudice or derogatory comments concerning discernible personal characteristics.” (*Id.*)

While I find that NE#1’s joke was in extremely poor taste and though it could arguably have been deemed to be anti-Semitic, I do not determine, when applying the requisite evidentiary burden, that he engaged in biased policing in this instance. Most notably, he was not taking law enforcement action against anyone when he made this joke. Even though this is a close call, I do not recommend that this allegation be Sustained. Instead, NE#1 should receive the following Training Referral.

- **Training Referral:** NE#1 should receive counseling from his chain of command concerning his statements in this case. Even if the evidence did not conclusively establish biased policing, these statements could give the perception that such conduct occurred in this instance. NE#1 should be instructed by his chain of command to avoid making such statements in the future and that his comments in this case reflected poorly both on him and the Department. His chain of command should retrain him on the elements and purposes of SPD Policies 5.001-POL-9 (now SPD Policy 5.001-POL-10), as well as SPD Policy 5.140. Further, his chain of command should evaluate requiring NE#1 to attend a supplemental bias-free policing training. This training and counseling should be documented and that documentation should be maintained in an appropriate database

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

Named Employee #2 - Allegations #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

Named Employee #2 (NE#2), a Department sergeant, admittedly heard NE#1’s guard tower joke. He did not, however, investigate or refer NE#1’s comments to OPA. NE#2 told OPA that he did not believe that NE#1’s joke was inappropriate or biased. This was the case even though he recognized that NE#1’s statement could have been interpreted as making light of Jews and the Holocaust.

NE#2 stated that no one approached him concerning being insulted by the joke. Had someone done so, NE#2 told OPA that he would have notified the precinct captain and made an OPA referral for biased policing. However, because no one did so, and due to the fact that he did not deem the joke inappropriate, he did not take such steps.

SPD Policy 5.002-POL-5 requires Department supervisors to investigate or refer to OPA allegations of potential misconduct. The policy explains that minor misconduct may be investigated by the supervisor while serious misconduct must be referred to OPA. (SPD Policy 5.002-POL-5.) Where the level of alleged misconduct is unclear, the matter should be elevated to a lieutenant and OPA should be consulted. (*Id.*)

Here, NE#2 did not refer NE#1’s inappropriate joke to OPA. He was required to do so under policy. Notably, this was not a case where NE#2 was confused as to whether the joke rose to the level of serious misconduct. He, instead, did not believe it was unprofessional or biased. Based on my findings herein, I find that decision to have been unreasonable and that it constituted a violation of policy.



In reaching this finding, I note that NE#2 was not the only individual who did not report NE#1's comments to a supervisor or OPA. Multiple officers heard or learned of the comments and took no action. Included among these was the Officer, to whom NE#1 stated that he made the joke (I note that the Officer denied hearing or being told the joke at his OPA interview). These failures to report were equally in violation of policy; however, those officers are not named employees in this case. Ultimately, that these officers are not also held accountable herein has no bearing on NE#2's culpability and the fact that he acted contrary to policy. For these reasons, I recommend that this allegation be Sustained as against NE#2.

Recommended Finding: **Sustained**