



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 8, 2019

CASE NUMBER: 2018OPA-0651

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Lawful and Proper)
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	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 Employees subjected him to biased policing and was unprofessional towards him. It was further alleged that the Named Employee failed to immediately report an allegation of biased policing as required by Department policy.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing

The Complainant called 911 to report that he had been threatened by another individual. The Complainant asserted that this individual threatened to mace him and throw him onto the ground. NE#1 responded to the scene and contacted the Complainant. NE#1 also made contact with a college security guard, who was the subject identified by the Complainant.

The Complainant repeated his allegations to NE#1. The security guard then told NE#1 that he heard glass break and shined a flashlight in the direction of the noise. He observed the Complainant, who the security guard reported began to run towards him. The security guard stated that he told the Complainant to stop. The security guard did not observe any damage to college property and directed the Complainant to leave the premises. He reported that he turned around and the Complainant followed him. The security guard told NE#1 that he instructed the Complainant that if he did not stop following him, he would mace the Complainant, throw him to the ground, and handcuff him. The security guard said that he then walked into the building.

NE#1 again went to speak with the Complainant and the Complainant requested that a report be written. NE#1 asked him for his identification. The Complainant did not provide it, but orally gave his name and his address. The



interaction between NE#1 and the Complainant grew increasingly negative. Ultimately, NE#1 told the Complainant “see you later” when he would not provide full information and walked back to his patrol vehicle. The Complainant followed him and stood by his driver’s side door. NE#1 began typing on his MDT, told the Complainant to back away from his door, and closed his window.

NE#1 ultimately gave both the Complainant and the security guard a report number. NE#1 did not make any arrests and listed both individuals as subjects. The Complainant was not pleased with this decision and asserted that NE#1 was unfairly siding with the security guard. He further called NE#1 a racist. NE#1 then left the scene.

NE#1 did not immediately notify a supervisor of the allegation that he was racist and did not call a supervisor to the scene to investigate the allegation. At approximately 0100 hours on July 12, 2018, he reported the statement to a supervisor at the East Precinct. That supervisor informed NE#1’s Sergeant of the statement and the Sergeant ultimately referred this matter to OPA after speaking with the Complainant.

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 discussed above, the Complainant called NE#1 racist at the scene, but he did not provide any specific detail as to why he believed this to be the case. From a review of the OPA Complaint in this case, which documented the conversation between the Complainant and NE#1’s Sergeant, it appears that he believed that NE#1 was biased because NE#1 allegedly sided with the security guard over him. When interviewed by OPA during this investigation, the Complainant again cited as evidence of bias NE#1 siding with the security guard and trespassing him from the location, even though the Complainant was the one who called the police.

Based on my review of the record, I find insufficient evidence to determine that NE#1 engaged in biased policing. Indeed, even if the Complainant’s allegation concerning NE#1’s conduct was true and that NE#1 sided with the security guard over the Complainant, NE#1 explained that this was due to a race-neutral reason. NE#1 told OPA that he had interacted with the security guard on numerous previous occasions and believed him to be reasonable and credible. Moreover, as noted by NE#1 and as is clear from the video of the incident, both the Complainant and the security guard are African-American. As such, even if NE#1 did side with the security guard and even if this was done unfairly, it was based on a prior relationship not on the Complainant’s race.

Given that I find no evidence of biased policing, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

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 call a supervisor in response to allegations of biased policing. This includes providing sufficient information to the supervisor to allow a determination as to what occurred and what the nature of the bias allegation is. (SPD Policy 5.140-POL-5.)



This allegation was classified against NE#1 due to his failure to immediately notify a supervisor of the allegation that he was racist. At his OPA interview, NE#1 asserted that he did not believe that simply being called a racist amounted to an allegation of biased policing. He contended that, to rise to the level of a claim of bias, subjects needed to specifically allege that they were treated a certain way or that action was taken against them based on their membership in a protected class.

I interpret the policy similarly to NE#1. I conclude that, for a statement to be considered an allegation of bias, a subject must claim a nexus between the subject's race or membership in a protected class and the officer's actions or lack of actions. Simply calling an officer racist, without more, is insufficient to meet this standard.

For these reasons, I do not find that NE#1 violated Department policy when he failed to immediately report the Complainant's statement. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 10. Employees Shall 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.*)

The Complainant asserted that NE#1 was unprofessional because he was hostile towards him and because NE#1 took the security officer's side. With regard to the latter allegation, I do not believe that NE#1's decision to credit the security guard's account of the incident was unprofessional.

I have more reservations concerning the tenor of NE#1's conversation with the Complainant. Nothing NE#1 said was, in and of itself, contemptuous, derogatory, or disrespectful; however, and at least in OPA's opinion, his tone and approach left something to be desired. For example, telling the Complainant "see you later" when he would not provide his identification, seemed counterproductive and did nothing other than to frustrate the Complainant. Had NE#1's demeanor been less adversarial, I believe it likely that no OPA complaint would have been filed in this case.

That being said, for the reasons set forth above, I do not conclude that NE#1's conduct violated this policy and I recommend that this allegation be Not Sustained – Unfounded. However, I advise him to continue to be mindful of his approach towards community members and to be cognizant of his demeanor and tone.

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