



## CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 19, 2019

CASE NUMBER: 2019OPA-0350

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 14. Retaliation is prohibited	Not Sustained (Unfounded)

**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 14. Retaliation is prohibited	Not Sustained (Unfounded)

**Named Employee #3**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 14. Retaliation is prohibited	Not Sustained (Unfounded)

**Named Employee #4**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 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 that he was subjected to retaliation by the Named Employees, who constituted members of his chain of command, for reporting irregular and hazardous CO2 levels.

### SUMMARY OF INVESTIGATION:

#### **A. Background Facts**

On May 6, 2019, the Complainant sent an email to his Lieutenant – Named Employee #1 (NE#1) – with the title: “Employee Hazard.” In that email, the Complainant stated that he was again addressing hazardous CO2 levels at the West Precinct. He noted that his past attempts to report this had damaged his career. He referenced NE#1 previously referring to him as a “problem child” because of his earlier reporting. He further referenced a flier that he found in the Precinct that he viewed as some kind of warning or threat and disclosed that, due to his prior reports, people working in the Precinct jokingly referred to him as: “the CO2 guy”; “the troublemaker”; and “dead man walking.” In the email the Complainant disclosed that he had placed CO2 detectors in the Precinct and that he told a L&I Investigator that he did so. He provided readouts from those CO2 detectors with the email.

In response, NE#1 wrote that he would forward the Complainant’s CO2 concerns to the safety officer. With regard to the other statements in the Complainant’s email, NE#1 asked to set up a meeting between them as soon as possible.



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NE#1 further told the Complainant to request a Guild representative for the meeting. The Complainant wrote back and asked why he needed a Guild representative, but it does not appear that NE#1 responded.

A meeting was held between the Complainant and NE#1. The parties to that meeting had different interpretations of how it went and what was discussed. On May 23, 2019, NE#1 made an OPA referral on the Complainant's behalf concerning this matter. In that referral, NE#1 wrote that he was forwarded a "possible hostile work environment" claim that had been made by the Complainant.

### **B. Complainant's OPA Interview**

As part of its investigation, OPA interviewed the Complainant. The Complainant recalled that he initially reported the CO2 issue and the potential impact that it was having on the health of officers in August of 2017. He stated that it eventually went through the chain of command and up to the then Assistant Chief of Patrol – Named Employee #4 (NE#4). The Complainant stated that NE#4 directed him to report safety issues directly through the chain of command. The Complainant told OPA that he took this as an order to no longer raise the issue of CO2 levels. He stated that, after this, he began hearing that he was considered a "problem child" in the Precinct because of his reporting of this issue. He told OPA that he was disturbed by this as he had always received good performance evaluations. The Complainant believed that the negative affect his reporting had on his career was demonstrated when he did not get one of two open Sergeant assignments. They went to two other Sergeants, even though he was the most senior Sergeant at the Precinct. NE#1 said that that he was never told why he did not get one of those positions, but he believed that it was due to his reporting. He also believed that he was not liked by the current Precinct Captain – Named Employee #3 (NE#3) – because of his past reporting.

The Complainant told OPA that, when he again reported the CO2 issue in May of 2019, it was after he found high levels of CO2 on his personal detectors that he had placed in the Precinct. He was reluctant to report the issue but determined that he needed to do so. He said that he was surprised and confused that NE#1 told him to bring a Guild representative to the meeting. He also said that NE#1 went over the air to call for a Guild representative, which the Complainant believed may have been purposed to embarrass him and to send a message that the Complainant should not be reporting such matters. The Complainant recalled that, during the meeting, NE#1 asked him whether he was happy at the Precinct and suggested that he look for a new assignment somewhere else.

The Complainant told OPA that he also believed that he was removed from being the Third Watch FTO Sergeant based on his reporting and that this decision was made by the Training Unit Captain – Named Employee #2 (NE#2) – who had been the West Precinct Captain when the Complainant had first raised the issue of the CO2 levels. However, he later contacted the Training Unit and was informed that this was a miscommunication. He was told that he was still assigned to be the Third Watch FTO Sergeant but that he was now sharing those duties with one other Third Watch Sergeant.

Lastly, the Complainant discussed the packet that was left in the Precinct, which he believed was a message to him that he should stop reporting. He stated that he did not know who left the packet.

During a second interview, the Complainant stated that he did not inform the Guild of the CO2 levels in the Precinct and that the first time the Guild became aware of these issues was during the meeting between the Complainant and NE#1 in May of 2019. NE#1 also stated that he did not file a grievance concerning not receiving one of the two open



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Sergeant positions and confirmed that he did not raise this matter with the Guild. The Complainant noted that NE#1 had recently approached another Third Watch Sergeant about moving into the Night Bikes Sergeant position, but that NE#1 did not ask the Complainant if he was interested. The Complainant believed that this was additional evidence of the negative impact the reporting had on his career.

### **C. Named Employees' OPA Interviews**

NE#1 reported that he was aware of previous high CO2 levels in the West Precinct. However, NE#1 said that he first learned of the Complainant's concerns regarding this issue when he received the May 2019 email from him. NE#1 told OPA that he asked the Complainant to bring a Guild representative because he anticipated discussing the Complainant's failure to address the CO2 issue through his chain of command prior to mounting his own detectors in the Precinct. NE#1 told OPA that he tried to obtain a Guild representative over the air because there was no representative at the Precinct, and he wanted to ensure that one would come to the meeting. NE#1 said that he was not bothered by the Complainant's reporting but thought he should do so through the chain of command and in an appropriate manner. NE#1 did not recall calling the Complainant a "problem child," but he did believe that the Complainant should consider trying out a new assignment or Precinct to have different experiences. NE#1 said that he was not aware of the flyers with the Complainant's name on them until the Complainant raised this with him. NE#1 said that, once he became aware of the flyers, he reported this entire issue to OPA. NE#1 ultimately denied that the Complainant was retaliated against because of his reporting.

NE#2 stated that the positions that the Complainant believed he did not get because of retaliation were filled in April 2017, several months prior to the Complainant first raising the CO2 issue. OPA asked NE#2 about an email sent by the Complainant in which the Complainant linked not being allowed to attend training to his CO2 reporting. NE#2 explained that this had nothing to do with the CO2 issue and, instead, was based on the West Precinct's limited training budget and the fact that the Complainant had already received more training than any other Sergeant at the Precinct. NE#2 further stated that, since the Complainant was still an FTO Sergeant, NE#2 could not have retaliated against him this that regard. Lastly, NE#2 denied knowledge of any negative effects that the reporting of the CO2 issue caused the Complainant and further stated that other officers also reported the CO2 issues prior to the Complainant.

NE#3 recalled that, at one point, he became aware that the Complainant had placed his own CO2 detectors in the Precinct. NE#3 was concerned because the detectors were not certified and, to the extent the readings were faulty, could cause unnecessary alarm among officers. He told the Complainant to remove the detectors and NE#1 counseled the Complainant about reporting such issues through his chain of command in the future. NE#3 stated such proper reporting would permit the chain of command to address this in an appropriate manner and to follow Department and City policies for handling such issues. NE#3 told OPA that it concerned him that the Complainant was repeatedly not going through official channels. He further said that he was concerned that the Complainant contacted vendors dealing with the CO2 issue directly and not through the chain of command. NE#3 stated that he had no knowledge concerning the decision not to select the Complainant for one of the open Sergeant spots in 2017 and that this decision was made by NE#2.

NE#4 discussed the steps that were taken by the Department to remedy the CO2 issue, including cleaning out the garage and contracting with vendors. He told OPA that he thought it was inappropriate for the Complainant to contact the vendors directly, as opposed to through his chain of command, and that he directed such communication to stop. However, he said that he did not take this personally against the Complainant. NE#4 told OPA that the Complainant is



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smart but can become fixated on issues. NE#4 believed that the CO2 levels was one of those issues. NE#4 opined that the Complainant could also be negative, including towards the Department. Lastly, NE#4 said that he was not involved in the Sergeant selection decision and that this was left to the Precinct. Lastly, NE#4, like the other Named Employees, denied that the Complainant was subject to any retaliation based on his reporting of the CO2 issue.

#### **D. Other Evidence Reviewed By OPA**

OPA additionally looked at the Complainant's performance evaluations and PAS entries to determine whether there was any evidence of retaliation there. There was no mention of the CO2 issue in the Complainant's PAS entries. In addition, the Complainant had not received a performance evaluation since 2016 – prior to his reporting – so this did not provide evidence of retaliation.

OPA also reviewed email exchanges concerning the CO2 issue, including a number of emails sent by the Complainant and the Named Employees. The emails were largely consistent with the Named Employees' accounts. Notably, in one email, NE#4 expressed his frustration with the Complainant dealing directly with vendors and asked that it stop. However, there were no negative sentiments directed towards the Complainant or any evidence of retaliation in the emails.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegations #1**

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

SPD Policy 5.001-POL-14 prohibits Department employees from engaging in retaliation. If, as the Complainant alleged, the Named Employees retaliated against him for reporting the CO2 levels, that conduct would violate policy.

However, based on OPA's evaluation of the totality of the record, there is insufficient evidence to establish that such retaliation occurred. First, with regard to the open Sergeant positions that the Complainant believed he was passed over for, those spots were filled in April of 2017 – months before the Complainant first reported the CO2 issue. Second, the training that the Complainant was not permitted to attend appears to have been due to the Precinct's limited training budget and other trainings that the Complainant had already taken part in, not retaliation. Third, there is no evidence of retaliation in the Complainant's performance evaluations, PAS entries, or emails concerning the CO2 issue. Fourth, the Complainant was not actually removed as the FTO Sergeant and still serves in that role for the West Precinct. Fifth, while it is unfortunate that someone marked up the flyer with the Complainant's name, there is no evidence suggesting that this was done by or at the behest of any of the Named Employees. Sixth, while NE#1 may have suggested to the Complainant that he explore opportunities outside of the Precinct, the Complainant was not forced to do so and his hours and working conditions were not changed by any of the Named Employees to functionally compel him into such a change. Seventh, and last, it was not retaliation, or for that matter improper, to direct the Complainant to report CO2 issues through the chain of command in the future. Similarly, it was appropriate for West Precinct to request that the Complainant remove his personal detectors so that any high CO2 levels could be determined by an expert and consistent with City and Department policies.



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For the above reasons, OPA finds no evidence of retaliation and recommends that this allegation be Not Sustained – Unfounded as against all of the Named Employees.

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

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

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

For the same reasons as stated above (see Named Employee #1, Allegation #1), OPA recommends that this allegation be Not Sustained – Unfounded.

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

**Named Employee #3 - Allegation #1**

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

For the same reasons as stated above (see Named Employee #1, Allegation #1), OPA recommends that this allegation be Not Sustained – Unfounded.

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

**Named Employee #4 - Allegation #1**

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

For the same reasons as stated above (see Named Employee #1, Allegation #1), OPA recommends that this allegation be Not Sustained – Unfounded.

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