



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 24, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0137

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 – Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer	Not Sustained (Inconclusive)
# 2	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Inconclusive)

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, an SPD Sergeant, alleged that the Named Employee acted unprofessionally and was insubordinate during a unit meeting on February 25, 2021.

SUMMARY OF INVESTIGATION:

On February 25, 2021, the Complainant, a Sergeant, held a meeting with the Background Unit. The Complainant was the front-line supervisor of that unit. The purpose of that meeting was to discuss physical activity tests (PAT) to be administered that weekend for SPD employment candidates. It is undisputed that, during the meeting, the Complainant raised the concept of a "social contract" amongst the unit and the request that, to the extent unit employees had concerns with his leadership and supervision, that they speak to him first prior to disparaging or talking about unit business with others. However, the involved parties diverged in their accounts of what happened next.

The Complainant reported that NE#1 was one of the officers who he believed had been engaging in this conduct. Without mentioning NE#1 by name, the Complainant asked all employees of the meeting to not do so anymore. However, NE#1 would not acknowledge the direction to conform with this order. This was the case even though the Complainant gave him three opportunities to do so. The Complainant subsequently issued NE#1 another order to come into his office to discuss the matter and NE#1's lack of professionalism and insubordination. According to the Complainant, NE#1 responded: "I'm not going with you anywhere." When the Complainant reiterated that he was giving NE#1 a direct order, NE#1 responded: "I don't care." As he walked away and out of the office, NE#1 looked at the Complainant and said: "I don't think you want to try and hold me here." The Complainant viewed this as a potential threat that NE#1 would become assaultive. The Complainant went to the unit Lieutenant's office to brief him as to what occurred. The Lieutenant was not there but NE#1 was standing outside the office. The Complainant again asked NE#1 to come speak with him alone and NE#1 refused. NE#1 stated: "I'm not going into your office...I'm not going anywhere with you." When the Complainant told NE#1 that, if he did not comply, he would be referred to OPA for insubordination, NE#1 responded: "You do what you gotta do." NE#1 walked away and out of the office and did not



stop when told to do so by the Complainant. The Complainant subsequently notified the Lieutenant and made a referral to OPA. In that referral, the Complainant identified a number of witnesses to this incident.

OPA's investigation included reviewing the documentation generated by the Complainant (including the OPA complaint) and other email correspondence. OPA also interviewed nine witnesses who were present at the meeting (and one unit employee who was not present and had no first-hand information), as well as NE#1.

NE#1 recalled that they were having a meeting about the PAT. He participated in the meeting, and it was normal. However, the Complainant then began talking about a social contract between members of the unit. The Complainant said that members of the unit should not speak about the unit to others and, specifically, should not criticize the Complainant. NE#1 said that the Complainant used an anecdote about the former Sergeant for the unit who once called the Complainant when she had a problem, and he told the unit that he did not disclose this to anyone. He said that information discussed about him would eventually get back to him. NE#1 described the Complainant as engaging in a "rant." He characterized the Complainant as growing angry and said that the Complainant's face became red, and his veins could be seen. The Complainant looked around the room when he discussed this and then specifically focused on NE#1. The Complainant told NE#1 to say that he understood. NE#1 refused to do so. NE#1 explained that SPD was not a monarchy, and he was not going to agree to not have discussions with people outside of the unit when necessary and appropriate. The Complainant then told NE#1 to go into his office and he again refused to do so. In explaining this decision, NE#1 noted that the Complainant was visibly angry and that, just a couple days earlier, he had observed the Complainant berate another unit employee in his office. NE#1 felt that this was improper, and he did not want to be subjected to the same conduct. He also noted that, based on his prior experience, the Complainant would yell at individuals in his office.

After NE#1 refused to tell the Complainant what he wanted to hear or to go into the Complainant's office, the Complainant ordered everyone to leave. NE#1 began to do so as well but then the Complainant told him to go to the Lieutenant's office. He felt fine with doing so, but the Lieutenant's office door was closed and locked. NE#1 then decided to leave to get coffee in an attempt to get away from the Complainant and to de-escalate the situation. NE#1 denied that he violated any policies by refusing to accept what the Complainant wanted to say and by not entering into the Complainant's office when he was worried about the Complainant's demeanor. He further denied saying anything that was derogatory or disrespectful at any time.

NE#1 also noted that the Complainant would often yell and lose his temper. He cited to an incident during the demonstrations the previous summer when NE#1 proceeded up and down the 6th floor at SPD headquarters yelling and using profanity while telling employees to get ready and get dressed.

Of the nine witnesses interviewed by OPA, a majority described the Complainant as angry or visibly upset during the meeting. Moreover, multiple witnesses stated that the Complainant generally asked the group whether they understood what he was saying about the social contract in the unit and then focused specifically on NE#1. None of the witnesses described NE#1 as acting aggressively and several described him as calm. However, several witnesses described the Complainant as aggressively approaching NE#1, with one witness saying that he stood up because he was worried about a potential physical altercation. All of the witnesses confirmed that NE#1 declined to verbally agree with what the Complainant was asking, and that NE#1 refused to go into the Complainant's office. Only one of the witnesses (a non-sworn employee) unequivocally asserted the opinion that NE#1 refused a lawful order and was unprofessional. The remainder of the witnesses either said that they felt the orders were questionable or that, even if the orders were lawful, they would have been reluctant to go into the Complainant's office alone given his demeanor at the time. None of the eight sworn employees interviewed affirmatively asserted the belief that NE#1 acted unprofessionally and engaged in insubordination during this incident.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 – Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer

SPD Policy 5.001-POL-15 requires all SPD employees to obey any lawful order issued to them by a supervisory employee. This is particularly important in the context of sworn officers who work within a chain of command.

It is undisputed that the Complainant issued at least two orders to NE#1 and that NE#1 declined to comply with either. The relevant question here is whether these orders were lawful orders that policy required NE#1 to comply with.

With regard to the first order – maintaining a social contract within the unit, NE#1 explained that he believed that he had the right to discuss his concerns with the Complainant's management or other similar matters with others outside of the unit and he did not think that NE#1 had the right to order him not to do so. With regard to the second order – going with the Complainant alone into his office, NE#1 felt that this was not required given his concerns regarding the Complainant's demeanor and his prior experience with the Complainant yelling at another officer.

In assessing the first order, OPA understands the Complainant's concern with officers discussing unit business and criticizing the Complainant to others outside of the unit. Allowing such conduct to continue could undermine the Complainant's ability to supervise the unit and could be damaging to the unit. The Complainant specifically identified NE#1 and one other unit employee as engaging in this conduct. On the other hand, NE#1 denied personally attacking and disparaging the Complainant out of malice but asserted his right to criticize the unit to others if needed. If OPA could prove that NE#1 was personally attacking and disparaging the Complainant, OPA would be more inclined to place greater weight on the order; however, that evidence is not within the casefile. The lack of such evidence prohibits OPA from reaching a conclusive finding on this aspect of the case.

In assessing the second order, if NE#1 reasonably believed that the Complainant was agitated to the point that he was worried about being alone with him, it would not violate policy to decline to comply with the order to go alone into the Complainant's office. On the other hand, if, as the Complainant and at least one witness claimed, the Complainant acted reasonably when the order was issued, it could violate policy if NE#1 did not comply. Aside from the witness accounts, which were mostly equivocal as to whether a lawful order was issued, there is no definitive evidence of what happened during the meeting and the physical and mental state of the parties. Moreover, OPA does not have a definitive account of the exact substance of what the involved parties said and has no way to assess their tones of voice and demeanors at that time. Accordingly, and as with the above, OPA also deems this portion of the allegation to be inconclusive.

Ultimately, it is clear to OPA that this was a unit with a substantial amount of conflict between the supervisor and officers. It is unfortunate that this matter could not be resolved through employee relations or another non-disciplinary mechanism. This is said without necessarily laying fault at the feet of any of the parties as OPA does not have full information. However, with regard to the allegations here – whether NE#1 violated a lawful order, OPA does not believe that there is sufficient evidence to make a determination one way or the other. As such, OPA recommends 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



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.*)

OPA finds that whether NE#1 was unprofessional rises and falls on whether he failed to comply with the Complainant’s lawful orders. As OPA deems Allegation #1 to be inconclusive, OPA reaches the same conclusion here.

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