

Issued Date: JANUARY 8, 2024

From: Director Gino Betts, Office of Police Accountability



Case Number: 2023OPA-0304

Allegations of Misconduct & Director's Findings

Named Employee #1

1. **Allegation:** 5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing
 - a. **Finding:** Not Sustained - Unfounded (Expedited)
 2. **Allegation:** 5.001 - Standards and Duties POL-10. Employees Will Strive to be Professional
 - a. **Finding:** Not Sustained - Unfounded (Expedited)
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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 Named Employee #1 (NE#1) made a homophobic joke regarding an arrest and was unprofessional by talking back to a gathered crowd.

Administrative Note:

This case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General's (OIG) review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the involved employees. As such, OPA did not interview the involved employees in this case.

On August 17, 2023, OIG certified OPA's investigation as thorough, timely, and objective.

During the intake, allegations were identified against NE#1 and another officer (Witness Officer #1 or WO#1). It was alleged both officers refused to identify themselves when asked and covered their badge numbers. Body-worn video (BWV) demonstrated these allegations were unfounded as neither officer was asked to identify themselves and both officers had their badge numbers displayed. An allegation of unprofessionalism was also identified against WO#1. BWV demonstrated that, while WO#1 raised the volume of his voice while speaking with an agitated

crowd, his behavior did not rise to the level of unprofessionalism. OPA processed these allegations as unfounded “FYI” Supervisor Actions. These allegations are closed as unfounded with no further action.

Summary of the Investigation:

The Complainant submitted a web-based complaint to OPA. The Complainant alleged police officers were “arresting a black man who verbally protested his arrest.” The Complainant wrote that a small crowd gathered and questioned the officers, who refused to respond. The Complainant alleged that an officer—later identified as NE#1—stated the arrestee “was having a fight with his boyfriend.” The Complainant stated NE#1 had a “smirk” on his face and said this “with the tone of a joke.” The Complainant alleged this was homophobic. The Complainant alleged the officers were “agitated” and that only one officer identified himself when asked. The Complainant wrote that other officers had their badge numbers covered.

OPA opened an intake investigation. During the intake, OPA reviewed the complaint, computer-aided dispatch (CAD) call report, incident report, and body-worn video (BWV). OPA also interviewed the Complainant.

The CAD call report showed that officers responded to a 9-1-1 report for a domestic violence (DV) assault. The incident report documented the SPD officers’ initial response and investigation of the incident. Responding officers developed probable cause to arrest the Subject for DV assault, which caused visible bruising to the Victim’s neck. Officers cleared the scene, but returned when the Victim informed them that the Subject returned to his apartment. The officers arrested the Subject. Because the Subject and Victim were partners, the arrest was mandatory under Washington State law and SPD policy.

BWV showed that multiple officers, including NE#1, responded to arrest the Subject. The arrest occurred outside on a public street. During the arrest, officers used *de minimis* force to hold the Subject and place him in handcuffs. In response, the Subject screamed, resisted, and kicked his legs. A crowd of community members formed on a nearby sidewalk. At one point, the Subject stated, “My fucking ankle hurts, bitch.” WO#1 responded, “You’re kicking it. That’s why. Stop it.” A bystander stated something to the effect of, “He’s probably scared you’re going to choke him to death.” WO#1 responded, “We’re not doing that, Bro. Do you know what’s going on?” WO#1 and the bystander then engaged in a back-and-forth. As officers waited with the Subject in recovery position, a bystander knelt on the nearby sidewalk and started talking to the Subject. The bystander stated to the Subject, “I’m concerned about you.” NE#1 responded, “Anyone concerned about his boyfriend he beat up?” The Subject screamed, “I don’t have a fucking boyfriend, bitch. Shut up. Watch your mouth.” A bystander said to NE#1, “You seriously think that’s an insult? What’s wrong with you?”

Shortly thereafter, NE#1 stated in a low voice to another officer, “I can’t fucking take anymore. . . I can’t fucking take anymore. . . I can’t take anymore. They make us work twelve-hour fucking days. . . .”

Analysis and Conclusions:

Named Employee #1 - Allegation #1

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

The Complainant alleged NE#1 made a homophobic joke.

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-POL. This includes different treatment based on sexual orientation. See *id.* Officers are forbidden from both, (i) making decisions or taking actions influenced by bias, and (ii) expressing any prejudice or derogatory comments concerning personal characteristics. See SPD Policy 5.140 POL-2.

Based on the evidence provided, in review of the totality of the circumstances, OPA finds NE#1’s statement (“Anyone concerned about his boyfriend he beat up?”) was not an expression or prejudice that was motivated by the Subject’s sexual orientation. Here, the Subject was factually under arrest for DV assault against his partner, who was male. Whether or not NE#1’s comment was productive in the situation, NE#1’s appeared to respond to the concern the community members were expressing regarding the Subject’s well-being and provided information to the crowd that NE#1 was being lawfully arrested for a crime with a victim.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

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

Named Employee #1 - Allegation #2

5.001 - Standards and Duties POL-10. Employees Will Strive to be Professional

The Complainant alleged that NE#1 unprofessionally talked back to a gathered crowd.

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers” whether on or off duty. (SPD Policy 5.001-POL-10.) Additionally, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*) Furthermore, the policy states: “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.*

Based on the evidence provided, in review of the totality of the circumstances, OPA finds this allegation is unfounded. As discussed above at Allegation #1, NE#1's commentary to the crowd appeared motivated by the disparity of concern expressed by the crowd for the Subject—who was being arrested—instead of the Victim. While NE#1's comment may not have been productive, it was not unprofessional. Additionally, the profanity NE#1 used shortly thereafter was stated in a low tone to colleagues and was not directed at the crowd. NE#1 appeared to be expressing personal fatigue and was not directing his profanity as an insult.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

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