



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 19, 2018

CASE NUMBER: 2018OPA-0368

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Sustained
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

Imposed Discipline

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:

The Complainant alleged that the Named Employee made unprofessional statements to her, as well as that he may have engaged in biased policing when he did so.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 – Standards and Duties 10. Employees Shall Strive to be Professional

The Complainant alleged that she was in her neighborhood walking her dog when she observed a Parking Enforcement Officer, who was later identified as Named Employee #1 (NE#1), sitting in his parked vehicle and playing a game on his cell phone. She stated that she started laughing and videotaping NE#1. She told OPA that they got in a negative back-and-forth, during which she stated that he made offensive statements to her. Specifically, she stated that he suggested that she was mentally ill and needed to get a job. She told OPA that, while she found NE#1’s behavior unprofessional and disturbing, she did not file a complaint at that time because she recognized that she had egged NE#1 on.

The Complainant stated that she interacted with the NE #1 on a second occasion. On that date, she was again walking her dog when she saw NE#1. She reported that she threw her hands up. She stated that, at this time, NE#1 said to her: “Have you been enjoying your McDonalds ‘fat ass.’” She found this statement to be insulting, unprofessional, and totally unacceptable coming from an employee of the Department.

OPA interviewed NE#1. NE#1 denied that he was playing a video game. He stated that, at the time he was first contacted by the Complainant, he was typing information concerning a ticket into his Department cell phone. NE#1 recalled his first interaction with the Complainant. He stated that she was critical of him and told him that the police should be abolished. NE#1 denied that he insulted the Complainant during that interaction.



NE#1 confirmed that he had a second interaction with the Complainant. He recounted that, during this later interaction, she initiated the contact with him. He stated that she told him that he needed to get a real job. NE#1 responded by telling her that she needed to get a job and that she should go over to McDonald's because they were hiring. NE#1 denied insulting the Complainant at that time, but recognized that he should not have made the comment concerning her getting a job at McDonalds.

When asked whether he undermined the Department when he made the statement to the Complainant, NE#1 responded: "I guess you could say, yes I did." NE#1 denied that he purposefully violated the Department's professionalism policy. He stated that, if he could redo the situation, he would not have made the statement to the Complainant.

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 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.*)

NE#1 admittedly took the bait and engaged in a negative back and forth with the Complainant. While there is insufficient evidence to establish that he insulted the Complainant as part of their first interaction and that he called her a "fat ass" during the second interaction, he confirmed that he told her to get a job and that McDonalds was hiring. This statement, in and of itself, was unprofessional and served to undermine the Department.

In reaching this decision, I struggle to understand what the purpose of the Complainant's initial interaction with NE#1 was. So what if NE#1 was playing a videogame on his phone. As far as the Complainant knew, he could have been on his break. Her admitted videotaping and laughing at NE#1 was frankly petty. Perhaps instead of engaging in that behavior, she could have approached NE#1 and discussed the issue in a respectful and rational manner. That would have gone much further and would have been substantially more effective to advance the Complainant's stated goals of ensuring taxpayer resources.

This being said, regardless of the Complainant's critical and counterproductive behavior, NE#1 should not have stooped to her level. Moreover, even if, as NE#1 contended, she criticized him and assailed the police, he should have disengaged and left the scene. By engaging in a negative back and forth and by making the comment concerning McDonalds he acted inconsistent with the expectations of his conduct set by the Department. While this result may not seem fair, SPD employees are held to a higher standard than the community members with whom they interact because of the uniform they wear and the role they are expected to play in our society. As such, 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

During her OPA interview, the Complainant suggested that NE#1's comments towards her may have been motivated by bias. The Complainant specifically referenced the fact that she was a disabled queer woman and that her partner was a woman of color. She appeared to contend that NE#1's comments made her fearful of adverse action against her and her partner.

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.*)

While I do not discount the concerns the Complainant and her partner may hold surrounding their relationship with law enforcement, I do not believe that there is any evidence that the interactions between her and NE#1 were motivated by bias. Indeed, based on the Complainant's own statements to OPA, their interactions were caused by the Complainant's initial criticisms of NE#1 and his responding in a negative fashion.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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