



## **CLOSED CASE SUMMARY**

ISSUED DATE: JUNE 30, 2018

CASE NUMBER: 2018OPA-0064

### **Allegations of Misconduct & Director’s Findings**

**Named Employee #1**

<b>Allegation(s):</b>		<b>Director’s Findings</b>
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)

**Named Employee #2**

<b>Allegation(s):</b>		<b>Director’s Findings</b>
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Training Referral)

***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 were unprofessional and acted in a biased manner towards him.

**STATEMENT OF FACTS:**

The Named Employees were dispatched to a call of a dispute between two males at an encampment for unsheltered individuals. When the officers arrived, there were three individuals involved in the dispute, which included a White male whose named was not identified and two Black males, one of whom is the Complainant in this case. The officers determined that the conflict was between the White male, who referred to himself as the “camp leader,” and the other Black male. Named Employee #1 (NE#1) was the primary officer and interacted with the camp leader. Named Employee #2 (NE#2) was focused on the other Black male.

At the time of the initial contact, the camp leader was holding a concrete block. This block was later discarded. The camp leader told the officers that the other Black male had been ordered to leave a community tent but had refused to do so. While the officers did not determine that the camp leader had the right to order the other Black male to leave, they asked him to do so to ensure that there was no ongoing conflict. The other Black male agreed to do so and began gathering his things.



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During that time, the camp leader began a predominantly negative interaction with the officers. This included calling the officers “whitey” and telling them to “go back to Europe.” At one point, NE#1 told the camp leader that he was “acting like a child.” While the other Black male continued to gather his things, the Complainant walked into the community tent. Both officers greeted the Complainant by his first name. This, for unknown reasons, made both the Complainant and the camp leader upset. Both told the officers to not speak to the Complainant or to refer to the Complainant by his first name. The camp leader continued to refer to the officers as “whitey,” told them that they did not “belong” in the camp, and said that the officers should “go back to Europe.” At one point, NE#2 told the camp leader to shut his mouth. The camp leader replied: “you shut your mouth, douche bag...talk to me like that...” The camp leader called the officers “sacks of shit,” “racists,” and “sexists.” NE#2 then asked the camp leader: “can you tell me what color your skin is?” The Complainant responded: “what kind of racist ass shit is that?”

The other Black male was able to locate his things and left the community tent. The officers began to clear the scene but, before they could do so, the camp leader asked for a sergeant to come and speak with him. A sergeant did so and spoke with both the camp leader and the Complainant. The Complainant told the sergeant that the officers referring to him by his first name constituted racism. He stated that if they referred to him by his full name he would not have any issue with that. At the conclusion of the sergeant’s time at the scene, the camp leader again told the officers and the sergeant to “go back to Europe.” This matter was screened with another supervisor and was ultimately referred this case to OPA. This investigation ensued.

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

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

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

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.*)

It is unclear what conduct the Named Employees engaged in that constituted bias. The Complainant contended that the officers’ use of his first name instead of his first name, last name, and middle initial constituted racism. I disagree and deem this allegation meritless.

Moreover, NE#2’s statement to the camp leader concerning the color of the camp leader’s skin did not constitute bias. As NE#2 explained at his OPA interview, he was pointing out the fact that the camp leader appeared to be White, while NE#2, who the camp leader was calling “whitey,” identifies as Native American. NE#2 was trying to make the point that it was offensive for the camp leader to tell him to go back to Europe when NE#2 was not of European ancestry. While perhaps not the most advisable conversation to have, particularly given that his point appeared lost on the camp leader, this does not constitute bias.

Neither of the Named Employees engaged in any speech or conduct that could plausibly be alleged to constitute bias. As such, I recommend that this allegation be Not Sustained – Unfounded as against both officers.

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



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

***5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times***

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.) Lastly, the policy directs that: “Employees will avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

The lone statement made by NE#1 that could be deemed unprofessional was when he told the camp leader that he was “acting like a child.” NE#1 explained that this was not meant as an insult, but was NE#1’s attempt to try to get the camp leader to “act his age” and to resolve the situation. If this was the purpose of this statement, it was counterproductive and ill-considered. First, this statement was more likely than not to escalate the situation instead of peaceably resolving it. Indeed, that was exactly what occurred. Second, it was simply unnecessary to engage with the camp leader in this manner. This was the case even though the camp leader was, in fact, behaving in a less than mature manner.

That being said, I do not feel that this conduct rises to the level of unprofessionalism. I further note that NE#1 was largely controlled during this incident even though the camp leader was insulting and obnoxious towards him and NE#2. For these reasons, and while I would counsel NE#1 to avoid extraneous and unnecessary commentary in the future, I recommend that this allegation be Not Sustained – Unfounded.

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

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

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

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

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

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

***5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times***

NE#2 made two statements during his interaction with the Complainant and the camp leader that were arguably unprofessional. The first was when he told the camp leader to shut his mouth. The second was when he asked the camp leader what color his skin was.

With regard to the first statement, while the camp leader was a difficult person to deal with and was continuously insulting to the officers, it was improper to tell him to shut his mouth. Officers are held to a higher standard than those they interact with. This includes the expectation that, even when subjects are inappropriate and unprofessional towards them, officers will not lower themselves to the subjects’ level. By telling the camp leader to shut his mouth, NE#2 did so here.



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With regard to the second statement, while I understand the point that NE#2 was trying to make, it was unnecessary under the circumstances. Moreover, it did not further any law enforcement purpose and only served to escalate an already heightened negative situation.

That being said, I do not feel that these statements warrant a Sustained finding, Instead, I recommend that NE#2 receive a Training Referral. This is particularly due to the fact that both the Complainant and the camp leader appeared to be irrational and were inappropriate and insulting towards the officers.

- **Training Referral:** NE#2's chain of command should go over this interaction with him and discuss some alternative strategies that NE#2 could have used to de-escalate the situation. It should be made clear that, under these types of circumstances, NE#2 should be careful not to escalate already emotional and negative interactions and that his statements here served to do so. This counseling and any associated re-training should be documented and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**