



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 14, 2019

CASE NUMBER: 2018OPA-0087

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Inconclusive)
# 2	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	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 alleged that the Named Employee violated the law and acted unprofessionally during a domestic dispute.

ADMINISTRATIVE NOTE:

The Named Employee is not a member of a collective bargaining unit and, as such, the 180-day timeline is inapplicable to him and does not govern this case. Accordingly, and for administrative purposes, OPA has set the date of this DCM as the 180-day deadline.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

The Complainant called 911 to report a potential domestic violence assault. She told the responding officers that her husband, from whom she was separated at the time, was at her home, was refusing to leave, and was demanding to take things out of the home. She stated that her husband moved out of their home the previous month. Her husband, who she identified as Named Employee #1 (NE#1) – a civilian employee of SPD, was at the home to visit her daughter. She said that, during the visit, NE#1 engaged in “unusual body languages” when he stood “close behind her.” She indicated that he started to use profanity, raised his voice, and that his “body language got really aggressive, really fast.” She described NE#1 as “making fists with his hands, his shoulders were really tensed and hunched up” and that it was “an aggressive posture.” The Complainant told OPA that she had packed up some of NE#1’s personal belongings and, when he realized that she had done so, he became “very strange and aggressive” and “stuffed charging cables into his pocket.” She stated that, when she called the police, NE#1 left the home.

The Complainant explained that, during their 16-year relationship, there was a “history of physical intimidation and occasional physical violence.” She described NE#1’s punching a hole in a wall and engaging in road-rage. She also



recounted that NE#1 once blocked her from leaving a room and, on another occasion, grabbed her arm because he wanted her to listen to him. However, the Complainant stated that these acts occurred four years or longer ago and that NE#1 did not make physical contact with her during this incident and did not make any verbal threats.

OPA reviewed the criminal investigation that was conducted by SPD. SPD interviewed the Complainant and obtained a written statement from NE#1. In that statement, NE#1 denied engaging in any threatening or assaultive behavior on the date in question. He stated that he was playing with his daughter on one of his weekly visitations when he asked the Complainant whether an upcoming meeting date worked for her. He recounted that the Complainant grew hostile and stated that this was “something [he] should talk to [his] lawyer about.” The Complainant then told NE#1 to go upstairs to play with his daughter. He did so and, while walking up, grabbed a phone charger from the wall because his phone was low on battery. He stated that the Complainant then accused him of “stealing” the charger and told him to put it back. NE#1 indicated that he tried to reason with her, but that she told him that he needed to leave the house. She then called 911 and his daughter began crying and asked him not to leave. The Complainant told the 911 operator that she was the victim in an ongoing “domestic disturbance” and that NE#1 was “acting aggressive” and that he had “mental health problems.” He wrote that he “promptly left the house in an effort to de-escalate the situation.” NE#1 denied raising his voice or acting aggressively. He opined that the Complainant called 911 in order to use this incident to gain full custody of their child.

After concluding its criminal investigation, the case was sent to the Seattle City Attorney’s Office for review. While noting that NE#1’s alleged behavior was “concerning,” the assigned prosecutor declined to prosecute citing “insufficient evidence.”

OPA then commenced its investigation, which included interviewing both the Complainant and NE#1. Like in his written statement, NE#1 denied engaging in any assaultive behavior. He refused to answer, however, when asked whether he ever punched a hole in the wall, citing the relevance of the question. NE#1 told OPA that there had never been any “police calls, police reports, [or] history of violence or injuries” during his 16-year relationship with the Complainant. He stated that, while he was upset at the custody arrangement that was in place at the time and by the conduct of the Complainant, he never touched or threatened her.

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. If true, the allegations set forth by the Complainant could have constituted criminal conduct on the part of NE#1. Moreover, that a prosecutor declined to proceed with charges does not preclude OPA from determining that NE#1 acted contrary to policy. Notably, while the prosecutor is required to prove beyond a reasonable doubt that NE#1 acted in violation of law, OPA applies a preponderance of the evidence standard, which is a significantly lower burden of proof. That being said, even when applying this less stringent standard, the evidence is insufficient to prove that NE#1 engaged in illegal activity. NE#1 and the Complainant were the only witnesses to this incident. Their accounts are irreconcilable and there is no evidence that moves the scales in either party’s favor.

As OPA cannot conclusively determine what occurred, OPA similarly cannot conclusively determine that NE#1 violated policy during this incident. Accordingly, I recommend that this allegation be Not Sustained – Inconclusive.

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



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-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 additionally 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.*)

Had NE#1 engaged in the behavior alleged by the Complainant, it would have constituted unprofessional conduct. However, when applying a preponderance of the evidence standard, OPA cannot definitively determine what occurred during this incident and whether NE#1’s conduct violated this policy. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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