

APM 3-5 Complaint #AA2021-0064
Final Investigative Report
February 14, 2022

COMPLAINANT

██████████, filed a complaint on behalf of recently resigned Police Officer ██████████ on December 9, 2021. ██████████ worked for the Police Department from January 2020 to December 2021. ██████████ reported that she identified as a white female when she began employment with the City of Madison. ██████████ confirmed that ██████████ reviewed ██████████ complaint and that ██████████ was in agreement with the content of the complaint.

RESPONDENT

Police Chief Shon Barnes is the Respondent. Barnes reported that he identified as a black male when he began employment with the City of Madison. Barnes was hired as Police Chief on February 1, 2021.

BASIS FOR COMPLAINT

██████████ alleges that Barnes created a hostile environment by making comments in violation of APM 3-5 related to protected classes (sex), sexual orientation, and physical appearance during an exit interview with ██████████ on Friday, December 3, 2021. Specifically, during the Complainant's exit interview on December 3, 2021, Barnes allegedly:

1. Asked ██████████ if she would continue working for the Madison Police Department if she found love and stated that he could assist her, among other comments.
2. Asked ██████████ about her sexual orientation.
3. Asked ██████████ if she preferred a partner with, 'teeth or no teeth.' He then commented about a majority of the customers of the Madison Police Department not having teeth.

INVESTIGATIVE STRATEGY

Mayor Satya Rhodes-Conway assigned Fire Chief Steven Davis, Human Resources Director Harper Donahue IV, and Deputy Mayor Christie Baumel to investigate this complaint. Affirmative Action Manager Melissa Gombar met with investigators on Friday, December 20, 2021, to review the complaint and prepare an investigative strategy for the complaint. The investigators wanted to answer the following information by conducting their investigation:

1. Did Barnes create a hostile work environment by making comments in violation of APM 3-5 related to protected classes (sex), sexual orientation, and physical appearance during an exit interview with the Complainant on Friday, December 3, 2021?
2. Did Barnes violate APM 3-5?

The following individuals were interviewed on the following dates:

██████████ – Thursday, January 6, 2022
Shon Barnes – Tuesday, January 18, 2022, & Thursday, February 3, 2022 (for follow-up questions).

Interviews focused on these two individuals as these two people were the only two in the room for the conversation - a fact confirmed by both parties – and therefore the only two people who directly knew how the conversation transpired.

INVESTIGATIVE FACT FINDINGS

The Investigators were able to determine answers to the following questions:

A. Did the Respondent ask [REDACTED] if she would continue working for the Madison Police Department if she found love, and did he offer to assist her, among other comments?

While the exact language that was used is unclear, it is clear that the topic of finding a partner in Madison was brought up. It is unclear if it was asked as a question, or if the Chief offered to assist her.

Per [REDACTED] Barnes asked why she was leaving. [REDACTED] relayed that she was not leaving because of the department and had no grievances with MPD. She stated she liked MPD; that she was leaving for personal reasons to be closer to out-of-state family. [REDACTED] added that if, *'In the future, if I have a family of my own, I want to be closer to my support system.'*

That comment prompted Barnes to ask, *'Something like, 'if you found love or romance in Madison, would it get you to stay?'* [REDACTED] said she laughed, and Barnes continued with the line of questions. [REDACTED] stated that she did not recall the exact words, but the Chief asked something along the lines of *'What do you prefer – male or female? I don't care about your preferences; let me know – I can keep an eye out for you.'* Barnes kept going on. [REDACTED] noted that Barnes also mentioned getting her set up on speed dating.

[REDACTED] noted that this part of the conversation might have gone on for 30-60 seconds in its entirety. That felt long to her, and very awkward to the point where she did not know how to respond - she said she was just waiting for it to end. [REDACTED] further noted that the conversation had been free-flowing and comfortable until that point.

Per Barnes:

[REDACTED] was leaving MPD to work for another police department. [REDACTED] noted that she was 'here alone' because her brother decided not to move to Madison as initially planned. Barnes then asked why she felt alone and stated, *'We have a great community in Madison... Madison is a great place for young people and a great place to find a partner and settle down. A great place to start a family.'*

In both interviews, investigators tried to learn how the conversation transitioned into one about finding a partner. [REDACTED] recalled that she said something about not having a support system in Madison, and Barnes asked something along the lines of if she found love here, would that change things. She did not have a clear memory of the wording that led from discussing a support system to finding love. Barnes indicated a clear recollection of the transition, stating that when [REDACTED] said she was moving because she was "here alone," he responded by stating that Madison is a great place to meet people and find a partner.

B. Did the Respondent ask the Complainant what her sexual orientation was?

No. Investigators agree that the topic broached, but do not believe it was asked as a question to be answered.

Per the descriptions from interviews below, sexual orientation may have only applied to an explanation that the word “partner” could be husband or wife and male or female. Both parties agree no answer was expected, and there would not be any weight given to the answer.

Per [REDACTED]

In response to Barnes learning that she was leaving to be closer to family out of state, he started asking questions about her finding love or romance in madison. [REDACTED] did not recall Barnes’ exact words, but said she was asked something like, *‘What do you prefer – male or female? I don’t care about your preferences; let me know – I can keep an eye out for you.’* [REDACTED] added that she did not feel that Barnes ever expected or hoped for an answer to the question of her sexual orientation. Rather, she felt it was part of a list of potential features in a partner. When asked if she understood Barnes’ purpose, she could only speculate that he may be trying to make a joke to make the conversation more light-hearted.

Per Barnes:

After [REDACTED] shared that she felt alone here in Madison due to her brother changing plans and deciding not to move to Madison, he stated, *‘... Madison is a great place for young people and a great place to find a partner, settle down.’* Barnes further stated that [REDACTED] looked puzzled, and responded with, *‘partner?’* Barnes then replied, *‘partner, meaning husband or wife.’* [REDACTED] then responded by saying, *‘I like men.’* Barnes then responded by saying, *‘Madison is a great place to find men ... we have tall men, short men, men with teeth, no teeth. It’s a great place for young people.’*

Barnes stated that one goal of each exit interview is a last-chance effort at retention, and his comments were related to this. He further stated that he recently started using the term ‘partner’ based on input from other City staff that a more gender-neutral term is considered a best practice, and thought the exchange in question stemmed from him clarifying what he meant by that term.

Both [REDACTED] and Barnes were consistent that there was no expectation that a question regarding sexual orientation would or should be answered. When asked if she thought Chief Barnes expected an answer, [REDACTED] stated, *‘No, he just continued in terms of a statement of looking out for me.’*

On this point, Barnes stated, *‘It wasn’t that I asked her what her sexual orientation was. There wasn’t even a reason to disclose it. I used the word ‘partner.’ The concept of ‘what’s your preference’ wasn’t part of the question. I don’t agree that she was asked to disclose. She questioned, ‘Partner?’ and I said, “Male or female.” She didn’t have to respond to that at all.’*

C. Did the Respondent ask the Complainant about her preferred physical appearances in a partner? Did the Respondent comment that her choice would exclude most of the people she deals with in her official capacity as a police officer?

Yes, regarding remarks related to physical appearance.

Unsure, regarding its relation to people that MPD deals with as a police officer.

Per [REDACTED]

[REDACTED] stated that the only comments of physical appearance were in reference to potential partners having teeth or no teeth. She said in the course of asking her preferences in a partner, the

Chief included an option of *'teeth or no teeth.'* She said she laughed and said *'teeth,'* to which the Chief commented that this would exclude about half the people they see on the street.

Per Barnes:

In response to [REDACTED] sharing that she liked men, Barnes shared, *'Madison is a great place to find men ... we have tall men, short men, men with teeth, no teeth. It's a great place for young people.'* When asked if he made any comments directed towards the physical traits of the general public or people who MPD engages with, Barnes said he did not.

CONCLUSION

Investigators were able to determine answers to the following questions:

I. Did Barnes create a hostile environment by making comments in violation of APM 3-5 related to protected classes (sex), sexual orientation, and physical appearance during an exit interview with the Complainant on Friday, December 3, 2021?

Not Sustained.

The investigators did not see evidence that Barnes created a hostile work environment. When [REDACTED] was asked about the overall tone of the meeting, Friendly, Supportive, Tense, or Hostile? [REDACTED] described the meeting as, *'as friendly as you can get with the Chief of police. I had never had a conversation with him. It was similar to the tone of the meeting right now. Nobody was sad or upset. Just questions and responses. Friendly, inquisitive. Not hostile.'* Barnes responded to the same question with *'Friendly from my perspective. Supportive. This is not an easy job. When I realized she would move on, I let her know I was still supportive and that her certification would still be good if things didn't work out in [REDACTED]'*

[REDACTED] noted that she found Barnes' comments to be, *'Weird. I wouldn't say I was outright disgusted or offended. It was just weird coming from the Chief, the boss of all bosses, someone I had never spoken to before. It felt awkward. In the course of the conversation, I felt like, 'do I answer, do I not, why are you asking me this?' It just felt unprofessional, weird, and awkward.'* She also noted that the conversation would not have felt the same with another colleague, saying, *'In a professional exit interview setting with the Chief, who I have never spoken to, it isn't a meeting to joke or be comical. We don't have that relationship. I have had supervisors where we have a light-hearted tone, but I have a relationship with them that makes that tone more understandable.'*

By accounts from both parties, it appears that the remainder of the meeting was appropriate. By both accounts, Barnes asked questions related to continuous improvement, areas for improvement within the Madison Police Department.

2. Did Barnes violate APM 3-5?

Not Sustained.

In determining a potential violation of APM 3-5, investigators consider:

- (a) Whether an action related to a protected class – in this case, sexual orientation and physical appearance; and

(b) A negative behavior or consequence related to the protected class(es) as outlined in APM 3-5 and the APM 3-5 Resource Guide – in this case, the creation of a hostile work environment or microaggression.

Related to part (a) of the above statement, both interviews were consistent that Barnes was not seeking answers as to [REDACTED] sexual orientation or preferences, nor did he apply any relevance to these factors. Barnes recalled that he stated examples of what was meant by the term “partner” and the wide variety of potential partners in Madison. [REDACTED] recalled that he didn’t seem to be expecting an answer as to her preferences and that he stated that it didn’t matter what her preferences were.

There is also insufficient evidence that any comments were made linking comments about teeth to the members of the public, as [REDACTED] and Barnes had different accounts of whether this comment was made. In either case, the investigators do not find evidence linking such a comment as it was presented in this case to an APM 3-5 violation.

Investigators also considered the context and intention of the conversation, as well as the impact the words had.

Regarding the context and a potential intention of Barnes’s comments, Barnes said he sees exit interviews as last-chance opportunities to possibly retain employees or keep the door open for them to return, and the comments were in direct response to the reason [REDACTED] stated for leaving. Barnes noted, *‘Retention is a problem. Last year, the department lost 34 officers to resignations, the highest ever, and 25 to retirements.’*

[REDACTED] stated she could only speculate that he was attempting a joke to make the conversation more light-hearted.

The investigators believe that both may be true – it is possible that this was a light-hearted attempt at employee retention.

In terms of impact, [REDACTED] stressed that a personal life discussion did not belong in a conversation about her profession during this meeting, and she found this unprofessional. She characterized her concerns as follows: *‘I want to clearly state that I think it was unprofessional, not appropriate for the setting. An exit interview should be about feedback from the employee’s standpoint, not a personal standpoint. Although I find it unprofessional, awkward, and inappropriate, I never felt my safety was threatened or that he was trying to make any advancements on me. I was not fearful. I didn’t feel threatened. I didn’t walk away thinking he was trying to make sexual advances, get sexual favors, or try to pursue a relationship with me. It was just an awkward, unprofessional, weird interaction.’*

Related to part (b) of the above statement, and as discussed in Question 1, the investigators did not find evidence that the exchange resulted in a hostile work environment or microaggression.

The three investigators were unanimous in these determinations. While acknowledging the interviews did not fully resolve all differences between the two interviews, Investigators note that both [REDACTED] and Barnes appeared to be highly credible and cooperative in the course of the interviews.