



OFFICE OF PROFESSIONAL ACCOUNTABILITY

Closed Case Summary

Complaint Number OPA#2015-0643

Issued Date: 12/08/2015

Named Employee #1 (several unknown)	
Allegation #1	<u>Seattle Police Department Manual</u> 8.100 (1) Using Force: Use-of-Force: When Authorized (Policy that was issued 01/01/2014)
OPA Finding	Not Sustained (Management Action)

Named Employee #2	
Allegation #1	<u>Seattle Police Department Manual</u> 8.100 (1) Using Force: Use-of-Force: When Authorized (Policy that was issued 01/01/2014)
OPA Finding	Not Sustained (Inconclusive)

INCIDENT SYNOPSIS

On May 1, 2015, a planned yet unpermitted march began on the campus of the Seattle Central Community College located at 1701 Broadway Avenue. The gathering was advertised via Facebook as the "May Day Anti-capitalist March 2015" reported to begin at about 6:00 p.m. on the college campus. Officers from SPD and other mutual aid agencies provided policing services for this event. In the course of the event that unfolded shortly after 6:00 p.m. and continued well past 9:30 p.m., some individuals in the crowd of marchers committed acts of vandalism (breaking windows, painting cars and buildings, etc.) and acts of violence directed at the police (throwing objects at officers, striking officers with wooden poles, etc.). SPD Incident Commanders ultimately ordered officers to disperse the crowd of demonstrators and authorized the use of less-lethal force. SPD and mutual aid officers used a variety of so-called "less-lethal"

devices directed at, or in close proximity to, some march and demonstration participants. The devices used by the police included pepper (OC) spray, shoulder-launched OC "PepperBalls", rubber blast-ball grenades (some inert and others containing OC), "less-lethal" plastic projectiles launched using compressed-air devices (FN 303), and compressible foam "less-lethal" projectiles (also known as "blue nose" rounds) shot from 40mm impact round launchers.

COMPLAINT

Five individuals alleged excessive force by SPD officers through the use of rubber blast-ball grenades (blast-balls). All five complainants claimed they were injured by the police use of blast-balls. One of the five complainants also alleged injuries resulting from being struck on the leg by a less-lethal projectile fired by the police.

INVESTIGATION

The OPA investigation included the following actions:

1. Review of the written complaints filed with OPA by four of the five complainants
2. Review of news media accounts of the event focused on complaints about use of force
3. Review of a Federal civil rights lawsuit filed by one of the complainants
4. Review of SPD documents related to planning for May Day
5. Review of officer statements created as part of SPD's use-of-force reporting
6. Review of SPD-generated use-of-force reports and other reviews related to May Day
7. Review of a body-worn camera videos recorded by SPD officers
8. Review of videos recorded by the news media
9. Review of news reports related to the May Day events
10. Review of videos recorded by private parties
11. Search for and review of all other relevant records and other evidence
12. Interviews of SPD employees

ANALYSIS AND CONCLUSION

Use of Blast-ball By Named Employee #2: With the active assistance of one of the complainants and OPA analysis of available video recordings, one officer was identified as having deployed a blast-ball in the same area and at roughly the same time as indicated by the complainant. While the evidence clearly shows that the officer (named employee #2), activated and tossed a blast-ball while he was standing in the same general area as the complainant, it is not clear his blast-ball was the one that detonated near the complainant. A blast-ball did detonate near the complainant (this is clear from the video he provided to OPA), but there is no direct evidence to link named employee #2 with that particular blast-ball. In addition, the written use-of-force report submitted by named employee #2 along with his statement to the OPA investigator indicate that he (named employee #2) rolled the blast-ball away from where the complainant was standing at the time. Also, other officers deployed blast-balls in that area at

roughly the same time. Because the investigation could not determine the direction of the blast-ball deployed by Named Employee #2, there was not a preponderance of evidence to either prove or disprove the allegation that named employee #2 activated a blast-ball and rolled it in the direction of the complainant and others who were not resisting or posing a threat, a finding of Not Sustained (Inconclusive) was appropriate.

Unknown Officer(s)' Use of Blast-balls: Despite the significant amount of SPD and private video available and reviewed by OPA, along with extensive documentation by SPD officers who reported deploying blast-balls during the event, OPA was unable to find sufficient evidence to link a specific SPD officer to any of the blast-ball deployments alleged by the complainants. However, the available evidence supports the allegation that blast-balls were deployed in the areas and at about the same times reported by the complainants.

Complainants' Reports of Injuries from Blast-balls: Four of the five complainants reported to OPA that they were physically injured by a blast-ball exploding near or next to them. Blast-balls are small explosive devices that detonate in two stages. The person deploying the blast-ball removes a safety pin and pulls up on a metal handle, much like on a grenade. Following a brief delay, during which the person deploying the device rolls or tosses the blast-ball towards the intended target area, an initial detonation takes place. As a result of this first explosion, the metal fuse portion of the blast-ball is ejected and flies away from the rubber base. About 1.5 seconds later, a second, larger explosion takes place in which 8 grams of flash powder ignites. With a flash of light and a 175 decibel bang, the rubber base of the blast-ball blows apart into two pieces at its equator. Manufacture's specifications for this device along with publically available literature clearly show that detonation in intimate proximity to a person may result in burns and/or other injuries. For this reason, officers are trained to roll the blast-ball underhanded like a bowling ball into an open space. Deployment of a blast-ball directly at a person, in close proximity to people increases the possibility that injuries might result.

The evidence available to OPA in this case indicates that SPD officers deployed at least 48 blast-balls during the event, eight of which contained powdered OC. The others were "inert", containing no chemical irritant. Analysis of available videos, witness statements and officer statements supports the conclusion that not all of the 48 blast-balls deployed by SPD officers detonated in open spaces or were rolled underhand. An undetermined number of blast balls detonated (both initially when the metal fuse assembly was ejected and secondarily when the larger blast took place with the separation of the two halves of the rubber base) next to or against one or more persons. Some blast-balls were thrown over the heads of those persons closest to the police and landed farther away among demonstrators and/or on-lookers. Statements by those officers who deployed in this fashion indicate that the blast-balls were thrown into open spaces inside crowds where officers believed there were subjects throwing objects at the police.

Based on the available evidence, OPA was unable to determine if the specific injuries reported by the complainants were caused by the detonation of blast-balls thrown by SPD officers or that the detonation of those blast-balls was outside of SPD policy. However, some of the reported

injuries, especially those involving burns and/or ankle and calf injuries, may have been the result of blast-balls detonating in close proximity. It is possible that some of these injuries were the result of changes in the individual's position which could not have been anticipated by the officer at the time of deployment.

Complainants' Reports of Injuries from "Less-lethal" Projectiles: The OPA investigation verified that SPD officers deployed two different types of "less-lethal" projectiles at individuals during the event.

One SPD officer launched a plastic projectile using a compressed-air device (FN 303). This was reportedly done at the intersection of Melrose and Denny as police observed a small group rolling a large metal dumpster to the crest of a hill at the bottom of which was a large group of people, including officers. The officer reported that this projectile did not strike anyone. This same officer also reported that he later fired two more "less-lethal" rounds from his FN 303 at a person who was reportedly throwing rocks at the police, striking the person in the upper leg or hip.

A different SPD officer reported firing a "blue nose" round at a person seen throwing a long wooden pole at officers. This round reportedly did not strike the person. A nearby officer fired five PepperBall rounds from a compressed air launcher at the same person, striking him with some of the rounds. Approximately 30 minutes earlier, this same officer had fired two PepperBalls at an individual who reportedly threw a lighted road flare at officers.

As was the case with being unable to match the deployment of blast-balls with reported injuries, OPA was not able to say with any certainty that the injuries reported by the complainants were caused by less-lethal projectiles fired by a SPD officer. At the same time, such causation could not be ruled out.

Mutual Aid Agencies: Seven outside police agencies provided mutual aid by supplying more than 80 officers to assist SPD. Many of these officers were on bicycles. Some of the mutual aid officers reported firing "blue nose" less-lethal rounds during the event. None reported using blast-balls. It must be pointed out that none of the mutual aid officers was required to follow SPD use-of-force policies, either with respect to their use of force or the reporting of its use. As a result, OPA is unable to report, with any confidence, the extent to which mutual aid officers detonated blast-balls or the conditions under which they were used. Similarly, while video and other evidence indicates that some mutual aid officers were carrying launchers and may have deployed less-lethal projectiles of one sort or another, OPA has no reliable way of reporting the extent to which this occurred and the circumstances of their use. It can only be said that the possibility exists that one or more of the injuries reported by the complainants was the result of a blast-ball and/or less-lethal projectile deployment by mutual aid officers.

FINDINGS

Named Employee #1 (several unknown)

Allegation #1

The complainants alleged that blast-balls and/or less-lethal projectiles were used against them in a manner that was unreasonable, unnecessary or not proportional. The evidence is insufficient to determine in any particular case whether or not this allegation is true. Nonetheless, the evidence suggests that some blast-balls were thrown or rolled and some less-lethal projectiles were fired at individuals or groups who were not posing a threat to persons or property. The evidence from this investigation supports the conclusion that SPD officers used blast-balls and less-lethal projectiles according to their training and the direction given to them by SPD incident commanders. For this reason, accountability lies with SPD as an agency, not with any individual officer. Therefore, a finding of **Not Sustained** (Management Action) was issued for this allegation.

A separate Management Action letter (attached) has been sent to the Chief of Police containing specific recommendations for changes to policy, tactics and/or training.

Named Employee #2

Allegation #1

The complainant alleged that named employee #2 deployed a blast-ball that detonated near enough to him (the complainant) that it caused injury and that this use of force was not reasonable, necessary or proportional. Due to the fact that there was insufficient evidence to either prove or disprove this allegation, a finding of **Not Sustained** (Inconclusive) was issued for this allegation.

NOTE: The Seattle Police Department Manual policies cited for the allegation(s) made for this OPA Investigation are policies that were in effect during the time of the incident. The issued date of the policy is listed.



City of Seattle

Office of Professional Accountability

December 10, 2015

Chief Kathleen M. O'Toole
Seattle Police Department
PO Box 34986
Seattle, WA 98124-4986

RE: MANAGEMENT ACTION RECOMMENDATION (2015OPA-0643)

Dear Chief O'Toole:

Since I began my assignment as OPA director in July of 2013, I have had the opportunity to review both chain of command and OPA use-of-force investigations relating to protests and demonstrations. The following recommendations are informed by this wide-range of experience, but are most directly a result of my review of the use of force by SPD officers during a protest and demonstration march that began on the campus of Seattle Central Community College on the evening of May 1, 2015.

1. Use of Rubber Blast Ball Grenades (blast-balls): OPA recommends that SPD re-evaluate how and under what circumstances officers use blast-balls as a means of moving or dispersing crowds of people. The evidence from May Day 2015 indicates that, while highly effective in getting people to move, the ball-blasts create fear and panic when detonated. Additionally, blast-balls deployed by SPD officers exploded in extremely close proximity to people, not all of whom were engaged in destruction of property or posed a threat to public safety. This is contrary to our understanding of how officers have been trained to deploy blast-balls, specifically so that they detonate in open areas to create greater distance between the police and a crowd. Of particular concern, some SPD officers tossed blast-balls over the heads of those immediately in front of them so the explosive devices landed in the middle of a crowd. Because the initial detonation of a blast-ball separates a hard metal fuse device from its rubber base, there is a possibility of the metal fuse acting as shrapnel and causing serious injury to someone in close proximity when it separates. In addition, deployment of blast-balls at the feet of people or into a crowd can cause burns from the second and larger detonation, as well as blunt force trauma from the rubber base as the flash powder inside explodes and the two halves of the base fly apart. The product safety warning included in the literature provided by the manufacturer: "may cause serious injury or death to you or others." We particularly encourage SPD to ensure that its officers' use of blast-balls is consistent with the care due explosive devices.

2. Inventory and Control of Blast-balls: OPA recommends that SPD make immediate changes to its control and tracking of blast-balls. These devices are munitions and must be treated as such. For purposes of both safety and accountability, strict inventory control by serial number must be maintained over these devices. In particular, each device should be tracked by serial number whenever it is issued to an officer and accounted for after each incident, either with a use-of-force statement by the officer who deployed it or by serial number when it is returned by the officer to whom it was issued.
3. Use of Less-lethal Projectiles: OPA recommends that SPD review its policy and training with respect to the use of less-lethal projectiles in crowd management situations to reduce the chances of them striking the wrong person or causing serious bodily injury. Although these projectiles are specifically designed to prevent penetration and, instead, stun the target with blunt-force trauma, the fact remains they can and do cause injury. In rare, but tragic cases, less-lethal projectiles have even resulted in death. We are particularly concerned with the possibility that, due to the sometimes chaotic and confusing nature of protests or demonstrations, these projectiles may strike and injure people lawfully exercising their constitutional rights.
4. Role, Training and Expectations for Officers From Mutual Aid Agencies: OPA recommends that SPD curtail its use of officers from mutual aid agencies in direct crowd management assignments. Specifically, OPA recommends that, should SPD chose to enlist the assistance of mutual aid officers, they be assigned to support positions which will significantly reduce the likelihood they will be required to use force, e.g., building security at precincts or headquarters, prisoner transport and processing, etc. If SPD wants to use mutual aid officers in a role that places them in direct contact with crowds or protesters, OPA strongly recommends that these officers be trained by SPD and required to comply with all SPD policies with regard to the use and reporting of force. In addition, OPA recommends that mutual aid officers be permitted to carry and use only those force options (weapons, chemical agents, munitions and less-lethal tools) authorized by SPD for use by its own officers.
5. Documentation and Investigation of Force Used During Protests, Marches, Demonstrations and Other Crowd Control Operations: OPA recommends that SPD study how it documents and investigates the use of force by officers during crowd management situations and demonstrations or protests. OPA recognizes and applauds SPD for the significant improvements made in this regard over the past 18 months. The documentation and post-event analysis of SPD use of force during May Day 2015 was more detailed and significantly better than May Day 2014 and/or Ferguson-related protests in late 2014 and early 2015. Nonetheless, we believe that additional improvements can and should be made. In particular, OPA recommends that SPD consider the use of video and other technology to increase its in-progress documentation of officers' use of force. This suggestion is different from and not meant to be a replacement for body-cameras placed on officers, which will primarily record the actions of demonstrators and protesters, not the officer wearing them. Instead, we encourage SPD to consider ways in which it can lawfully, reliably and safely video record the actions of its officers during these events.

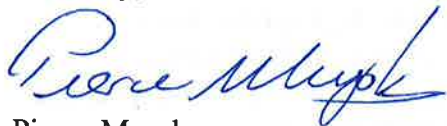
In addition, given the number of protests, marches and demonstrations that occur every year in Seattle, OPA recommends that SPD consider establishing a cadre of detectives and supervisors who are specifically trained in investigating and analyzing the use of force in these situations. Those staffing such a unit should possess many of the skills utilized by SPD's Force Investigations Team. In addition, the members of this unit should be thoroughly schooled in the policies, tactics and training relating to providing police services during demonstrations or other events with large crowds of people. Successfully implementing this recommendation will provide for stable, high-quality force investigations that are completed in a shorter timeframe, thus enabling police management, the Force Review Board, OPA and the public with timely and complete information needed to understand and evaluate the performance of SPD during these events and apply valuable lessons.

6. More Visible Names and/or Serial Numbers for Officers: OPA recommends that SPD find an appropriate means to affix the name and/or the serial number of each officer on the front and back of the outermost garment or body armor, along with the helmet. This should be done in a large and highly visible manner. Because of the nature and similarity of uniforms, protective gear and helmets used by SPD officers while providing police services at demonstrations and protests, OPA has found it difficult and time-consuming to identify officers shown in photographs and videos taken during these events. In addition, complainants frequently are unable to give OPA the name or serial number of the officer alleged to have used excessive force. Finding a practical and highly visible means to display names or numbers will make accountability more possible and send an important message of transparency to the public.

7. Policing Operations In Protests, Marches, Demonstrations and Other Crowd Control Situations: OPA recommends that SPD rethink its approach to planning and providing policing services in relation to protests and demonstrations. We are aware that SPD has assembled a highly regarded group of national experts to examine and make recommendations on this topic. OPA encourages SPD, in collaboration with these experts, to look beyond the confines and thinking of the American law enforcement establishment. We note that law enforcement agencies in the United States have relied on the military and those with military experience for many of the tactics, equipment, weapons and training used in dealing with protests, demonstrations and crowd control scenarios. While these traditional approaches have much to offer, we believe that SPD would benefit from employing an intentionally wide lens in its search for best practices in this field, including what other countries and regions have found successful in supporting the free expression of public protests while limiting the use of force necessary to promote public safety. Also, we encourage SPD to seek out academics and others outside the mainstream of current law enforcement thinking who may have innovative and evidence-based recommendations in this area. Finally, OPA strongly recommends that SPD seek an effective means by which Seattle's many diverse peoples and neighborhoods can actively participate in this process and communicate to SPD how they want their police service to handle protests and demonstrations in their city.

Thank you very much for your prompt attention to this matter of public trust and confidence in the professional conduct of the SPD and its employees. Please inform me of your response to these recommendations and, should you decide to take action as a result, the progress of this action.

Sincerely,



Pierce Murphy
Director, Office of Professional Accountability