



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 28, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0334

Allegations of Misconduct and Director's Findings

Named Employee #1

Allegation(s):		Director's Findings	Chief's Finding
# 1	14.090 Crowd Management 9. Crowd Dispersal a. Upon Determining That There are Acts or Conduct Within a Group of Four or More Persons That Create a Substantial Risk of Causing Injury to Any Person or Substantial Harm to Property, the Incident Commander May Order That the Crowd Be Dispersed	Sustained	Not Sustained (Training Referral)
# 2	14.090 Crowd Management 9. Crowd Dispersal b. The Incident Commander Shall Have Authority to Direct the Use of Blast Balls and OC Spray to Disperse the Crowd	Sustained	Not Sustained (Training Referral)
# 3	14.090 Crowd Management 8. The Incident Commander Retains Ultimate Responsibility for the Decisions of Subordinates	Allegation Removed	
# 4	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Allegation Removed	

Named Employee #2

Allegation(s):		Director's Findings
# 1	14.090 Crowd Management 9. Crowd Dispersal a. Upon Determining That There are Acts or Conduct Within a Group of Four or More Persons That Create a Substantial Risk of Causing Injury to Any Person or Substantial Harm to Property, the Incident Commander May Order That the Crowd Be Dispersed	Not Sustained (Unfounded)
# 2	14.090 Crowd Management 9. Crowd Dispersal b. The Incident Commander Shall Have Authority to Direct the Use of Blast Balls and OC Spray to Disperse the Crowd	Not Sustained (Unfounded)
# 3	14.090 Crowd Management 8. The Incident Commander Retains Ultimate Responsibility for the Decisions of Subordinates	Not Sustained (Unfounded)
# 4	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)



Named Employee #3

Allegation(s):		Director's Findings
# 1	8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 3	5.001 - Standards and Duties 6. Employees May Use Discretion	Not Sustained (Unfounded)

Named Employee #4

Allegation(s):		Director's Findings
# 1	14.090 - Crowd Management 10. Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 - Use-of-Force a & b	Not Sustained (Inconclusive)

EXECUTIVE SUMMARY:

OPA received numerous complaints regarding SPD's decision to disperse a crowd of protesters near the intersection of 11th Avenue and Pine Street on June 1, 2020, using blast balls, CS gas, and OC spray. The complaints generally alleged that SPD, and not the protesters, escalated the situation without provocation. In particular, one Complainant alleged that the Named Employees violated her rights by attempting to confiscate her umbrella, leading to her exposure to OC spray. Another Complainant alleged that he was injured by a blast ball while peacefully protesting.

ADMINISTRATIVE NOTE:

This case has two different 180-day deadlines as it involves officers belonging to different bargaining units. The 180-day deadline for Named Employee #1 and Named Employee #2, who are both members of the Seattle Police Management Association, is January 11, 2021. The 180-day deadline for Named Employee #3, who is a member of the Seattle Police Officers' Guild, is December 28, 2020. The investigation against the unknown SPD employee – Named Employee #4 – is not governed by a 180-day deadline.

SUMMARY OF INVESTIGATION:

This case arises out of the demonstrations that occurred within Seattle and across the nation in the wake of the killing of George Floyd by a Minneapolis Police Officer. These protests were unprecedented in scope and were directed at law enforcement. While most demonstrators protested peacefully, some demonstrations, especially during the early days of the protests and during nighttime hours, devolved into violence, property destruction, and looting.

The specific incident at issue occurred on June 1, 2020, the fourth full day of protests. On that date, a group of demonstrators, who had gathered initially in the Westlake area, marched up Pine Street to the East Precinct. Once there, they amassed in front of a police fence line. The line was made up initially of connected segments of metal



fencing backed by bicycle officers. The crowd remained static in that area for some time and grew in size significantly. Ultimately, around 9:00 PM, the decision was made to reinforce the line with officers wearing gas masks and equipped with less-lethal crowd control tools.

Video of the incident showed that, shortly after this occurred, demonstrators began opening up umbrellas. This included one demonstrator – referred to here as Complainant #1 – who possessed a pink umbrella. Officers on the line facing Complainant #1 made the decision to seize Complainant #1's umbrella. When they did so, Complainant #1 and another member of the crowd attempted to resist the seizure, causing officers on the line to deploy OC spray. This crowd subsequently escalated to the point that a Lieutenant, Named Employee #1 (NE#1), made the decision to disperse the crowd using blast balls and CS gas.

A. Narrative of Incident

OPA's assessment of the incident is based on multiple sources, including Body Worn Video (BWV), third-party video, SPD demonstration logs, and interviews. In order to provide clarity, OPA synthesized these sources to create a narrative of the incident. To the extent that there is disagreement about what occurred as well as background information, OPA presents those disagreements in sections below.

On June 1, at approximately 9:00 PM, a large crowd had gathered at the police barricade on 11th Avenue and Pike, near the East Precinct. At the time, the crowd did not appear to be engaged in violence, and neither third-party video nor BWV showed individuals throwing projectiles. Video of the incident showed that people in the crowd began to chant "let us walk," a chant that was taken up by a large segment of the crowd and which seemed to indicate a desire to pass the police barricade and march toward or past the East Precinct.

The crowd was pressed up against the metal barricades, and SPD radio logs reflect that at around 9:04 PM officers on the line reported that individuals were pushing on the barricades. This caused the metal fence line to become bent and concave in places where members of the crowd pushed it. At that time, NE#1 was in tactical command of the police line. According to Department records and interviews, NE#1 was coordinating with Named Employee #2 (NE#2), the Captain assigned to the East Precinct and tasked with physically defending the precinct. However, NE#2 was not at that time giving orders to officers. At 9:04 PM, NE#1 directed officers to hold their position and authorized the use of OC spray in the event that individuals tried to break through the line, but video did not show that OC spray was deployed at that time.

At 9:06, SPD radio, as well as third-party footage, confirmed that at least one bottle was thrown at the line. This appeared to be an isolated incident. However, based on what appeared to be increasing tensions between the crowd and officers, NE#1 directed officers on the line to "mask up" and stated that demonstrators were "not allowed to push again." During this time, it appeared that the decision was made to switch bicycle officers with SWAT team and other officers equipped with gas masks and batons. Moments later, the gas-mask equipped SPD officers moved forward and "tapped out" the bike officers. These officers were equipped with batons and took up station behind the metal fence line. Shortly after this switch was made, many individuals on the front of the line, including Complainant #1, raised umbrellas, while other members of the crowd began shouting at officers and grabbing onto the metal fence line, causing it to become further bent and distorted. At 9:09, NE#1 advised over radio that there were "many in group with umbrellas."



Complainant #1 could be seen in the video holding the umbrella with its top pointed toward officers. Footage from the third-party video showed that the umbrella extended past the metal fence line and came within inches of the officers standing behind it. One officer appeared to use his baton to push the umbrella back over the metal fence line, but Complainant #1 extended it again, as did other individuals with umbrellas. Footage from above showed the crowd and the police line as well. In that footage, the metal fence separating the crowd and officers had clearly become uneven, and some individuals could be seen reaching across the line. Of the umbrellas present on the line, only Complainant #1's umbrella was consistently on the other side of the metal fencing; however, it did not appear to be in direct contact with officers.

Named Employee #3 (NE#3), a Sergeant, was present on the line as a supervisor. NE#3 was recorded on BWV telling nearby officers that if Complainant #1's umbrella came over the line again, "you grab it and pull it this way." One of the officers on the line pushed the umbrella back toward Complainant #1, who then pushed it back toward officers. That officer grabbed the umbrella. Complainant #1 attempted to pull it back, and the third-party video showed another individual (dressed in a blue shirt) grab at the umbrella as well. Another officer on the line deployed OC spray at Complainant #1 and the blue-shirted individual. Members of the crowd lowered their umbrellas as a group and officers began deploying OC across the line, including further down.

At 9:10 PM, NE#1 gave the directive: "Per IC [Incident Commander] deploy blast balls and CS. SWAT go ahead and deploy CS, and blast balls." In OPA's assessment, this was the directive to officers to disperse the crowd. On the line, officers began to throw blast balls. Many on the front line had already begun to move back after being exposed to OC, but there was still contact between demonstrators and officers up and down the line at this time and the crowd had not fully dispersed. Officers continued to deploy blast balls and CS canisters until the crowd fully dispersed. At 9:11 PM, NE#1 stated on the incident log that the crowd was dispersed.

B. Third-Party Video

OPA analyzed a video taken by a journalist in the crowd and livestreamed to Facebook. The video included several minutes of footage in the leadup to the incident, during which the journalist circulated in the crowd and spoke to individuals. For the most part, the crowd appeared to be agitated but not openly violent, and the video did not depict any acts of violence like throwing objects.

The journalist talked to members of the crowd, including one who said that he had been told by people closer to the front of the line that they intended to push past the "gate," or metal fence line. The individual was trying to discourage people from escalating. This portion of the video appeared to coincide with initial pushes on the line, which the journalist's feed did not record as he was further back. At one point, the crowd chanted audibly "let us walk," and the journalist identified an isolated bottle being thrown. This was potentially the bottle identified at 9:06 PM on the SPD protest log. The journalist noticed SPD reinforcements arriving and he began making his way up to right front of the line.

When the journalist reached the line, he pointed out to viewers that bicycle officers were still manning the line. He expressed his view that, as long as the bicycle officers remained in front rather than the officers with gas masks, the posture of the incident was "stable." At this point, the journalist was standing against the metal fencing, and noted that officers with gas masks appeared to be assembling behind the bicycle line. He said that if bicycle officers got "tapped out" then "we need to be concerned." While the crowd was agitated, the journalist's stream did not capture any direct violence.



Moments later, the gas mask equipped SPD officers moved forward and “tapped out” the bike officers. These officers were equipped with batons and took up station behind the metal fence line. The journalist noted this on video and said: “what we can expect next is tear gas.” The crowd responded to the change in personnel and began shouting and grabbing the metal fencing. Officers also grabbed the metal fencing to hold it in position. Certain individuals in the front rank of the crowd, including one of the Complainants, opened umbrellas.

When officers seized the umbrella, the journalist’s video showed that at least one officer further down the line began deploying OC spray at the crowd while people in the crowd began grabbing at and climbing over the metal barriers. Ultimately, the OC deployments caused most people in the crowd to fall back from the line. There was no warning broadcast to the crowd. The journalist’s video showed several people with umbrellas and shields rushing forward attempting to block the OC spray or otherwise interfere with officers’ efforts to push the crowd back. Ultimately, the deployment of blast balls and CS gas caused the crowd to fall back from the line.

C. New York Times Analysis

The New York Times published an op-ed by a former police chief that analyzed the third-party video as well as other images from the incident. The op-ed covered approximately 60 seconds of video beginning with the switch from bicycle officers to officers wearing gas masks and ending with the dispersal of the crowd. In that analysis, the author stated his belief that the decision to deploy officers wearing gas masks “can send a message that the police expect to use force.” He stated that the protesters raised umbrellas in response to the deployment of masked officers to shield themselves from pepper spray. With respect to Complainant #1’s pink umbrella, the writer pointed out that an officer batted it away after it had been “opened near his face.” He noted that “[b]locking line of sight—intentionally or not—can alarm officers [and] lead to an eruption.”

The writer stated that, after the officer grabbed the umbrella, other officers nearby “quickly blast the area with pepper spray.” He opined that officers may have “misread the skirmish as a sign that protesters were turning violent” or may have used it “as a reason” to break up the crowd. Generally, the author’s assessment was that protesters were generally peaceful, and the OC spray was not reasonable. He further stated that officers used OC spray “indiscriminately” and concluded that, once officers saw the initial use of OC, they became committed to a “logic of escalation,” whereby they now had cause to disperse a crowd that had been escalated to violence by their own actions.

D. Specific Complaints

Complainant #1, the owner of the pink umbrella, filed one of several complaints associated with this incident. In her complaint, she stated that she was “peacefully protesting” and used the umbrella as a “shield from the chemicals” she expected to encounter based off prior protest experiences. She stated that the video taken by the journalist showed she had “no protective gear,” which she stated was evidence of peaceful intent. She stated that the officers’ use of protective gear was escalatory in the situation because it “incites panic in civilians.”

A second complaint was filed by Complainant #2. Complainant #2 stated that he attended the June 1 protest and that “when the cops threw flash-bangs, I was injured.” He attached a Reddit post he made in which he stated that: “[c]ops nailed me with a flash-bang yesterday when I walked up to them asking that they put down their weapons.” When contacted by OPA, Complainant #2 stated that his complaint was about how SPD handled the demonstration



in general. Consequently, Complainant #2's complaint was combined with this one and assessed as part of the overall decision to use force.

E. Witness Employee Interviews

OPA conducted interviews with several employees who were involved in the planning or oversight of crowd control operations on June 1. In doing so, OPA found that operational command of the June 1 incident differed in several respects from what was written on the Incident Action Plan (IAP). First, the IAP for June 1 listed an Assistant Chief of Patrol Operations as the citywide Incident Commander (IC) responsible for overseeing all demonstrations that day in the City and directing SPD resources appropriately. However, that individual was not in fact the IC for June 1. Rather, a different Assistant Chief, Witness Officer #1 (WO#1), was the citywide IC that day. Second, the IAP designated an "Operations Chief." This officer, the Captain commanding the West Precinct, was tasked with overseeing demonstration activity and coordinating resources to respond to particular incidents. When interviewed by OPA, the West Precinct Captain stated that he was not in command of operations at the East Precinct although he was in transit to there at the time of the dispersal.

WO#1 stated that, as citywide Incident Commander, he was not making tactical decisions about how to manage the East Precinct crowd although he was in communication with NE#2 and was monitoring the incident from the West Precinct. WO#1 stated that he did not give the order to disperse the crowd. He stated that, while he deferred to the assessments of leaders on the ground, his impression based on reports was that the majority of the crowd at 11th and Pine was not intent on causing destruction, but that elements within it likely sought confrontation with the police. He said that there appeared to be some "practiced Black Bloc" (anarchist) elements in the crowd as well as other people who were there primarily to express their views peacefully. However, in his experience, crowds are dynamic in nature and individual actors or small groups can sometimes escalate groups within the crowd.

WO#1 also stated that, as citywide IC, he was aware of intelligence that some individuals or groups sought to damage SPD property and the East Precinct in particular. This concern appeared to be motivated by the similar destruction of the Minneapolis Third Precinct building several days before. That incident was heavily publicized in the news and on social media. WO#1 stated that reports from Washington State Patrol as well as federal partner agencies conveyed this concern. It also appeared to be a widely held concern among SPD command staff independently of these reports, to the point where the then-Chief of Police reinforced the importance of protecting SPD facilities to him. WO#1 was not aware of what, if anything, was done to verify this intelligence but stated that he relied on it as part of his decision making.

F. Named Employee Interviews

OPA determined, based on interviews with several SPD employees including those named in this investigation, that NE#1 gave the order to disperse the crowd. NE#1 was interviewed by OPA and, in his interview, confirmed that he gave the order. While NE#2, the East Precinct captain, was senior to him in rank, NE#2 had just returned from extended military leave and deferred to NE#1, who had been involved in SPD's planning as well as prior demonstrations.

NE#1 stated that, by 9:04 PM, the crowd had been steadily encroaching on the police line and becoming more confrontational. NE#1 noted that the crowd was shouting, and recordings confirmed the crowd chanting "let us walk." NE#1 also noted the presence of umbrellas, which he said could be used to obscure officers' vision and hide



illegal conduct like assaults and breaches of the fence. NE#1 specifically noted the pink/purple umbrella, which was over the metal fence while others were not.

NE#1 said that the umbrella was evidence of “coordinated conduct” and recalled a conversation with the West Precinct Captain about the use of umbrellas at other protests as a “go-to tactic” of individuals seeking confrontation. NE#1 said that, while he could not assess Complainant #1’s motives with the pink/purple umbrella, he said that many individuals in protest lines were aware of the potential for confrontation with officers and that the collective use of umbrellas could conceal interference with barricades, defeat less-lethal enforcement like OC spray, and otherwise increase the threat a group of protesters posed to officers. NE#1 did not direct officers to seize the umbrella or use OC spray, but he stated that he did not believe doing so violated policy. NE#1 recalled, consistent with BWV and other recordings, that immediately after officers used OC spray the crowd became significantly more escalated and began throwing projectiles. He also stated that individuals tried to climb over the fence line and that this led him to authorize blast balls and CS gas to disperse the crowd.

In response to questions about whether non-violent demonstrators were affected by the dispersal, NE#1 said that he believed the “majority” of the crowd intended to confront officers and that it was a coordinated effort on the part of people attending the demonstration. NE#1 pointed to intelligence obtained by SPD, as well as the rapid deployment of umbrellas across the front line of the crowd, as evidence that significant elements of the crowd planned a confrontation. NE#1 was aware of and concerned about efforts to burn down the East Precinct, based on the intelligence reports.

OPA interviewed NE#2 as well. NE#2 confirmed that, while he was present for the incident and in command of the protection of the East Precinct, he consulted with NE#1 regarding management of the demonstration crowd. Earlier in the day, NE#2 had spoken to the crowd to attempt de-escalation and, based on this conversation, felt that while the crowd was “as large as [he] had ever seen it,” the crowd was “reasonably calm and peaceful.” However, after some time, he noticed a different group of individuals moving to the front of the crowd who were more confrontational. He stated that officers on the line began to take “a few bottles” as incoming projectiles. During this time, he consulted with NE#1, who asked for the line to be reinforced. He recalled being concerned that the crowd would attempt to burn the East Precinct if it broke through the line. It was around this time that individuals in the crowd began pushing on the line. NE#2 recalled a shift in the crowd’s “tone,” which approximately coincided with the deployment of gas-masked officers to replace the bicycle officers on the line.

When asked, NE#2 stated that the deployment of gas-masked officers was not done because he or NE#1 had already decided to use force. Rather, it was a response to what he and NE#1 perceived as increasing tensions and attempts to push past the metal fencing. While NE#2 stated that he did not believe more than a few hundred out of the “thousands” present wanted to instigate violence, he stated that it was not uncommon for actors with bad intentions to mix with peaceful demonstrators and attempt to excite them into violence. NE#2 stated that the anonymity afforded by a large crowd meant that some individuals who intended to protest peacefully could perceive license to act more violently when in the presence of people instigating conflicts.

NE#2 stated that he wanted to give a “good, clear dispersal order” prior to dispersing the crowd, and did not want to give that order to the crowd without “clear and convincing violence” to avoid escalating the crowd. Despite the tonal shift, that had not occurred. At the time, there was also no SPD vehicle equipped with a PA system near the line. NE#2 stated that he stepped back from the main line to provide an update to the citywide Incident Commander, WO#1. While he was doing so, he observed a “huge disturbance” at the front of the line, which caused



him to believe that someone must have tried to cross the metal fence. Based on OPA's analysis of the incident, it appeared that the "huge disturbance" was the attempted seizure of the umbrella and the deployment of OC across the line.

NE#2 stated that he did not give or participate in the order to disperse the crowd using blast balls or CS gas. However, he also did not believe there was a time when it would have been feasible to give a warning to the crowd. NE#2 said that, prior to the umbrella incident (which he became aware of after viewing video), the crowd had not yet given cause for police to issue a dispersal order and once the police line began using OC, a dispersal order would not have provided any warning to protesters. He stated that the incident went from tense but peaceful to violent in "ten to twenty seconds."

Finally, OPA interviewed NE#3, the Sergeant who issued the order to take Complainant #1's umbrella. NE#3 said that he made the decision to confiscate the umbrella and was not ordered to do so. He stated that he was concerned that the umbrella would jab one of the officers and could conceal attempts to pull down the metal fencing, or other illegal activity, because unlike other umbrellas it was in front of the fencing. NE#3 said that, because Complainant #1 was holding the umbrella at full arms'-length (i.e., approximately four to five feet), he did not believe it would be practical to try to talk to the Complainant directly given the noise, the agitation of the crowd, and the fact that the officers were already formed in a line. NE#3 said that he heard "constant and repetitive" warnings from officers to the crowd saying to "step back, stay back, and don't cross the line" created by the metal fence.

During his interview, NE#3 stated that he did not order any officer to deploy OC. Based on prior protests, NE#3 did not expect the umbrella seizure to provoke the level of crowd response it did, and typically when officers seize umbrellas, they are able to do so quickly with the umbrella either being confiscated or immediately destroyed in the seizure. NE#3 stated that, in his view, the situation was under control at the time the officer seized the umbrella. He stated that he did not believe, based on what he saw, that officers down the line should have deployed OC.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

14.090 Crowd Management 9. Crowd Dispersal a. Upon Determining That There are Acts or Conduct Within a Group of Four or More Persons That Create a Substantial Risk of Causing Injury to Any Person or Substantial Harm to Property, the Incident Commander May Order That the Crowd Be Dispersed

SPD Policy 14.090-POL-9(a) states the conditions under which an Incident Commander (IC) may order a crowd to be dispersed. SPD Policy 14.090-POL-9(a). The policy goes on to state that prior to ordering a crowd to be dispersed, the IC: "shall consider whether less restrictive means of crowd management are available. Such means may include strategies such as area denial and/or seeking voluntary compliance." (*Id.*) It goes on to state that the IC must ensure there is a viable avenue of egress to allow the crowd to disperse, and that where feasible, the IC or a designee should issue a dispersal order prior to ordering officers to disperse the crowd. (*Id.*)

At the outset, OPA finds that NE#1 was the Incident Commander at 11th and Pine with respect to this policy because he was the officer in actual command of the line at the time the dispersal order was issued. As such, OPA assesses his decision to disperse the crowd based on whether there were sufficient "acts or conduct" within that crowd to make dispersal of the entire crowd proportional to the "substantial risk" that those acts would cause injury or property destruction.



OPA finds that no such substantial risk existed and, as a result, the decision to disperse the crowd violated this policy. OPA reaches this conclusion for three main reasons.

First, while evidence suggested that individuals within the crowd did seek out conflict with officers, the weight of the evidence shows that the large majority of the crowd was not acting violently at the time the officers deployed OC and, shortly after, blast balls and CS gas. Video from within the crowd, as well as from above, showed that at most, a small group sought to breach the line. While the entire crowd did at points chant “let us walk,” they did not make efforts to do so. And, though groups did press on the metal fencing line causing it to become distorted, the bicycle and gas-mask equipped officers were able to prevent breaches from occurring.

Second, OPA does not interpret the presence of umbrellas on the front line as conclusive evidence that this segment of the crowd had a settled plan to confront officers or attempt to breach the line. Rather, OPA finds it equally plausible that demonstrators—some of whom had been exposed to OC on prior days—used umbrellas as an improvised protection tool. That these umbrellas could also interfere with officer awareness and, in some cases, pose a risk to officer safety is not evidence that they were exclusively purposed to do so. Certainly, their presence alone does not justify dispersing the crowd entirely. Rather, OPA believes that where umbrellas were used to obstruct or assault officers, there were more limited responses available rather than using OC spray.

Third, from OPA’s review of the totality of the video, there was only clear evidence of one projectile being thrown at officers prior to the dispersal. In this respect, the June 1 demonstration was significantly less dangerous than those that occurred on the days prior and that were dispersed with less-lethal tools. In those earlier protests, there had been significant property damage and violence towards officers. The same active threat level was not present here.

Fourth, and finally, OPA finds that the risk to the East Precinct was speculative rather than substantial. To the extent that intelligence suggested individuals or groups wanted to burn down the precinct on June 1, it appeared to suggest only that. There was no evidence that individuals in the crowd on June 1 actually had a plan or the means to do so. Moreover, during the course of this and other protest-related investigations, OPA has not located and the Department has not produced any tangible documentation of such a threat or of the intelligence relied upon that would have warranted the force used. While property damage indisputably occurred at other SPD facilities prior to June 1, the “substantial risk” standard demands more than mere suspicion that the East Precinct would be burnt down to justify the use of force on thousands of demonstrators.

For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

14.090 Crowd Management 9. Crowd Dispersal b. The Incident Commander Shall Have Authority to Direct the Use of Blast Balls and OC Spray to Disperse the Crowd

SPD Policy 14.090-POL-9(b) states that the Incident Commander (IC) has the authority to direct the use of blast balls and OC spray to disperse a crowd. SPD Policy 14.090-POL-9(b). A lieutenant may authorize the use of blast balls and OC spray where an immediate life safety emergency exists, and there is insufficient time to obtain approval from the IC. (*Id.*) The policy defines a “life safety emergency” as “an unplanned, dynamic situation where immediate police action is necessary to protect the officers’ and/or the public’s safety.” (*Id.*) It goes on to state that when feasible, a



dispersal order should be given and the crowd afforded sufficient time to disperse prior to the use of blast balls and OC. (*Id.*) Similarly, when feasible, blast balls and OC should not be deployed in the vicinity of people who do not pose a threat to safety or property. (*Id.*) SPD Policy 14.090-POL-8 states that the IC retains ultimate responsibility for the decisions of subordinates.

OPA views this Allegation and Allegation #3, which concerns SPD Policy 14.090-POL-8, to be duplicative of each other and, thus, assesses them together.

As indicated herein, OPA does not find that there was a sufficient basis to disperse the crowd in its entirety and, while doing so, to subject thousands of protestors, the vast majority of whom were not engaging in violence, to blast balls, OC spray, and CS gas. Similarly, applying the terms of SPD Policy 14.090-POL-9(b), OPA finds that NE#1's conduct here was contrary to policy because: there was not a clear life safety emergency present; no formal dispersal order was provided, even though the gas-mask wearing officers advanced to the line in apparent readiness to use chemical agents to disperse the crowd; and less-lethal tools were deployed in the direct vicinity of many individuals who did not pose active threats of harm. Lastly, while line officers are responsible for their individual deployments, ultimately, due to his role and given the protest context, NE#1 bears responsibility for their actions. This is especially the case here as it was a more static situation and the officers appeared to apply force, at least in part, in direct response to NE#1's directions.

For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

14.090 Crowd Management 8. The Incident Commander Retains Ultimate Responsibility for the Decisions of Subordinates

Given that OPA finds this allegation duplicative of Allegation #2, OPA recommends that it be removed.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegation #4

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

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers" whether on or off duty. (SPD Policy 5.001-POL-10.) The policy further instructs Department employees to "avoid unnecessary escalation of events even if those events do not end in reportable uses of force." (*Id.*)

OPA finds that this allegation is subsumed within the above allegations. (See Named Employee #1 – Allegation #1; Named Employee #1 – Allegation #3.) Accordingly, OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**



Named Employee #2 - Allegation #1

14.090 Crowd Management 9. Crowd Dispersal a. Upon Determining That There are Acts or Conduct Within a Group of Four or More Persons That Create a Substantial Risk of Causing Injury to Any Person or Substantial Harm to Property, the Incident Commander May Order That the Crowd Be Dispersed

For the reasons stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Unfounded as against NE#2.

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

Named Employee #2 - Allegation #2

14.090 Crowd Management 9. Crowd Dispersal b. The Incident Commander Shall Have Authority to Direct the Use of Blast Balls and OC Spray to Disperse the Crowd

For the reasons stated above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Not Sustained – Unfounded as against NE#2.

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

Named Employee #2 - Allegation #3

14.090 Crowd Management 8. The Incident Commander Retains Ultimate Responsibility for the Decisions of Subordinates

OPA finds that NE#2 was not the Incident Commander with respect to the decision to disperse the crowd or other directives given to the police line on June 1.

While NE#2 consulted with NE#1 and communicated with the citywide Incident Commander – WO#1, NE#2 did not give specific orders and was not NE#1's supervisor. While NE#2 did express his desire to give dispersal orders prior to dispersing the crowd, he expressly left such decisions to NE#1, who in his assessment had better situational awareness than he did given his recent return from military leave.

As such, OPA recommends that this allegation be Not Sustained – Unfounded as against NE#2.

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

Named Employee #2 - Allegation #4

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

For the reasons stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Unfounded as against NE#2.

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



Named Employee #3 - Allegation #1

8.100 - De-Escalation 1. When Safe under the Totality of the Circumstances and Time and Circumstances Permit, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force

“De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance.” (SPD Policy 8.100-POL)

The policy further instructs that: “When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution.” (SPD Policy 8.100-POL-1) Officers are also required, “when time and circumstances permit,” to “consider whether a subject’s lack of compliance is a deliberate attempt to resist or an inability to comply based on factors” such as “mental impairment...drug interaction...[and/or] behavioral crisis.” (*Id.*) These mental and behavioral factors should be balanced by the officer against the facts of the incident “when deciding which tactical options are the most appropriate to bring the situation to a safe resolution.” (*Id.*)

De-escalation is inarguably a crucial component of the Department’s obligations under the Consent Decree; however, it is not purposed to act as an absolute bar to enforcing the law when necessary. That being said, where officers fail to fully de-escalate and instead act in a manner that increases the need for force and the level of force used, such conduct is inconsistent with the Department’s policy and expectations.

In evaluating whether NE#3 violated the de-escalation policy, there are two questions. First, did the officers under NE#3’s command violate the de-escalation policy when they seized Complainant #1’s umbrella? Second, was the subsequent escalation of the crowd, force used, and dispersal a foreseeable result of the decision to seize the umbrella that NE#3 bears responsibility for?

As discussed above, NE#3 acknowledged directing officers to seize Complainant #1’s umbrella. He explained that he did so because the umbrella was extended out approximately four to five feet, had crossed the distance between the demonstrators and officers, and was directly pointed towards officers. NE#3 said that he believed it was appropriate to seize the umbrella at that time because it could be used to jab officers and because he felt that it could be positioned to prevent officers from viewing demonstrators who were trying to disassemble the metal fencing and/or engaging in other criminal activity. Accordingly, he felt that he had a legitimate law enforcement interest in seizing the umbrella.

He further told OPA that, at the time he seized the umbrella, de-escalation was no longer safe or feasible. With regard to safe, he explained, as discussed above, that the umbrella was presently being pointed at officers and represented a potential threat. The video confirmed that this was how the umbrella was positioned. The video also showed that, while other umbrellas were out at the time, Complainant #1’s umbrella was the only one that appeared to have crossed the line and that was within inches of officers. In addition, the video showed that, even when officers on the line pushed the umbrella back using a baton, Complainant #1 repositioned it in the same manner, again placing it close to the officers.



With regard to feasible, NE#3 noted that giving orders to Complainant #1 would have been impracticable because of the agitation of the crowd and the overall level of noise. NE#3 additionally indicated that there were repeated warnings from SPD to the crowd to move back, but that Complainant #1 did not seem inclined to comply. This belief was corroborated by Complainant #1's purposeful repositioning of the umbrella after it was initially pushed away. OPA does not find that seizure of the umbrella was, in and of itself, improper. Stated differently, OPA finds that, as articulated by NE#3 and consistent with the video, NE#3 was permitted to authorize the umbrella being confiscated given the totality of the circumstances and the positioning of the umbrella. While OPA does not necessarily believe that additional de-escalation prior to the seizure would have been unsafe, OPA does agree that it would not have been feasible. In reaching this conclusion, OPA finds the ongoing chaotic situation, the crowd noise, and Complainant #1's demonstrated disinclination to pull back the umbrella to be dispositive.

The more difficult question to assess is the second one – whether the seizure of the umbrella triggered a chain of events that led to the crowd being dispersed and, if so, whether that result was reasonably foreseeable to NE#1. It appears clear from the video that the seizing of the umbrella resulted in a conflict between demonstrators and officers at the right side of the line. This push and pull ended with officers dispersing OC spray in the vicinity of Complainant #1. Shortly thereafter, and on the other side of the line, additional demonstrators and officers began to struggle against each other, resulting in more OC spray being used. It was unclear what triggered this second conflict from occurring, and OPA could not conclusively determine whether it was caused by officers, demonstrators, or a combination of the two.

OPA believed it to be possible, if not probable, that the OC spray deployed by the officers under NE#3's command influenced the conflict that occurred at the other end of the line. However, when applying the requisite burden of proof, OPA simply cannot say that this would have been a foreseeable result to NE#3. Indeed, he denied that this was the case. He told OPA that, based on prior experience at the protests, he did not expect the seizure of the umbrella to provoke the level of crowd response that it did. He further stated that, on several prior occasions, officers under his command were able to seize and, at times, destroy umbrellas without any comparable crowd reaction. Moreover, NE#3 said that he did not order any officers, let alone those down the line from him, to use OC spray and, in fact, that he did not believe, based on what he observed, that the officers at the other end of the line should have used OC spray at all.

To find that NE#3 did bear responsibility for the actions of officers down the line would impose an impossible burden of foresight on NE#3. While, in hindsight, the decision to seize the umbrella was not a good one, OPA must evaluate what NE#3 knew or reasonably could have known at the time. Applying this standard, OPA finds that his failure to predict how officers and protestors would react to the seizure does not violate the Department's de-escalation policy.

For these reasons, OPA recommends that this allegation, as well as Allegations #2 and #3 which are premised on the same conduct, be Not Sustained – Unfounded.

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



Named Employee #3 - Allegation #2

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

For the same reasons as above (see Named Employee #3 – Allegation #1) OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #3 - Allegation #3

5.001 - Standards and Duties 6. Employees May Use Discretion

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

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

Named Employee #4 - Allegation #1

14.090 - Crowd Management 10. Officers May Make Individual Decisions to Deploy OC Spray, and Blast Balls Consistent with Title 8 - Use-of-Force a & b

SPD Policy 14.090-POL-10 states that deployment of OC spray or blast balls shall have the primary objective of defending the officer, defending another, or preventing significant destruction of property. SPD Policy 14.090-POL-10. It further states that individual officers may deploy OC spray or blast balls “at the specific suspect(s) who are posing a threat” and that if feasible, officers must provide a verbal warning prior to deployment. (*Id.*) Finally, the policy states that when feasible, officers will provide aid to subjects exposed to OC and/or blast balls and will request medical assistance when subjects complain of continued effects from OC or blast balls. Officers will request medical assistance when a subject appears to have been injured. (*Id.*) An officer’s decision to deploy OC or blast balls must be consistent with Title 8 – Use of Force. (*Id.*)

Complainant #2 alleged that he peacefully approached the line and asked officers to put down their weapons, and that he took no other action which would justify force. To the extent that is true, the use of a blast ball targeting him could very well violate this policy. However, OPA was unable to isolate the blast ball deployment affecting Complainant #2 from the broader crowd dispersal. As such, OPA cannot assess whether the blast ball deployment in fact targeted the Complainant, or whether he was incidentally exposed to a blast ball that was deployed in response to specific conduct by others.

With regard to the overall tactics and force used by SPD officers on this date, this will be assessed more fully during the Sentinel Event Review that will be conducted by the Office of Inspector General for Public Safety and is beyond the scope of this investigation.

Accordingly, with regard to the specific blast ball deployment that was alleged to have affected Complainant #2, OPA recommends that this allegation be Not Sustained – Inconclusive.

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