



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 30, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0665

Allegations of Misconduct and the Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics	Sustained
# 3	5.001 - Standards and Duties 14. Retaliation is prohibited	Not Sustained (Unfounded)

Imposed Discipline

Written Reprimand

EXECUTIVE SUMMARY:

The Complainant alleged that the Named Employee subjected him and other demonstrators to excessive force, that the Named Employee failed to de-escalate, and that the force used by the Named Employee was purposed as retaliation against the Complainant.

SUMMARY OF INVESTIGATION:

This case arises out of the protests that occurred in Seattle in the aftermath of George Floyd’s killing by a Minneapolis police officer. The incident in question took place on September 7, 2020, which was several months after the protests began but on the same date as a significant demonstration that took place at the headquarters of the Seattle Police Officers’ Guild. This demonstration involved significant violence against officers and multiple incidences of force used by officers against demonstrators. There were a number of crowd dispersals from various areas of the city, as well as numerous pushes of the crowd back by officers.

The Complainant alleged that they and other demonstrators were subjected to excessive force by Named Employee #1 (NE#1). The Complainant further contended that NE#1 unnecessarily escalated the crowd by pushing several demonstrators without notice or reason, causing one to fall on the ground. Lastly, the Complainant asserted that NE#1’s conduct towards the Complainant was based on retaliation given their prior interactions. This OPA investigation ensued.

As part of its investigation, OPA interviewed the Complainant and NE#1. OPA also reviewed various Computer Aided Dispatch reports, incident reports, and use of force reports. OPA lastly reviewed Body Worn Video (BWV) recorded by multiple officers, including NE#1.



NE#1's initial interaction with the Complainant was completely captured on BWV. NE#1 was standing with other officers when a Sergeant instructed them to begin moving a crowd of demonstrators back. Officers discussed pushing the demonstrators out of the street and onto the sidewalk. NE#1 approached a group of demonstrators. The demonstrators were walking in the middle of the street (there was traffic proceeding in the other lanes) with other demonstrators. NE#1 pointed down the street towards the sidewalk and told the demonstrators to move in that direction. He then walked up to a police line where an individual – the Complainant – was standing. The Complainant was leaning over the police line while talking to an officer on the other side. NE#1 walked next to the Complainant and began interacting with him.

The Complainant turned around to face NE#1 and said: "Do not put your hands on my body." Prior to that point, there was no indication that NE#1 pushed or used any force on the Complainant. From a review of the BWV, it appeared possible, however, that he tapped the Complainant's arm to get their attention. NE#1 said that he did not put his hands on the Complainant. The Complainant, who became significantly elevated, started yelling: "Can we have a public service announcement to not put your hands on my fucking body!" NE#1 pointed behind the Complainant and said: "Go that way." The Complainant asked "why," and NE#1 told him that demonstrators needed to get out of the street. The Complainant responded by telling NE#1 to get out of the street and asserted that the demonstrators had a "legal protest." The Complainant, who had moved closer to NE#1, asked why NE#1 was "putting his hands" on the Complainant's body. NE#1 then pushed the Complainant back with an outstretched hand. The Complainant again yelled about hands being put on their body. NE#1 stepped forward to again push the Complainant back. At that time, the Complainant appeared to grab onto NE#1. They struggled with each other for a moment before the Complainant turned their body, pulled away, and began running down the street. NE#1 moved after the Complainant but ultimately did not chase after them. Another officer did given chase and later caught up to the Complainant and took them into custody. NE#1 turned and walked back towards the line. While doing so, he walked past several demonstrators. He pushed each of them to the side while saying "move." This angered the demonstrators who began yelling.

Shortly thereafter, the officers collectively formed a line and began pushing the demonstrators back towards the sidewalk. NE#1 was not involved in this. NE#1 was later notified that the Complainant was being held several blocks away. He went to that location and positively identified the Complainant.

Approximately six minutes later, NE#1 observed an arrest occurring to his right. He advanced towards that location. In front of him, there were individuals who were also moving towards the officers who were effectuating the arrest. NE#1 began to move more quickly towards the arrest location. At that time, he was behind a woman. She briefly looked backwards and slowed down. He stated to her: "Get back, get back, get back." However, the woman remained in front of him and largely stopped moving. NE#1 said: "Hey, don't do that." He then pushed her to the side with both hands. She moved to the left and fell down next to a planter. She was then helped up by other demonstrators as NE#1 stood by the officers making the arrest.

As part of its investigation, OPA interviewed NE#1. He stated that he did not initially put his hands on the Complainant and only did so once the Complainant continually refused to cooperate. He stated that, at this point, the force was appropriate to move the Complainant out of the street. He felt that the force was de minimis and he did not hear the Complainant make any complaint of pain. He stated that de-escalation was not feasible at that time. The Complainant still did not move, and NE#1 began to push them one more time. NE#1 reported that, when he did so, the Complainant grabbed his arm. NE#1 believed that this constituted an assault, but, when he tried to grab onto the Complainant to take them into custody, the Complainant ran away. NE#1 began chasing after them but ultimately decided to stop doing so.



NE#1 said that he turned around and began walking back towards other officers. He saw people that were in the street even though they were being told to move back. He pushed several people back to get them out of the street. He stated that he did so for safety reasons. He recalled that people in the crowd became upset by this. He did not believe that this was escalatory. NE#1 was later notified that the Complainant was in custody. NE#1 went to the Complainant's location and positively identified them.

Lastly, NE#1 said that he saw a commotion to his side and noticed that officers were taking an individual into custody. He perceived the individual to be resisting. He rushed over to assist. At that time, a woman was in front of him and, in his opinion, deliberately slowed down to prevent him from assisting. He believed this was because she looked back towards him, purposefully slowed down, and then moved into him as he tried to get by her. He said that when she continued to obstruct him, he used his hands to push her to the side. He did not feel that de-escalation was safe or feasible, and he felt that going around her would slow him down unnecessarily. He said that he did not see the woman fall to the ground but heard the crowd behind him exclaiming.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Whether force is reasonable depends "on the totality of the circumstances" known to the officers at the time of the force and must be balanced against "the rights of the subject, in light of the circumstances surrounding the event." (SPD Policy 8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where "no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose." (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

In evaluating this allegation, OPA assessed three separate uses of force by NE#1. The first was the push of the Complainant, the second was the pushes of several individuals after his interaction with the Complainant, the third was the push of the woman while NE#1 was advancing towards the arrest location. Of the three uses of force, OPA finds the third to have been the most problematic.

With regard to the force used against the Complainant, NE#1 had told them to get out of the street. However, the Complainant did not do so and, instead, gesticulated, yelled, and moved closer to NE#1. After again pointing down the street and directing him to move and, again, after him refusing to comply, NE#1 pushed the Complainant back. The push consisted of an open hand placed in the middle of the Complainant's chest. The Complainant moved backwards slightly, but he did not fall over or exclaim in pain. To the contrary, the Complainant reengaged with NE#1 and grabbed NE#1's arm prior to running away. This force was appropriate given the Complainant's non-compliance and his positioning directly in front of NE#1. NE#1 was allowed to use physical compulsion to move the Complainant away from him and to get the Complainant out of the street.

With regard to the second uses of force, NE#1 used minor pushes to move several individuals out of the street and onto the sidewalk. NE#1 said "move" at the time he did so but, other than that, he provided no other notice that he was going to take this action. This force appeared to anger the persons pushed, as well as caused other people in the



crowd to begin yelling. OPA believes that the decision to use force at that time was misplaced; however, that is addressed in the context of Allegation #2, below. However, the force, itself, was low-level and did not violate policy. At that time, the individuals were in the street, had received directions to move, and they did not do so. NE#1 was permitted to use force to move them.

With regard to the third use of force, OPA recognizes that the woman looked back at NE#1 and observed him moving towards the arrest location and the other officers. From OPA's perspective, the video clearly showed that she purposely slowed down and moved in front of NE#1 to prevent him from quickly moving forward. She did so again as he approached immediately behind her and attempted to move around her. Again, from OPA's review of the video, this was consistent with obstruction. Given this, OPA finds that force was permitted to move the woman. The issue for OPA was the choice of force among the various options available to him and his decision to use a push rather than first exploring other less invasive force options. However, OPA finds that, as with the second use of force described above, this is better addressed under de-escalation.

Ultimately, when evaluating the force actually used, OPA finds that it was consistent with policy. At the outset, OPA finds that force did not violate the reasonable and necessary elements. As discussed above, the woman was obstructing NE#1, and he was allowed to use force to move her. Moreover, while the woman fell down after being pushed, this appeared to be based less on the force being of a high level than on the fact that she appeared to trip on a planter. This convinces OPA that, while a close call, the force did not violate the proportionality element.

Accordingly, for the above reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #1 - Allegation #2

8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics

"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-1.)

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." (*Id.*) 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.



OPA has concerns with NE#1's decision to use force on two occasions without first attempting to de-escalate. The initial instance of this occurred after the Complainant ran away from NE#1 and he turned back towards the line of officers. While doing so, he pushed multiple individuals while saying "move." Notably, at that time, no other officers were pushing demonstrators and, though the individuals were in the street, they were not in the direct line of traffic or at any imminent risk of harm. While NE#1 was permitted to use physical force to move the individuals, he was required to first determine whether any steps could be taken to gain voluntary compliance before doing so. He failed to do that here.

On the second instance, NE#1 pushed the woman who had slowed down in front of him. Again, while force was permitted to move her, NE#1 did not evaluate other less invasive force options prior to pushing the woman with two hands. For example, he could have grabbed onto her clothing and pulled her to the side or guided rather than pushed her. Both would have been less significant than a two-handed push and less likely to cause the woman injury. Moreover, while NE#1 said that he did not have time to try to move around her, OPA struggles to see how that was the case. Notably, at the time, there were multiple officers surrounding the arrestee on the ground and there was no indication that those officers were being subjected to an active physical assault. OPA finds that NE#1 should have considered taking an additional one or two seconds to move around the woman prior to pushing her.

Lastly, in both situations, the force used aggravated not only the subjects of the force but also the crowd. This was escalatory and could have been avoided had NE#1 evaluated alternatives prior to using force.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 14. Retaliation is Prohibited

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-14.) SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, "oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy" or "who otherwise engages in lawful behavior." (*Id.*) Retaliatory acts are defined broadly under SPD's policy and include "discouragement, intimidation, coercion, or adverse action against any person. (*Id.*)

OPA could find no evidence corroborating the Complainant's contention that NE#1 used force as retaliation. To the contrary, OPA believes that the video evidence coupled with NE#1's interview indicates that his decision to use force was based on the Complainant's conduct, not because of any past interactions between them.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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