




## CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 9, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0260

### Allegations of Misconduct & Director’s Findings

#### Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.100 - De-Escalation, 8.100 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics to Reduce the Need for Force	Not Sustained - Unfounded
# 2	8.200 - Using Force (1) Use of Force: When Authorized	Not Sustained - Unfounded

#### Named Employee #2

Allegation(s):		Director’s Findings
# 1	8.100 - De-Escalation, 8.100 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics to Reduce the Need for Force	Not Sustained - Unfounded
# 2	8.200 - Using Force (1) Use of Force: When Authorized	Not Sustained - Inconclusive

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### EXECUTIVE SUMMARY:

It was alleged that Named Employee #1 (NE#1) and Named Employee #2 (NE#2) failed to de-escalate and used unauthorized force during Community Member #1’s (CM#1) arrest.

### ADMINISTRATIVE NOTE:

On August 28, 2023, the Office of Inspector General (OIG) certified OPA’s investigation as thorough and objective but untimely. OIG found it untimely because the 5-day notice, required under the SPOG collective bargaining agreement, was sent fifteen days late. OPA acknowledges the 5-day notice’s untimeliness but respectfully disagrees that it renders the investigation untimely—particularly where it had no negative impact on the named employee.

### SUMMARY OF INVESTIGATION:

OPA received an unsubstantiated misconduct screening (UMS)<sup>1</sup> request concerning this incident. OPA requested the screening supervisor submit the allegations as a formal complaint. OPA opened an investigation, reviewing the

<sup>1</sup> See OPA Internal Operations and Training Manual, Section 8.1 (Unsubstantiated Misconduct Screening). Allegations of misconduct that are clearly refuted by evidence can be investigated and documented by the chain of command and then screened



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computer-aided dispatch (CAD) call report, incident and supplemental reports, use of force documents, Seattle Fire Department (SFD) records, training records, body-worn video (BWV), in-car video (ICV), and photographs. OPA interviewed NE#1 and NE#2. OPA contacted CM#1's criminal attorney multiple times to schedule an interview but did not receive a response.

**a. UMS Screening**

On May 17, 2023, Witness Supervisor #1 (WS#1)—an administrative lieutenant—emailed OPA a UMS request. It stated that officers were outside a Downtown Emergency Services Center (DESC) building completing another call when Community Member #2 (CM#2)—a DESC staff member—reported that CM#1 was causing a disturbance. As officers spoke with CM#2, CM#1 exited the building yelling while approaching CM#2. NE#2 stepped between CM#1 and CM#2 and placed a hand on CM#1's chest. WS#1 wrote that CM#1 "immediately assaulted [NE#2] by slapping his hand away." WS#1 wrote that NE#2 took CM#1 to the ground where "a long struggle [ensued]." WS#1 wrote that CM#1 resisted officers' attempts to roll him onto his stomach for handcuffing and that NE#2 punched and kned CM#1. WS#1 wrote that NE#1 also kned and TASED CM#1.

WS#1 wrote that CM#1 yelled, "Ah, my arm. Why are y'all abusing me?" CM#1 alleged he was "assaulted," and officers "punched my face into dog shit." WS#1 indicated that CM#1's face landed on dog feces during the struggle and that NE#1 moved the feces away, and SFD members cleaned CM#1's face.

**b. CAD and Incident Report**

CAD Call Reports showed that officers—including NE#1 and NE#2—responded to a call for service at a DESC building. CAD Call Records showed the subject for that call was being transported when, at the end of the call, a broadcast was made for a "fastback" for more officers, and a TASER was deployed. A second CAD incident was generated and showed CM#1 was arrested for assault and ultimately transported to the hospital after being medically declined at King County Jail.

An officer completed an Incident Report based on information provided to him by the involved officers. The incident report reflected the information in the UMS request. The incident report also noted that CM#1 had a "threat to law enforcement caution" in the Washington Criminal Information System for fighting officers while under the influence of "PCP." The incident report also noted NE#2 sustained cuts to his right elbow and forehead and that charges were requested against CM#1 for misdemeanor harassment against CM#2.

Multiple officers, including NE#1 and NE#2, completed supplemental statements for the incident report. These were broadly consistent with the information documented in the UMS and incident report. NE#1 and NE#2 detailed their reasoning, de-escalation, and use of force in use of force statements.

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with OPA via email. *See id.* The OPA Director or designee determines whether a formal complaint referral is required. *See id.* The program is audited quarterly by OIG. *See id.*



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**c. Use of Force Documentation**

NE#1 and NE#2 both completed Use of Force Statements that were then investigated and reviewed as “Type II” uses of force.<sup>2</sup>

*i. NE#1 Statement*

NE#1 wrote he and NE#2 approached CM#2, who stated CM#1 was inside and wanted to hit her. NE#1 wrote CM#1 exited the building, yelling repeatedly that CM#2 needed a new job. NE#1 wrote that CM#2 identified CM#1 as the offender. NE#1 wrote NE#2 stepped past CM#2 to intercept CM#1 as CM#1 continued yelling that CM#2 needed a new job. NE#1 wrote that CM#1 tried to follow CM#2, at which point NE#2 stepped in between and put his hand on CM#1’s chest to prevent him from passing.

NE#1 wrote that NE#2 tried to separate CM#1 and CM#2 and that multiple officers were on the scene. NE#1 also stated NE#2 attempted to talk with CM#1 to calm him down and mitigate any issues. NE#1 described de-escalation efforts as failing because CM#1 ignored NE#2. NE#1 wrote that CM#1 struck NE#2, making further de-escalation infeasible.

NE#1 described NE#2 grabbing CM#1’s jacket and pushing CM#1 into bushes before they went “to the ground together.” NE#1 wrote that CM#1 grabbed NE#2 and said “No” when told to let go. NE#1 wrote that NE#2 warned CM#1 that he would be hit in the face if he continued to resist. NE#1 wrote he observed NE#2 strike CM#1 in the face about five times, but CM#1 continued to resist and actively fight. NE#1 wrote that he requested additional units and observed three officers attempt to handcuff CM#1. NE#1 wrote he could not push CM#1 onto his stomach, then tried three “knee strikes” on CM#1’s buttocks area while ordering CM#1 to roll over. NE#1 wrote these strikes were ineffective. NE#1 wrote he then decided to use his TASER. NE#1 wrote:

*Public safety interests dictated that [CM#1] must be taken into custody for felony assault on a police officer, and the sustained level of resistance [CM#1] presented made continued hands-on techniques likely to result in injuries to both [CM#1] and Officers.*

NE#1 wrote he warned CM#1 he would get TASED, but CM#1 responded, “No.” NE#1 wrote that, as CM#1 continued to actively resist, he gave CM#1 about six seconds and three warnings, but CM#1 did not comply. NE#1 wrote:

*I called out “Taser, taser, taser,” before deploying one set of probes into [CM#1’s] lower right back area. I immediately lifted and moved my Taser to the back of [CM#1’s] right leg, called*

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<sup>2</sup> SPD policy requires reporting and investigation for all “reportable” uses of force. See SPD Policy 8.400-POL-1. “Type II” force is “force that causes or is reasonably expected to cause physical injury greater than transitory pain but less than great or substantial bodily harm.” SPD Policy 8.050. “Type II” force includes TASER applications and punches or kicks causing less than Type III injury. See SPD Policy 8.400-POL-1. “Type III” injuries result from force that causes or is reasonably expected to cause “great bodily harm, substantial bodily harm, loss of consciousness, or death.” SPD Policy 8.050.



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*out “Taser, taser, taser” once more and deployed my second set of probes. Both sets of probes embedded into [CM#1], and [CM#1] was tased for one five-second Taser cycle. My goal in deploying my Taser in this manner was to split [CM#1’s] belt line with the two set of probes and achieve Neuromuscular Incapacitation – where the electrical energy from the Taser causes involuntary muscle contraction and pain, so that [CM#1] could be handcuffed.*

NE#1 wrote that CM#1 reached back and tried to grab the TASER wires before he provided another TASER warning.

NE#1 wrote that he suffered minor injuries, including pain in his right pinky and bruised elbows and left knee.

*ii. NE#2’s Statement*

NE#2’s use of force statement factually mirrored NE#1’s. NE#2 also noted that CM#1 had his hands in his pockets and was 6’1” tall and two-hundred twenty-five pounds.

NE#2 stated he placed his left hand on CM#1’s chest before CM#1 “...paused, then raised his right hand, swiping it across, striking [NE#2’s] left forearm.” NE#2 stated he grabbed CM#1’s jacket near each armpit. NE#2 wrote that he drove CM#1 backward into a line of bushes before taking him to the ground for handcuffing. NE#2 wrote that he maintained control of CM#1 during the takedown. NE#1 wrote that CM#1 turned onto his back, facing NE#2. NE#2 documented trying to control CM#1’s right wrist but felt CM#1 tighten his forearm. NE#2 wrote that CM#1 was told to roll onto his stomach, but responded, “No.”

NE#2 said CM#1 fought against control holds and it was unknown whether CM#1 was armed. NE#2 also noted that CM#1 was very strong. NE#2 warned CM#1 that he would punch his face to gain compliance, but CM#1 responded, “No.” NE#2 documented holding CM#1’s wrist while punching CM#1’s face twice. NE#2 wrote that CM#1 continued to flex and pull away while thrashing his wrist. NE#2 wrote he struck CM#1’s face with a “hammer fist” three more times.

NE#2 wrote that he tried to roll CM#1 over, but CM#1 fought to free his hand. NE#2 wrote that since the face strikes were ineffective, he used a knee strike, which “slightly glanced” CM#1’s face. NE#2 wrote that he tried to roll CM#1 over again, and CM#1 asked, “Do you know who I am?” while trying to grab NE#2’s fingers. NE#2 wrote that he ordered CM#1 to put his arms behind his back, but CM#1 responded, “No.” NE#2 stated NE#1 issued a TASER warning and then deployed a TASER.

NE#2 wrote that CM#1 rolled onto his stomach and was handcuffed. NE#2 wrote CM#1 was placed in the recovery position and later treated by SFD.



*iii. Review*

The named employees' uses of force were investigated by a sergeant and then reviewed by WS#1 and a watch commander. The Watch Commander found NE#1 and NE#2's force reasonable, necessary, and proportional:

*The subject's arrest was necessitated by law and policy; there was also a legitimate governmental interest in taking him into custody. Due to the subject's sustained active resistance and non-compliance, no reasonable alternative to the use of force appeared to exist to safely accomplish the lawful purpose. I believe the level of force applied properly reflected the totality of the circumstances.*

**d. SFD Records**

SFD responded to remove the TASER probes from CM#1. SFD members completed run reports concerning their treatment of NE#2 and CM#1.

SFD noted NE#2's chief complaint was a right forearm abrasion.

SFD noted CM#1's chief complaint was jaw pain. SFD also documented injuries on his face and TASER probes in his right hip, hamstring, and calf. SFD noted that CM#1 had left jaw pain, but it had mobility. SFD found no blood in CM#1's mouth or loose teeth. SFD also noted they wiped dog feces from CM#1's face.

**e. BWV & ICV**

OPA reviewed BWV and ICV from this incident. Both were consistent with NE#1 and NE#2's use of force statements.

NE#1 and NE#2 were standing outside of a building when a woman (CM#2) approached. CM#2 stated, "There's a guy in the office, and he's shouting at me, and I think he wanted to hit me. And I'm telling him to leave. . ." While CM#2 continued speaking, CM#1 exited the building, and NE#2 asked, "Is this him?"

CM#1 approached, with both hands in his pockets, yelling, "She needs a new job." NE#2 stepped between CM#1 and CM#2. NE#2 stated, "Okay, relax," to CM#1. As CM#1 continued to yell, "She needs a new job," repeatedly, NE#2 said, "Stop," "Okay, relax," and "Why?" CM#1 then pointed at CM#2 and yelled—louder— "She needs a new job!" NE#2 then stated something to CM#1 about repeating the same thing over again; in the interim, NE#1 instructed CM#2 to go back inside. As CM#2 walked past CM#1 on the sidewalk, CM#1 loudly yelled, "Her needs a new job!"

CM#1 turned quickly from NE#2 and, with his hands in his pockets, leaned over CM#2<sup>3</sup> and yelled, "You need a new job!"

<sup>3</sup> CM#1 appeared substantially taller than CM#1.



*CM#1 (on the left wearing a black hooded sweatshirt) and CM#2 (on the right wearing a white shirt)*

NE#2 then stepped forward and said, "hey," while putting his left hand on CM#1's right shoulder area. CM#2 walked back towards the officers. As CM#1 turned, NE#2's left hand lay with his palm flat against CM#1's right pectoral area. NE#2 stated, "what are you doing?"



*NE#2's left hand (indicated by the red arrow) on CM#1's chest.*



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NE#2 started to say something to the effect of “Stop following her around.” Around the same time, CM#1 brought his right hand up and forcefully knocked NE#2’s hand away while stating something to the effect of, “What? My fucking. . .”

NE#2 pushed CM#1 towards a line of bushes before he and CM#1 went to the ground.



*NE#2 pushing CM#1 into bushes.*

As NE#2 and CM#1 went to the ground, CM#1 appeared to be on his back. NE#2 attempted to control CM#1’s left arm. NE#2 told CM#1 to give him his arm and rollover. CM#1 responded, “No.” NE#2 said, “I’m going to hit you. I’m going to hit you in the face if you don’t.” About three seconds later, NE#2 held CM#1’s wrist with NE#2’s left hand while appearing to punch CM#1’s face two or three times with his right hand.<sup>4</sup>

While holding CM#1’s wrist, yelled, “Rollover, now.” CM#1 did not comply. NE#2 then appeared to release CM#1’s right wrist and punched CM#1’s face about three times with his left hand. NE#2 kept ordering CM#1 to roll over.

Three officers, including NE#2, held CM#1. An officer held CM#1’s feet and another tried controlling CM#1’s hands. NE#1 approached and radioed for more backup. NE#1 pulled CM#1’s hip area without effect. NE#1 then kned CM#1’s buttocks three times. An officer asked, “Which way are we trying to roll him?” Another officer—possibly NE#2—responded, “Towards me.”

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<sup>4</sup> NE#2’s BWV did not depict the actual strikes, but the motions observed and sounds captured on BWV, and NE#2’s use of force statement, indicate that happened.



CM#1 said, "Kill me. Kill me, then." NE#2 struggled to control CM#1's left hand, which appeared to swipe at NE#2. NE#2 ordered, "Roll over now!" CM#1 responded, "What are you doing? You're on camera. Do you know who I am?" CM#1 appeared to briefly grab NE#2's arm or hand. NE#2 ordered, "Get your arm behind your back." CM#1 responded, "No. What is wrong with you?"

NE#1 warned CM#1, "You're going to get TASED." CM#1 replied, "No. What is wrong with y'all?" NE#1 said, "Last chance," two seconds before saying, "TASER, TASER, TASER." About six seconds after the initial TASER warning, NE#1 deployed his TASER at CM#1's right abdominal area. About two seconds later, NE#1 again said, "TASER, TASER, TASER," before deploying his TASER at CM#1's right leg. CM#1 screamed. CM#1 appeared to grab or knock away the TASER wires. NE#1 said, "Stop fighting or you're going to get it again." CM#1 appeared to stop resisting.

About twenty seconds later, CM#1 rolled onto his stomach and was handcuffed.

**f. OPA Interview – NE#1**

OPA interviewed NE#1, who was a permanent acting sergeant on the date of the incident.

NE#1's interview was consistent with his use of force statement and BWV.

NE#1 described CM#1 as over 6' tall and about two-hundred forty pounds. NE#1 said he is 6'5" and two hundred fifty pounds, and NE#2 is 6'3" and two hundred forty pounds. NE#1 said that despite their size, he and NE#2 struggled to control CM#1.

When asked about de-escalation, NE#1 responded:

*Unfortunately, aside from trying to separate them, giving [CM#2] some instructions to leave, and trying to get [CM#1] to stop and talk with us there wasn't time to do anything other than that. You know, sometimes we talk about things like time, distance, shielding. [CM#2] was coming up to us for help. We couldn't really hide behind our cars and try and solve their issues when they're – [CM#1's] following [CM#2] around and screaming at her. We did the best we could to try and separate them. It just evolved very quickly.*

When asked about him kneeing CM#1, NE#1 said he kneed CM#1's buttocks since it was a muscled area. NE#1 said it was objectively reasonable since CM#1 fought officers for close to a minute, ignored multiple commands, and verbally refused to comply. NE#1 said the strikes were necessary as other methods were ineffective. NE#1 said his force was proportional, as he targeted CM#1's buttocks and stopped when he realized the strikes were ineffective.

NE#1 also noted issuing multiple TASER warnings and choosing to use two TASER darts to make a second connection point to increase the odds of achieving neuromuscular incapacitation. NE#1 said his TASER use was within policy since





CM#1 was combative and uncooperative. Moreover, other uses of force, like knee strikes, were ineffective, and CM#1 verbalized his refusal to comply. NE#1 also said public safety required CM#1 to be taken into custody for assault on an officer. Finally, NE#1 said that continuing to fight with CM#1 would have led to additional injuries to CM#1 and officers.

**g. OPA Interview – NE#2**

NE#2's OPA interview was consistent with his use of force statement and BWV.

NE#2 described placing his hand on CM#1's chest to create a barrier between CM#1 and CM#2. NE#2 said he attempted to de-escalate by speaking and listening to CM#1. NE#2 said there were several officers on the scene, and he gave CM#1 clear commands. NE#2 said that once CM#1 slapped him, there was probable cause to arrest CM#1 for assault, and de-escalation was no longer feasible. NE#2 summarized:

*I think based on his actions and our close proximity to him, and his level of aggression, I don't think that any other time, distance, or shielding tactics would have been appropriate.*

NE#2 said he pushed CM#1 back because he did not believe compliant handcuffing was appropriate given CM#1's demonstrated non-compliance. NE#2 stated he wanted to get CM#1 onto the ground for prone handcuffing. NE#1 noted he did not have an opportunity to frisk CM#1 for weapons.

NE#2 described CM#1 as heavily resisting by pulling his arms away, shifting his weight, and thrashing away from officers. NE#2 also stated CM#1 was stating "no" to commands.

NE#2 stated he did not have a clear idea of where other officers were during this time, but noted he was near CM#1's head, in a kneeling/squatting position, with CM#1 facing him. NE#2 stated he gave CM#1 a warning prior about hitting him in the face so CM#1 would know what would happen if he continued to resist. NE#2 stated strikes were appropriate given his proximity to CM#1. NE#2 stated he chose to hit CM#1's face based on their positioning; if he chose a different target, he would have been forced to move. NE#1 stated his first set of fist strikes were reasonable and necessary as CM#1 had already assaulted officers and shown a high level of resistance that he was unable to overcome. NE#2 stated the first set of strikes were proportional as CM#1 was provided an opportunity to comply but continued to resist. NE#2's reasoning for the second set of strikes was similar.

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegation #1**

***8.100 - De-Escalation, 8.100 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force***

It was alleged that the named employees failed to exhaust available de-escalation tactics before using force on CM#1.

"When safe, feasible, and without compromising law enforcement priorities, officers will use de-escalation tactics in order to reduce the need for force." SPD Policy 8.100-POL-1. Officers are encouraged to use team approaches and consider whether any officer successfully established rapport with the subject. *Id.* De-escalation options are guided



by the “totality of the circumstances,” emphasizing communication, time, distance, and shielding to minimize the need for force. *Id.*

Here, CM#2 said CM#1 shouted at her, refused to leave, and seemed like he wanted to hit her. While the named employees spoke with CM#2, CM#1 unexpectedly approached while repeatedly yelling that CM#2 needed a new job. NE#2 made multiple attempts to communicate with CM#1. Instead of engaging NE#2, CM#1 turned and hovered over CM#2 while yelling. Under the circumstances, time, distance, and shielding were unsafe for CM#2 and inconsistent with law enforcement priorities. NE#2 placed himself between CM#1 and CM#2 with *de minimis* force—placing a palm against CM#1’s chest—while continuing communication attempts.

When CM#1 slapped NE#2’s hand away, de-escalation attempts were unfeasible and inconsistent with law enforcement priorities. CM#1 displayed menacing behavior towards CM#2 and assaultive behavior towards NE#2, a uniformed officer.

Similarly, once NE#2 pushed CM#1, time, distance, and shielding were unsafe and infeasible. Nevertheless, NE#1 and NE#2 continued verbal communication with CM#1 throughout the struggle.

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

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #1 - Allegation #2**

**8.200 - Using Force (1) Use of Force: When Authorized**

It was alleged that NE#1 used unauthorized force by kneeling CM#1’s buttocks and deploying his TASER.

An officer’s use of force must be reasonable, necessary, and proportional. SPD Policy 8.200(1). Specifically, officers shall only use “objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective.” *Id.* Reasonableness depends “on the totality of the circumstances” known to the officer when the force is applied balanced against “the rights of the subject, in light of the circumstances surrounding the event.” SPD Policy 8.050. It must also consider that officers are often forced to make “split-second decisions” under tense, dynamic circumstances. *Id.* The policy lists several factors to weigh when evaluating reasonableness. *See id.* Force is necessary when “no reasonably effective alternative to the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” *Id.* Last, the force must be proportional to the threat posed to the officer. *Id.*

NE#1 delivered three knee strikes around CM#1’s buttocks after CM#1 resisted three other officers for about forty seconds. When the strikes were delivered, the officers were attempting to force CM#1 onto his stomach for handcuffing, but CM#1 resisted. NE#1 unsuccessfully attempted to push CM#1’s hip toward the ground. Under the totality of the circumstances, NE#1’s knee strikes were objectively reasonable given CM#1’s assaultive crime, the difficulty officers had overcoming CM#1’s resistance, and the need to handcuff CM#1. Moreover, NE#1’s targeted area—CM#1’s buttocks—was unlikely to cause greater than transitory pain (Type I) and result in minor bruising. Further, three knee strikes to CM#1’s buttocks were proportional to the threat CM#1 posed and to overcome his resistance.



NE#1 also TASED CM#1, deploying two sets of darts, one into CM#1’s abdomen and another into his leg. NE#1 targeted those areas to “split the beltline,” a trained TASER technique for close-range deployments to increase the chances of neuromuscular incapacitation (NMI).<sup>5</sup> NE#1 issued several warnings before deploying the TASER. No reasonable alternative appeared to exist when officers exhausted other reasonable options to gain compliance, including grabbing, pulling, pushing, punching, and kneeing CM#1. The TASER maximized the chance of NMI and was among the few remaining options for quickly ending the struggle without risking further injury to CM#1 or the officers. The TASER was also proportional to CM#1’s heightened resistance.

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

Recommended Finding: **Not Sustained - Unfounded**

**Named Employee #2 - Allegation #1**

**8.100 - De-Escalation, 8.100 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force**

It was alleged that NE#2 failed to use de-escalation with CM#1.

For the reason at Named Employee #1 - Allegation #1, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**


**Named Employee #2 - Allegation #2**

**8.200 - Using Force (1) Use of Force: When Authorized**

It was alleged that NE#2 used unauthorized force on CM#1.

NE#1 initially used *de minimis* force by placing a hand against CM#1’s chest. That was objectively reasonable to create space between CM#1 and CM#2. It also diverted CM#1’s attention from CM#2. Given the threatening behavior reported by CM#2 and the harassing behavior observed by NE#2, it was necessary to create space and an opportunity for dialogue. This low level of force was also proportional to the threat CM#1 presented.

<sup>5</sup> See SPD’s TASER recertification course, attended by NE#1 in 2022.

<p><b>SPLIT THE BELTLINE</b></p> <p>For close-range deployments:</p>	<ul style="list-style-type: none"> <li>Target the waist area to “split the belt line” <ul style="list-style-type: none"> <li>- Affects core muscles needed for balance</li> <li>- Increases officer and cardiac safety</li> </ul> </li> <li>Avoid the genitals when practicable</li> </ul> 	<p><b>PROBE SPREAD</b></p> <p>Greater probe spreads generally increase effectiveness</p>	<ul style="list-style-type: none"> <li>A 12-inch distance between probes (“probe spread”) is optimal to reliably create NMI</li> <li>Probe spreads under 12 inches may not create NMI, and probe spreads 4 inches or less typically create pain effect only</li> <li>Consider deploying a second cartridge or using a 3-point drive stun if the spread is insufficient to cause NMI</li> </ul>
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After CM#1 slapped NE#2's hand, it was reasonable for NE#2 to push CM#1 back and take him to the ground. NE#2 was in full uniform and stood near multiple marked police vehicles. It was clear that NE#2 was a police officer, and his *de minimis* force—placing a hand with a flat palm on CM#1's chest—was not offensive or unlawful such that CM#1 could forcibly slap NE#2's hand away. CM#2 assaulted a police officer and NE#2 had probable cause to arrest him. NE#2 lawfully sought to handcuff CM#1 and based on CM#1's behavior—repeatedly yelling, aggressively approaching CM#2, and slapping NE#2's hand—NE#2 reasonably concluded that CM#1 would not submit to handcuffing. NE#2's Type II force, pushing CM#1 back and taking him to the ground, was reasonable given CM#1's assaultive behavior, the potential for injury or resistance if CM#1 was permitted to remain standing and resisted handcuffing and the limited time NE#2 had to decide. It was also reasonably necessary to take CM#1 off balance and bring him to the ground for prone handcuffing, and proportional to CM#1's assaultive behavior. See SPD Policy 8.050 (proportional force “does not require officers to use the same type or amount of force as the subject”).

While struggling with CM#1 on the ground, NE#2 used two sets of punches—two or three punches to the face, then three “hammer fist” punches to the face—and kneed CM#1 once in the face. As detailed in NE#2's use of force statement and corroborated by BWV and other officer statements, CM#1 was strong and forcefully resisted. He had not been frisked for weapons and had already demonstrated his willingness to assault fully uniformed police officers. NE#2 wanted to end the struggle quickly. Moreover, NE#2 did not know where the other officers were. During the struggle, NE#2 issued clear warnings before striking CM#1. CM#1 responded multiple times, with clear refusals to comply. Also, between strikes, NE#1 paused and appeared to evaluate their effectiveness before striking CM#1 again. Finally, the amount of force used in these strikes, while causing more than transitory pain, did not result in bleeding, broken bones, or loose teeth.

Under the circumstances known to NE#2 and considering that NE#2 was forced to make “split-second decisions—under tense, uncertain, dynamic, and rapidly evolving” situations, SPD Policy 8.050 (defining objectively reasonable force), NE#2's strikes were arguably necessary. However, given the number of officers on the scene, the reasonableness and proportionality of NE#2's elected force are questionable.

Accordingly, OPA recommends this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained - Inconclusive**