



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 22, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0555

Allegations of Misconduct & Director’s Findings

Named Employee #1

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

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 the Named Employee failed to de-escalate and used excessive force when he pepper sprayed one demonstrator and pushed another demonstrator to the ground.

SUMMARY OF INVESTIGATION:

This case stems from the demonstrations that occurred on July 25, 2020, and SPD’s response thereto. The demonstrations that took place on that day were the largest since the protests began in late May/early June. As a general matter, a large crowd marched from the Central District/South Seattle to the East Precinct. Along the way, individuals within the crowd caused property damage, including shattering the windows of businesses and setting trailers and other buildings on fire in a cordoned off area in the vicinity of the Youth Service Center. SPD additionally reported that demonstrators threw at least one explosive device at the East Precinct, which caused damage to the precinct wall.

As demonstrators passed the East Precinct and walked towards Cal Anderson Park, officers emerged from the precinct and proceeded towards the crowd. SPD issued a number of dispersal orders, which were not complied with. Ultimately, both groups clashed repeatedly, resulting in numerous uses of force against demonstrators and violence towards officers over a prolonged period of time. As a result, OPA received and/or initiated multiple investigations, including this case.

The incident here occurred while SPD officers began to push the demonstrators back from the vicinity of the precinct and towards Broadway. At that time, a standoff occurred between lines of demonstrators and officers. Officers continued to take projectiles from demonstrator and used less-lethal tools in response, including blast balls and 40mm launchers.



Named Employee #1 (NE#1) was facing the crowd at the front of the line of officers. There was a demonstrator dressed in tan who was standing in the street between the officers and demonstrators. Another demonstrator who was holding a large shield situated himself between the crowd and the demonstrator in tan. NE#1 told the demonstrator with the shield to “stay back.” While pointing at the demonstrator, NE#1 told a SWAT officer near him that the demonstrator was reaching behind the shield. The SWAT officer fired his 40mm, causing the demonstrator to back away. The demonstrator again moved towards the shield and NE#1 deployed a burst of pepper spray at him. This caused the demonstrator to pause momentarily.

At that time, a dispersal order was issued and the demonstrators in that location were notified that they were taking part in an unlawful assembly. An officer ran towards the demonstrator with the shield and kicked the shield away. At that time, NE#1 advanced towards the crowd behind that officer and past the demonstrator dressed in tan, who was immediately to his left. NE#1 yelled: “Move it back.” Once the shield was out of the way, NE#1 began to proceed back towards the police line. Simultaneously, the police line proceeded forward and the demonstrator in tan remained standing still with his hands in the air. The line began to proceed past the demonstrator in tan, causing the demonstrator to be virtually face to face with the advancing officers. While this was occurring, NE#1 and the demonstrator in tan bumped into each other and NE#1 reached out with one arm and pushed the demonstrator away, saying: “Get out of here.” This resulted in the demonstrator in tan to fall backwards and onto the ground. The demonstrator in tan (who was wearing a helmet) got up and did not appear to be injured. The demonstrator in tan then went into the crowd with the assistance of other demonstrators.

During his OPA interview, NE#1 stated that he saw the demonstrator with the shield reaching for or trying to prepare something behind the shield. At that time, NE#1 felt it possible that it was a weapon or projectile. NE#1 pointed this out to a SWAT officer who made an independent decision to deploy his 40mm. NE#1 stated that he saw the demonstrator advance back towards the shield and he deployed pepper spray to prevent the demonstrator from doing so. Another officer then ran over to kick the shield and to put it out of reach of the demonstrator. NE#1 contended that the force was justified as he felt the demonstrator presented a threat. This, coupled with the volatile and fast-evolving nature of the demonstrator, informed the need to act quickly to prevent the threat.

With regard to the push of the demonstrator in tan, NE#1 stated that this individual, and everyone else in the crowd, had been given multiple orders to move back and disperse but had not done so. He stated that he could not let the demonstrator in tan remain in that location as the demonstrator could go behind the police line, thus presenting a danger to the officers. He felt that the push to the side was appropriate given this and given the demonstrator in tan’s repeated non-compliance with lawful orders. NE#1 told OPA that, at the time of the push, he knew where the demonstrator in tan was and he did not react out of surprise.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

NE#1 explained at his OPA interview that, at the time he identified the demonstrator with the shield as potentially representing a threat, officers had already engaged in substantial de-escalation. He stated that they had given multiple orders to the demonstrators to move back and to disperse but demonstrators did not do so. He stated that, to the contrary, demonstrators continued to engage in violence towards officers.



NE#1 indicated that, once he perceived the demonstrator in the shield engage in furtive actions, further de-escalation was not safe or feasible. He believed that the threat needed to be addressed at that time and he notified the SWAT officer, who then deployed the 40mm.

In evaluating this allegation, including watching BWV and third-party video, OPA believes it clear that the crowd was already escalated. Throughout the entirety of this incident, demonstrators were non-compliant and did not follow direct orders to move back and disperse. This was particularly the case with the demonstrator in tan and the demonstrator with the shield. At the time NE#1 identified the demonstrator with the shield as potentially engaging in malfeasance, that individual had advanced towards the officers and into the street. The demonstrator with the shield was clearly not moving back as he was obligated to do.

OPA does not find NE#1's identification of this demonstrator as potentially presenting a threat to have been improper. Indeed, this was part of his role while monitoring the demonstrations. In addition, the SWAT officer made the independent decision to use force based on his perception of the events and identification of the demonstrator with the shield as a threat.

Ultimately, OPA concurs with NE#1 that no further de-escalation was required at this time because, based on NE#1's perception, it was not safe or feasible. Moreover, as discussed above, given that the crowd was already escalated, OPA does not find that NE#1 conduct was the cause of this.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #2

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

NE#1 used force twice. First, when he deployed pepper spray and, second, when he pushed the demonstrator in tan.

With regard to the first use of force, OPA finds that it was consistent with policy. As NE#1 articulated, he had already identified that the demonstrator with the shield had engaged in furtive actions behind the shield and could be attempting to assault officers. He used pepper spray when he observed the demonstrator, who had just been the subject of a 40mm deployment, begin to move back to the shield. NE#1 stated that he was concerned that the demonstrator, again who he believed presented a threat, was going to reobtain the shield. OPA believes that the use of force to prevent the demonstrator from gaining access to the shield was reasonable. The force was also necessary as it was narrowly tailored to effectuate NE#1's lawful goals and was no more expansive than needed. Lastly, the force used – one brief burst of pepper spray – was proportional to the threat posed by the demonstrator if the demonstrator were permitted to regain the shield.

With regard to the second use of force, OPA also finds it to be consistent with policy. At the time force was used, the demonstrator in tan was standing immediately in front of the police line. While the demonstrator took one slow step back, the line of officers advanced more quickly and was about to go past him. This created the risk that the demonstrator would end up behind the line. This was the case even though the demonstrator had received



numerous orders to move back and to disperse. At that time, NE#1 was permitted to use force to make sure that this did not occur. The force used, a push, was appropriate under the circumstances. In reaching this conclusion, OPA notes that the force did not look particularly good; however, this is often the case. Moreover, it is possible (and common in other push cases) that the demonstrator's momentum and balance being affected substantially contributed to the fall, causing the force to look more significant than it actually was. Ultimately, NE#1 was allowed to move the demonstrator back to protect the integrity of the line, to ensure that the demonstrator did not present a threat to officers, and to cause compliance with repeated officer orders. The push was among the few options available to him at the time and, under the circumstances of this case, did not violate policy.

As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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