



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 5, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0586

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)

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 engaged in a back and forth with demonstrators that was unprofessional and escalatory.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

OPA received a complaint from community members who alleged that Named Employee #1 (NE#1), an SPD Sergeant, engaged in an interaction with demonstrators that was escalatory and unprofessional. This investigation ensued.

Based on a review of documentation concerning this incident, OPA determined that SPD was notified by the King County Jail (KCJ) that demonstrators were standing outside and blocking traffic. The KCJ asserted that demonstrators had previously entered the jail causing a disturbance and reportedly engaging in property damage. NE#1 was dispatched to the KCJ. NE#1’s response to the scene was captured on In-Car Video (ICV) and Body Worn Video (BWV).

The video showed that vehicles associated with the demonstrators were in the roadway, including one that was blocking the bus lane. When NE#1 drove up, a demonstrator with a bullhorn stated: “Come talk to me in my face, you fucking idiot.” NE#1 went over his PA system and said: ““Your truck is blocking the bus lane” and “you can protest, I’m just trying to move the vehicle from the bus lane.” NE#1 and the individual with the bullhorn continued to communicate over their amplified systems for a period of time. They spoke about the cost of the tow of the vehicle and what budget that would come out of. At one point, the individual with the bullhorn asked for NE#1’s badge number as the individual was unhappy with their conversation. NE#1 told the individual: “I don’t need to



swear at you though, I can speak intelligently without using the F-word.” A further back and forth ensued, with discussions – and, at times, negotiations – concerning the moving of the vehicle and NE#1’s provision of his badge number. NE#1 later gave his badge number, and the vehicle was moved shortly thereafter. NE#1 thanked demonstrators over his PA system.

NE#1 then prepared to leave. Demonstrators had entered the street and were in front of NE#1’s patrol vehicle. He asked them to move out of the way. Demonstrators told him that he could leave by driving left, but NE#1 said that he was not going to do so, as it would place him into the lane of oncoming traffic. Additional demonstrators began standing in the street and the crowd appeared to be more escalated at that time. NE#1 began speaking with some of the demonstrators. He objected to them calling him racist and said that there was no use in them talking together as the demonstrators were not interested in communicating. He spoke with them about a large protest that had occurred the previous day at the Seattle Police Officers’ Guild. He disputed some of the demonstrators’ claims of police excessive force and said that they were only relaying some of the facts. He noted that he saw projectiles being thrown at officers and officers getting injured. He further stated that the only people arrested were those that assaulted officers. These statements made the demonstrators increasingly frustrated.

Demonstrators pressed NE#1 on police shootings. He responded: “I haven’t killed you, my guys haven’t killed you.” When the crowd became more animated, he said: “This is what I mean. You have to shout people down because you can’t make a point.” The demonstrators discussed their belief that they had a legal right to be in the street. They further referenced their belief, apparently pursuant to an internet search, that NE#1 had a history of misconduct. He disputed this. The discussion continued for a prolonged period of time until NE#1 backed his patrol vehicle away and drove off. While he was leaving, and outside of the presence of demonstrators, he stated to himself: “A bunch of fucking...” He continued: “Just ridiculous, and they can’t read apparently.” He had no further contact with the demonstrators.

The Complainant was anonymous so OPA could not interview them concerning what occurred. OPA interviewed NE#1. He explained that he went to the scene to address the concerns articulated by the KCJ. He described the crowd as escalated and angry at the outset, using profanity and making obscene gestures towards him. He did not believe that his back and forth with the group with either unprofessional or escalatory. He explained that, for the majority of the discussion, he was simply trying to leave. Lastly, he acknowledged that, had he used profanity towards the demonstrators, it would have been unprofessional; however, he believed that his statements while driving away, which were made outside of the presence of anyone else, were not unprofessional and were borne out of frustration.

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-10.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

In assessing whether NE#1’s statements violated the professionalism policy, OPA separates them into two categories: first, the ongoing discussions between NE#1 and demonstrators that were largely made over his PA system; and second, NE#1’s comments as he drove away.



With regard to the prolonged back and forth, OPA does not find any of NE#1's specific statements to have been unprofessional. In addition, while the statements certainly irritated members of the crowd, the demonstrators were already escalated when NE#1 arrived at the KCJ. For example, even before NE#1 said anything to the demonstrators, the individual with the bullhorn announced: "Come talk to me in my face, you fucking idiot." Accordingly, OPA cannot say that NE#1's conversation with the demonstrators was so escalatory as to violate policy. More than anything, OPA just finds the back and forth to have been unnecessary and counterproductive. OPA has seen this type of occurrence numerous times since the demonstrators began and it virtually never ends up well. NE#1 simply should have avoided the continued discussion, particularly when it did not immediately yield any positive results.

With regard to the comments NE#1 made while driving away, they were clearly the result of his frustration from the interaction with the demonstrators. Notably, they were not made to anyone and were not heard by anyone. While NE#1 optimally would not have said them out loud as all of his comments were recorded and available for public consumption, he is human and OPA does not find that this rises to the level of a policy violation.

In conclusion, OPA determines that NE#1 did not clearly violate policy during this incident but determines that he would benefit from additional counseling and retraining concerning professionalism. As such, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should counsel him concerning his decision to engage in a prolonged back and forth with demonstrators and his failure to end the discussion once it was clearly unproductive. He should be advised of other manners in which he could have handled the interaction and should be given any retraining that his chain of command deems necessary. This counseling and retraining should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**