



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 14, 2018

CASE NUMBER: 2017OPA-0944

ALLEGATIONS OF MISCONDUCT & DIRECTOR’S FINDINGS:

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Inconclusive)
Discipline Imposed: N/A		

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint	Not Sustained (Inconclusive)
Discipline Imposed: N/A		

Named Employee #3

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint	Not Sustained (Inconclusive)
Discipline Imposed: N/A		

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:

The Complainant alleged that Named Employee #1 may have used out of policy force against her when he shoved her back with an open palm strike to her chest, knocking her backwards when she refused to move. Additionally, the Complainant indicated she tried to notify an Unknown Bike Officer, an Unknown East Precinct Male Front Desk Officer, and an Unknown East Precinct Female Front Desk Officer, and all refused to take her complaint, but told her to either call 911 or OPA. OPA identified the East Precinct Front Desk Officer as Named Employee #2.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The complaint arose out of law enforcement action that occurred during two competing rallies that occurred on August 13, 2017. These rallies – the “Freedom Rally Seattle” and the “Solidarity Against Hate” occurred shortly after similar demonstrations in Charlottesville, Virginia, which resulted in mass disturbances and the murder of one counter-demonstrator. During the Seattle iteration of these competing demonstrations, emotions ran high and there were threats of assaults, property destruction, and other disorder.



The Complainant participated in the “Solidarity Against Hate” demonstrations and was counter-protesting the Freedom Rally. She reported to OPA that, while walking back to the vicinity of Westlake Park with a number of other fellow demonstrators, she was stopped from doing so by a number of bicycle officers. She stated that she interacted with one of the officers, Named Employee #1 (NE#1), who told her that she could not walk past the line. She contended that she obeyed NE#1’s direction and moved to the other side of his bicycle; however, NE#1 then shoved her with the palm of his hand, “struck [her] really hard,” and “threw [her] back.” The Complainant alleged that NE#1 had no lawful basis to use force on her as she was complying with his directions and that the force he did use was excessive.

Another demonstrator stated that she was with the Complainant at the time of the incident. She recalled that the officers were letting shoppers through the bicycle line but were not letting demonstrators through. She stated that the Complainant walked towards the bicycle line to follow the shoppers and walked up to NE#1 who, with no warning or explanation, shoved her with his hand in the center of her chest. The other demonstrator claimed that NE#1 shoved the Complainant hard enough to physically cause her “body to fly back from his hand.”

A third demonstrator was also with the Complainant on that date and was also taking part in the demonstration. She also reported that tourists and shoppers were allowed to cross the bicycle line but when the Complainant moved towards the line, she was shoved backwards by NE#1. The third demonstrator asserted her belief that NE#1 “snapped.”

Lastly, a fourth demonstrator also provided a witness statement on behalf of the Complainant. The fourth demonstrator, who also took part in the demonstration, recounted that they were walking towards the vicinity of Sixth Avenue and Westlake Avenue and were planning on crossing the street. She stated that there were police officers blocking the street off but not the sidewalk. She indicated that when the Complainant was about to step into the crosswalk, NE#1 “threw his arm up and hit her full in the chest to stop her from crossing the intersection.” She stated that NE#1 “gave no verbal warning or command before doing this.”

OPA interviewed NE#1 who admitted using force against the Complainant. He contended, however, that it was de minimis force that was justified and within policy. NE#1 explained that there was violence and threatened violence that occurred at this demonstration and that the officers were concerned by violence that had occurred earlier in Charlottesville. NE#1 stated that he was instructed by his supervisor to set up a mobile bicycle line across Sixth Avenue to prevent demonstrators from walking down to Westlake Park and engaging in any further disorder. NE#1 stated that he gave a direction to the individuals walking in his direction, who he perceived to be demonstrators, to move back. However, the Complainant continued to walk towards him, started pushing his right tire, and tried to move through his bicycle line. He told her to move back again and when she failed to do so, he used de minimis force to push her back. He stated that at the time of the incident, he did not have time to explain to her why she could not cross his bicycle line. He explained that while she was angry with him and accused him of pushing her, she did not make a complaint of pain at that time.

OPA also interviewed two other officers, both of whom worked the demonstration and were in the near vicinity of NE#1. Neither recalled observing NE#1’s force.

NE#1’s Body Worn Video (BWV) captured his arrival on the scene and him quickly setting up a mobile bicycle line. While initially outside of the view of the camera, you can hear his initial interaction with the Complainant. NE#1



rode up to the intersection, which appeared to be a crosswalk, dismounted his bicycle and stated “move back.” NE#1 told the Complainant, who could not be viewed on the BWV at that point due to her location: “you can’t go this way.” She responded: “don’t touch me.” NE#1 again stated: “you can’t go this way.” The Complainant stated “why,” and NE#1 responded: “because I said so.” Almost immediately thereafter, the Complainant can be viewed moving backwards as if she had been pushed. The officers then again repeatedly yelled: “move back.” The Complainant and several other individuals yelled at NE#1 and took pictures of him. The Complainant remained at the scene for a period of time while another demonstrator accused the officers of “protecting white supremacy.” There was no further interaction between NE#1 and the Complainant and she left the scene. The officers continued to block off the crosswalk and did not let anyone through, including individuals that did not appear, from my review of the BWV, to be demonstrators. Several minutes later, the officers then moved to another location. At the tail end of the BWV, NE#1 rode past the Complainant and she again called him out by name. A Sergeant asked NE#1 how the Complainant knew him. NE#1 responded that he had set up a mobile bicycle line, the Complainant tried to move around him, and he pushed her back. The Sergeant had not respond and rode off. I note that I did not see, as the Complainant and her witnesses contended, that the officers let tourists and shoppers through the bicycle line but not those who the officers perceived to be demonstrators.

The Complainant and the civilian witnesses contended that the force used was unwarranted and outside of policy. NE#1 relayed a different interpretation and under his account, the force could very well have been consistent with his training and tactics and within policy. Ultimately, due to the limitations of the BWV and its failure to capture the physical touching between the Complainant and NE#1, I cannot tell whether the Complainant was pushing on NE#1’s bicycle and was actively trying to push back through the line. If she was, the force would likely have been lawful and proper, if she was not, it would likely have been unnecessary and outside of policy. However, based on the disputes of fact in this case and the lack of completeness of the video evidence, I recommend that this allegation be Not Sustained – Inconclusive.

I note that, based on my review of the BWV, it appeared that there were alternate ways of addressing this situation that might not have resulted in a push to the Complainant and the filing of this complaint. Even if the push was entirely lawful, it was disturbing to numerous members of the community (as clearly captured by the BWV) and perhaps the matter could have been handled in a less aggressive and more communicative manner.

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

Named Employee #2 - Allegation #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint

SPD Policy 5.002-POL-2 states that employees will assist any person who wishes to file a complaint. Notably, the policy provides that “[i]f the employee is unable to take the complaint (e.g., the allegation is made during a demonstration while the employee is on a line, etc.), while not interfering or compromising public safety interests, the employee will provide specific information to the complainant on where and how to file the allegation.” (SPD Policy 5.002-POL-2.)

Here, the Complainant alleged that she tried to complain about NE#1 to a sergeant that she encountered on the street, but that this sergeant indicated that he could not help her. The Complainant further alleged that when she



went to the East Precinct to report NE#1's actions and to make a complaint, she was told by a male and female officer that they could not help her. OPA was able to identify the male officer as Named Employee #2 (NE#2), but was unable to identify either the sergeant that the Complainant alleged she spoke with or the female officer that was purportedly working at the East Precinct desk with NE#2.

NE#2 stated that he was working at the desk of the East Precinct on that day. He recalled that the precinct was busy, presumably due to the ongoing demonstrations throughout the City and particularly within the confines of the East Precinct. NE#2 recalled interacting with the Complainant and recalled that she wanted to make a complaint about an officer. NE#1 stated that he began to explain the process of filing an OPA complaint when she cut him off and requested OPA's phone number. NE#2 verified to the Complainant that NE#1 had indeed provided her with his correct name and also wrote OPA's phone number on the back of a business card. NE#2 stated that he did not have time to have any further interaction with the Complainant because she walked out of the precinct. He did not recall the Complainant ever asking to speak with a supervisor and he was unable to get her contact information in order to ensure that someone called her back. NE#2 stated that he perceived the Complainant to be angry, aggressive and confrontational. NE#2 did not recall ever hearing the specifics of what NE#1 had allegedly done and he indicated that he did not pass on any information to a supervisor because he had no specific information to provide.

There is a clear dispute of fact concerning what occurred. The Complainant stated that the officer at the desk refused to help her, while NE#2 stated that he did, in fact, help the Complainant as much as he could under the circumstances and provided her with OPA's phone number. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #3 - Allegation #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint

As indicated above, the Complainant alleged that she tried to report NE#1's actions to both a sergeant she encountered on the street and a female East Precinct Front Desk Officer. During its investigation, OPA was not able to identify who these individuals were. As such, OPA cannot determine whether or not the Complainant reported NE#1's actions to these individuals and whether these individuals failed to assist her.

As such, I recommend that this allegation be Not Sustained – Inconclusive.

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