



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 21, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0358

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)

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 the Named Employee struck him with his baton during a demonstration, without cause.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1 8.200 - Using Force 1. Use of Force: When Authorized

This case arises out of the demonstrations that occurred within Seattle and across the nation in the wake of the killing of George Floyd by a Minneapolis Police Officer. These protests were unprecedented in scope and were directed at law enforcement.

The incident at issue here occurred on June 1, 2020, the third full day of protests, at around 5:30 PM. On that day, the Complainant participated in a march in Downtown Seattle against police brutality. At the time of the incident, the march was moving north on 4th Avenue. According to the Complainant, the main body of the march was moving north, but a number of participants were having trouble keeping up. Behind the march, a line of police officers was moving in tandem with the marchers with some separation between them. The Complainant stated that an organizer with the march directed participants to form a line across the street “for safety.” The Complainant described the organizer’s intent as providing time for the stragglers to catch up to the main march. The Complainant and his wife formed part of the protester line.

The Complainant stated that officers asked him and the other protesters to move, but the protesters did not do so. The Complainant stated that officers “used clubs to push us back.” He stated that Named Employee #1 (NE#1), who was identified by his nametag, was the officer who pushed him. The Complainant also alleged that NE#1 struck him in the mouth and face with his baton. The Complainant said that he staggered back, and the officer continued to hit him. He described moving away and having to spit blood because of a cut to his inner lip made by his teeth as a result of the strike.



The Complainant stated that he did not move in response to officer directives, and described standing still while officers (specifically, NE#1) advanced on him and pushed him with his baton. The Complainant stated that other officers appeared to be pushing protesters in the chest area, but that NE#1's baton hit him in the face. He stated that he believed the force was unnecessary. The Complainant also provided two photographs, one of the police line behind the march and the other of his face after the incident. The face picture showed a red abrasion on the Complainant's left cheekbone. It did not show the Complainant's mouth.

This OPA investigation ensued. OPA identified NE#1 based on the name provided. NE#1 activated BWV at approximately the time he made contact with the Complainant, and OPA viewed the footage. The first minute of BWV was from the automatic buffer and did not include any sound. BWV showed NE#1 in formation with other officers in a line-abreast facing north. Protesters, including the Complainant, were in a line-abreast facing south. NE#1 was holding his baton at a 45-degree angle in front of him. The Complainant had his back turned at the initial time of contact with NE#1. BWV showed NE#1 extending his baton forward in a pushing or shoving motion and making contact with the Complainant's lower back 6 times, pushing the Complainant forward as NE#1 and the other officers advanced. After these pushes, the Complainant and other protesters advanced north about 20-30 feet before stopping again. Officers, including NE#1, remained standing where they were.

Audio activated. Officers on the line, including NE#1, shouted "move back" repeatedly and began to advance toward the protester line, which remained stationary. After moving forward, NE#1 and the other officers were again in direct contact with the protester line. BWV showed the officers physically pushing protesters with their batons. Both NE#1 and the officer next to him appeared at different times to push the Complainant as well as the protesters next to him. OPA viewed 12 shoves or pushes with the baton before an officer (likely a sergeant) could be heard giving the order to halt. These shoves appeared to contact the Complainant in his chest. At one point, the Complainant turned westward so that his left side faced the officers, and the officer next to NE#1 applied at least one shove which contacted the Complainant's upper arm. The Complainant moved his face back, and it did not appear to contact his face.

Officers advanced again, as before shouting "move back." NE#1's BWV showed additional contact with protesters, although the Complainant did not appear to be present in these contacts. OPA counted 14 pushes with the baton before the halt order was given again. In eight instances, BWV was partly obscured by NE#1's arms given the placement of the camera (on NE#1's chest), and the fact that he was holding his baton in front of him. It was ultimately inconclusive if any of these 8 shoves affected the Complainant.

After the second halt order, BWV showed that the protesters moved about 20-30 feet north before stopping. NE#1 and the other officers remained where they were. The line of protesters continued to retreat, eventually moving a quarter-block away from officers. After a few minutes, the line of protesters again started to move and no further contact was recorded.

OPA also examined BWV from an officer standing next to NE#1. That footage was consistent with the above and provided no additional information.

Notably, none of the BWV reviewed by OPA conclusively showed NE#1's baton striking the Complainant in the face; however, it was possible from positioning that this occurred.



OPA interviewed NE#1. NE#1 stated that he had been trained in crowd control and that his use of the baton was consistent with that training. He described the training. He stated that the directive “move back” is intended to clearly indicate that protesters are to do so and is designed to encourage and create movement. When an officer carries a baton for this purpose, it is held at a 45-degree angle across the body. NE#1 described the process for advancing to move a crowd: on “move,” officers take a step forward and extend their baton to arms-length; on “back” officers retract their baton and prepare for another push. The line is intended to advance as a unit.

NE#1 stated that, when he performs the above action, he tailors his baton placement and the amount of force he uses to contact whomever is in front of him in the chest, and to not use more force than needed to push them back. NE#1 described the difference in placement and force with respect to a hypothetical male weighing 200 pounds, versus a hypothetical female weighing 100 pounds. Significantly more force would be required to move the 200-pound male, and NE#1 stated that he modulates his force and baton placement according to the person in front of him, with the intent of contacting that person in the chest. NE#1 stated that when moving a crowd in this manner, if the person in front of him does not move, training and practice dictate that he would apply another push in tandem with other officers. NE#1 stated that he would not “chase” a person just to continue pushing them and would only apply force until the person vacated the space immediately in front of him.

NE#1 stated that, in a crowd control situation, he generally would not use the end of his baton to jab. While training and policy permit it if “reasonable and necessary,” NE#1 stated that jabbing is “more of pain infliction versus tactical movement.” He stated that he might do so if an individual was assaulting someone, but that jabs are not taught as a crowd movement tool. He also stated that strikes or pushes to the head or groin area are not ideal, and not generally used for crowd movement.

NE#1 also described general protest management tactics. He stated that, generally when a march is taking place, officers may form lines along the sides of a protest to prevent cross traffic from interfering with the protest march, and will march behind at a distance to prevent the protest march from losing cohesion and interfering with traffic. He described the line as a “tactical move to contain and direct a protest.”

Describing the incident at issue here, NE#1 stated that at no point on that day did he swing his baton or jab using the end of it. He stated that during the incident, he was not trying to cause pain or injury to anyone, including the Complainant. In describing his contact with the Complainant specifically, NE#1 stated that “[the Complainant] was trying to prevent the police line from moving. We were giving him multiple directives to move back. We gave him plenty of time to continue moving with the march to practice his First Amendment right. I at no point struck him with, you know, excessive force, like a baseball bat, or on the head, or the genitals, or any area where I’m intending to, you know, break a bone. It was just a push back in accordance with the police line.”

OPA showed NE#1 the photo of the Complainant’s face injury. NE#1 stated that he did not believe his baton contacted the Complainant’s face. He theorized that the Complainant might have mistaken him for an adjacent officer. When asked about the possibility that there was contact prior to that shown on BWV, or accidental contact during the BWV which hit the Complainant in the face, NE#1 stated that “there’s always a chance” that this happened. He said that he had “no intention to it.” He said that had he knowingly hit the Complainant’s face or had the Complainant told him so, he would have notified his sergeant.

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Officers shall only use “objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to



achieve a law-enforcement objective.” 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 8.050.) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “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.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

As a general matter, OPA notes that using a baton to push a crowd forward when necessary to carry out law enforcement interests is an appropriate force tactic and is consistent with both policy and tactics. As described by NE#1, the tactic involves holding out the baton and pushing it forward, making contact with the torso or back of a demonstrator. This is not purposed to cause pain, even though it can do so, but is, instead, geared to get a stopped crowd moving. As such, NE#1’s repeated pushes with his baton towards the Complainant and others did not violate policy and were permissible.

This analysis changes, however, if NE#1 purposefully or with reckless disregard for his training caused his baton to strike the Complainant in the face, causing injury. This would not be an appropriate use of the baton under the circumstances at issue here and would almost certainly violate policy.

Ultimately, and as discussed above, while totality of the evidence suggests that NE#1 did not engage in actions purposed to strike the Complainant in the face or that were in reckless disregard of his training, OPA cannot conclusively determine this given the lack of conclusive video evidence of the moment of contact with the Complainant’s face. As such, OPA instead recommends that this allegation be Not Sustained – Inconclusive.

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