



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 23, 2020

CASE NUMBER: 2017OPA-0803

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 5. Employees May Use Discretion	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:

The Complainant, a spectator at a parade, alleged that the Named Employee was unprofessional and abused his discretion by deploying his squad of bicycle officers directly behind a group protesting police violence, rather than on the edge or rear of the parade.

ADMINISTRATIVE NOTE:

This case was submitted to the OPA Auditor approximately one month prior to the expiration of the 180-day deadline. After conducting a preliminary review, the OPA Auditor requested additional investigation. However, based on heavy workloads at the time, the requested additional investigation was not completed and the case was not resubmitted until more than one year later. As such, the Director's Certification Memo in this case was not completed within the 180-day timeline set forth in the Collective Bargaining Agreement between the City of Seattle and SPOG.

OPA further notes that, since this incident, both of the policies at issue have been renumbered. However, the versions of the policies that were in effect in August 2017 were used in the evaluation of this case.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

On August 5, 2017, Named Employee #1 (NE#1) was assigned as the Sergeant commanding a seven-officer bicycle squad assigned to the North Precinct. At the time of the incident, he had been incumbent in this role for less than a year. NE#1's squad was deployed in the East Precinct area to cover a permitted march associated with the Umoja Festival and the African American Day Parade. The North Precinct bicycle squad did so because other squads were assigned to Seafair weekend events. This event occurred in the context of relatively recent shootings of people of color by police officers. In addition, at least one group in the parade, which included family members of individuals shot and killed by police officers, marched to protest police violence. For clarity purposes, this group will be referred



to as the “Not This Time group,” based on the name of the group which organized at least some of the parade participants involved.

During the event, NE#1 deployed his squad approximately 20-50 yards behind this group of protesters. This group was third in the parade with several groups behind them. The effect of NE#1’s deployment order was therefore to place his squad in the parade order, between the Not This Time group and groups following behind them. According to the Complainant, who was a spectator at the parade, this had a “chilling effect” on the protest. The Complainant further relayed that a leader of the Not This Time group “sounded distraught” as she called attention to NE#1’s squad. The Complainant asserted that the net effect of the deployment amounted to “disparate treatment” of Black-led efforts to change the system, and that it made her and many other participants in the event feel harassed and targeted.

As part of its investigation OPA interviewed NE#1. He stated that his squad had been assigned to the event “at the last moment” by an East Precinct Lieutenant who had received intelligence about a group that was potentially planning to disrupt the event. NE#1 described the intelligence as being to the effect that the Not This Time group planned to deviate from the permitted parade route and lead the parade downtown to protest police violence, or, in the alternative, that the group planned to stage a sit-in to create a sustained traffic disruption. NE#1 stated that, in the event the march left the permitted route, his squad was tasked with blocking off cross streets to create safe traffic flow and with ensuring the safety of all people and property involved, all while safeguarding the demonstrators’ First Amendment rights. NE#1 stated that, while standard procedure would be to ride alongside the protest march on either side, he used his judgment to deviate from the standard operating procedure in order to tail the Not This Time group in the event of a departure from the planned route. He believed that tailing the group at a distance of 20 to 50 yards would “strike a tactical balance” between the ability to respond to deviations and “becoming the focus of the parade,” which he sought to avoid. He stated that his squad took no actions whatsoever and did not engage with either the protest group or any of the spectators.

In response to questions about the orders he received from the East Precinct Lieutenant, NE#1 confirmed that the Lieutenant provided intelligence that the Not This Time group or another similar group might attempt a disruption. The decision to deploy his squad directly behind the Not This Time group was an exercise of NE#1’s discretion. He stated that he believed there were actually three separate groups protesting police actions, but that they had substantially merged into the one that he and his squad were following. NE#1 stated that, while officers were usually deployed either at the rear of a parade or along the sides, this was not the first time that he had observed a bike squad in the parade order.

OPA also interviewed the East Precinct Lieutenant. He confirmed that, based on the intelligence he was given, the Not This Time group was a late addition to the parade and was potentially planning to disrupt the permitted route. He said that when a group occupies an intersection off the permitted route, it can quickly produce a “landslide” of disruptions. He asserted that, given this, the decision to specifically monitor this group was justified. He stated that SPD had followed individual groups before during his time with the Department. Further, he stated that, given the small size of the bike squad, it was reasonable to keep them together rather than to deploy them in twos and threes to ride alongside the Not This Time group.

SPD Policy 5.001-POL-9 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-9.) The policy additionally 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.*)

OPA finds insufficient evidence to determine that NE#1 violated the professionalism policy by ordering his squad to follow the Not This Time group from a distance of 20-50 yards. The Complainant and witnesses agreed that NE#1 and his squad took no law enforcement action during the event. They further confirmed that the officers did not use profanity as an insult or otherwise disrespect any individual or the Not This Time group as a whole.

Because they took no action, nothing NE#1 or his squad did beyond merely being present could have further escalated the event. OPA finds that this does not and cannot constitute unprofessional conduct as contemplated by SPD policy.

Moreover, OPA finds insufficient evidence to determine that the officers’ presence during the parade “chilled” any demonstrators’ First Amendment rights. Indeed, the parade continued without the officers providing an impediment and the demonstrators were able to fully exercise their constitutional rights.

Lastly, OPA finds that NE#1’s decision to deploy his unit behind the Not This Time group did not undermine confidence in the Department, thus not violating SPD policy. OPA reaches this conclusion because NE#1 acted on specific intelligence indicating that the Not This Time group presented an elevated risk of disrupting a planned and permitted march, and because staffing limitations required NE#1 to deploy his squad in a way that allowed for tactical and safe control of the scene if necessary. While OPA understands that parade spectators and participants may not have viewed NE#1’s actions as entirely benign, the totality of the evidence indicates that NE#1 did not take the actions he did for unprofessional reasons. Rather, he did so in order to maximize his squad’s effectiveness while minimizing the disruption to the parade.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 5. Employees May Use Discretion

As indicated in SPD Policy 5.001-POL-5, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-5.)

OPA finds that NE#1’s exercise of discretion was appropriate in this situation. As noted above, NE#1 was tasked with monitoring the parade for disruptions in order to ensure safety of persons and property, while upholding First Amendment rights. NE#1 planned the deployment of his squad in a manner that allowed him to monitor those entities that had been identified in the intelligence that he received and to do so effectively given his relative lack of resources. While OPA understands that some observers, including the Complainant, were upset by NE#1’s



deployment decisions, there is no indication that NE#1 abused his discretion without regard to the legitimate objectives outlined in his orders or that he did so in order to intimidate demonstrators.

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

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