



## CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 11, 2020

CASE NUMBER: 2019OPA-0499

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

<b>Allegation(s):</b>		<b>Director's Findings</b>
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 2	8.300 - Use of Force Tools 5. Officers Shall Not Use Less-Lethal Tools to Prod or Jab Individuals, to Awaken Unconscious or Intoxicated Individuals, or to Prevent the Destruction of Evidence	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 alleged that the Named Employee, who was working off-duty providing pedestrian control at a job site, "disturbingly manhandled" her and was rude towards her when she tried to cross the street.

### **ADMINISTRATIVE NOTE:**

During its investigation, OPA determined that, though the Named Employee was working off-duty at the time of the incident, he did not properly log in for off-duty secondary employment and did not properly file for approval for the off-duty work. While contrary to policy, this issue was referred to the Named Employee's chain of command for handling by a supervisor and was not investigated by OPA.

### **ANALYSIS AND CONCLUSIONS:**

#### **Named Employee #1 - Allegations #1**

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

On July 17, 2019, Named Employee #1 (NE#1) was working at the corner of 7th Avenue and Olive St. This was an active City Light worksite, with barriers and cones blocking the crosswalk, as well as an open manhole inside the cordoned-off area. NE#1 was tasked with monitoring pedestrian and traffic safety and ensuring that pedestrians did not enter the cordoned-off area. The worksite was in front of various businesses and blocked pedestrian access through the cordoned-off crosswalk. Because he was working secondary employment, NE#1 was not equipped with Body Worn Video (BWV) and OPA could not locate any surveillance footage in the area that captured the incident.

The Complainant attempted to cross the street at the closed crosswalk. When she did so, she alleged that NE#1 repeatedly pushed her despite her multiple requests that he not touch her person. During her OPA interview, the Complainant stated that her workplace was on the other side of the crosswalk and that she attempted to cross when the crosswalk sign said to walk. She stated that she saw the crosswalk was closed, but that she did not want to



walk to a different crosswalk since her workplace was so close. The Complainant said that NE#1 initially asked her to stop, but when she did not, NE#1 put the end of his “stick” just above her waistline and pushed her backward. She also alleged that NE#1 used his body weight to push her, that their thighs touched, and that NE#1 forced her back using the stick. She also stated that she had a second, two-minute conversation with NE#1 in which he was rude and intimidating. The Complainant stated that she could have crossed the street safely despite the cones and barriers.

OPA interviewed NE#1 as part of its investigation. NE#1 stated that he made multiple verbal requests for the Complainant to stop and return to the curb. He said he was equipped with a uniform, reflective vest, and lighted wand, which he used to signal cars and pedestrians. He stated that he held the wand horizontally in front of the Complainant’s waist to block her path, and that he used it to guide her back to the curb. He stated that he did not jab or prod the Complainant with the end of the wand, and that he initially used the wand in an attempt to avoid physical contact. He also stated that, after approximately 30 seconds to a minute of trying to verbally direct the Complainant back to the curb, he placed his hand on her elbow area to guide her. NE#1 further told OPA that, while he was within a few inches of the Complainant, he was trying to keep her and himself out of traffic and the job site and did not make physical contact with her apart from his hand on her elbow. NE#1 said that he did not have another conversation with the Complainant. He stated that he did not become escalated or use profanity.

NE#1 provided photographs of the intersection. The photographs showed that the crosswalk was blocked by cones, and that signs indicating closure were visible at both corners. While OPA could not verify that the photographs were contemporaneous, they were consistent with both the Complainant’s and NE#1’s descriptions. NE#1 also provided contact information for City Light employees who he said observed the interaction. OPA interviewed these witnesses. The first witness (Witness #1) stated that he heard NE#1 ask the Complainant not to cross, and that she ignored his request multiple times. He said the interaction between NE#1 and the Complainant became negative, and that he believed the Complainant was “rude.” Witness #1 did not see NE#1 use a stick to push the Complainant. The second witness (Witness #2) provided substantially the same testimony when interviewed and stated that he did see NE#1 use a stick but did not see him touch the Complainant with it. Neither witness reported a second conversation between NE#1 and the Complainant.

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.*)

Based on the evidence, OPA is unable to determine that NE#1’s actions violated the Department’s professionalism policy. Based on the Complainant’s own statement, which is corroborated by other witnesses, the Complainant knowingly entered a closed crosswalk and refused instructions to stop. NE#1’s use of his traffic wand or his hand on her arm to guide her back to the traffic curb would not, under such circumstances, likely be purposed to demean or intimidate her. Pedestrians are required to obey official signs and warnings, and NE#1 would have been acting within the scope of his duties to ensure that the Complainant did so. Moreover, in guiding the Complainant to the curb, NE#1 was permitted to use his wand to minimize unwanted physical contact with the Complainant’s person, and witness testimony suggests that any contact that did occur was incidental or, at minimum, not intended as a harmful jab. While OPA cannot conclusively state absent BWV that NE#1’s language or conduct was respectful, there



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is no evidence in the record aside from the Complainant's interview suggesting the contrary. Though OPA found the Complainant credible, there were two other witnesses, not employed by SPD, who supported NE#1's account.

Ultimately, OPA believes that it was unfortunate that NE#1 and the Complainant had a negative interaction; however, the evidence is insufficient to prove that NE#1 engaged in purposeful, disrespectful conduct as alleged. For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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

**Named Employee #1 - Allegation #2**

***8.300 - Use of Force Tools 5. Officers Shall Not Use Less-Lethal Tools to Prod or Jab Individuals, to Awaken Unconscious or Intoxicated Individuals, or to Prevent the Destruction of Evidence***

As discussed more fully above, the two witnesses interviewed by OPA corroborated NE#1's account of this incident and his usage of the baton. Both confirmed that he did not jab or prod the Complainant with it. OPA finds that his testimonial evidence is determinative.

Accordingly, OPA recommends that this allegation be Not Sustained -Lawful and Proper.

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