



## CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 25, 2020

CASE NUMBER: 2019OPA-0514

### 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	Sustained
# 2	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force	Sustained
# 3	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)

#### Imposed Discipline

**Suspension without Pay - 1 Day**

*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 was unprofessional towards him and "assaulted" him. OPA alleged that the Named Employee's conduct constituted a failure to de-escalate.

### SUMMARY OF INVESTIGATION:

Named Employee #1 (NE#1) was dispatched to a call of a man requesting help. The call indicated that the man was "screaming for assistance" and that he stated that someone had "attacked him." NE#1 reported that, when he arrived on scene, he saw the Complainant, who matched the description of the man seeking assistance. NE#1 documented that, at that time, the Seattle Fire Department (SFD) was preparing to leave the scene and the Complainant was striking the side of the ambulance with his hand.

Body Worn Video (BWV) reflected that NE#1 approached the Complainant and yelled: "Hey, what the hell's your problem!" The Complainant said that he had been pepper sprayed by "crackheads" to which NE#1 replied: "Alright, so why [are] you banging on the Fire Department's car?" NE#1 said to the Complainant, referring to SFD, "you told them to fuck off." The Complainant asked for water to rinse his eyes out and NE#1 said that he did not have any. NE#1 queried why the Complainant was "screaming at people who want to help" him. The Complainant replied: "Cause I'm in pain, asshole." NE#1 retorted: "If you want help, you should be nice." In response to NE#1's statement, the Complainant got down on his knees and said: "Can I please have some help? Can I kiss your shoes?" He bent downwards, disappearing from view of the BWV. NE#1 replied: "Yes you can, go ahead. Go ahead, kiss 'em." The Complainant got up and sat down on a bench. He stated: "fuck you, asshole" and threw what appeared to be a napkin at NE#1. NE#1 quickly replied "really?" while approaching the Complainant. NE#1 stood close to the Complainant who clenched his fists at his side. NE#1 said to the Complainant: "Go ahead, swing." The Complainant stood up and appeared to chest bump NE#1. In response, NE#1 pushed the Complainant and the Complainant fell back onto the



bench and into a seated position. The Complainant said that he hoped NE#1's actions were "on camera," and NE#1 confirmed that he had been recording.

NE#1 pointed his index finger at the Complainant and told him: "That's right. The next time I'm gonna knock your ass out." The Complainant again stood up and said: "then knock me out, asshole." NE#1 used his outstretched hand to push the Complainant back into a seated position. He told the Complainant: "Just sit down and behave." The Complainant mentioned wanting to call a "cop" and NE#1 explained that he was a police officer. The Complainant said that NE#1 was not a very good police officer. NE#1 asked the Complainant to calm down so that SFD could provide him with medical assistance; however, the Complainant remained agitated. At one point, NE#1 proposed to the Complainant that, if he calmed down, NE#1 would let go of his shirt. When the Complainant said no, NE#1 told him that he would continue to hold the Complainant's shirt. The Complainant said that he had not committed a crime and that NE#1 had assaulted him. NE#1 questioned whether or not the Complainant had assaulted NE#1 and the Complainant denied doing so.

NE#1 then let go of the Complainant and SFD provided him with medical attention. While that occurred, the Complainant continued to yell at and refer to NE#1 and SFD with profanities. The Complainant again alleged that NE#1 assaulted him. NE#1 denied that he did and said that the Complainant was the one who had engaged in an assault. NE#1 responded to the Complainant: "You're lying again." NE#1 asked another officer whether it was possible to use his Department issued cell phone to show the Complainant the BWV of the incident. That other officer said that he could. NE#1 and the Complainant continued to go back and forth concerning whether NE#1 assaulted him and then NE#1 showed the Complainant the BWV using his cell phone.

When NE#1's BWV restarted, it showed NE#1 narrating the video to the Complainant. In response, the Complainant stated: "No, I didn't do anything. You initiated that." The Complainant asked NE#1 why he could not be honest and said that the video showed that "you guys are liars." The Complainant requested a supervisor and NE#1 called one to the scene. The Complainant asserted that he was afraid that officers might shoot him and NE#1 said that the Complainant was "acting stupid." NE#1 explained: "Like you're going to get shot for not sitting down. Geez Louise. Give me a fucking break." The Complainant and NE#1 continued to debate the earlier incident until a supervisor arrived on scene. The Complainant reiterated to the supervisor his belief that he had been assaulted and that NE#1 had treated him unprofessionally. The supervisor referred those allegations to OPA, and this investigation ensued.

## **ANALYSIS AND CONCLUSIONS:**

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

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

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.*)



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Based on OPA's review of the BWV and consideration of the totality of the circumstances of this incident, OPA finds that NE#1's conduct and demeanor were unprofessional.

First, during this incident, NE#1 treated the Complainant disrespectfully and used contemptuous language. Most notably, NE#1 told the Complainant that he if wanted to receive medical treatment he should be nice, and that the Complainant should kiss his shoes. With regard to the first comment, while the Complainant was rude towards NE#1, that may have been based in part on the fact that he was in pain. Indeed, the Complainant explained to NE#1 that this was the case. However, NE#1 appeared to have paid no heed to this. Moreover, nothing in SPD policy provides that only subjects who are deemed by officers to be "nice" are entitled to medical treatment. With regard to NE#1's second comment, it was simply inappropriate and demeaning to the Complainant. NE#1 acknowledged this at his OPA interview.

Second, from the inception of the contact, NE#1 used an elevated tone and aggressive demeanor. For example, NE#1's first statement to the Complainant consisted of NE#1 yelling at him: "Hey, what the hell's your problem!" NE#1 only became more argumentative and threatening after that point, including telling the Complainant to kiss his shoes, saying that he would knock the Complainant's "ass" out, and using profanity towards the Complainant. NE#1's statement to the Complainant that he should kiss NE#1's shoes caused the Complainant to grow angry. NE#1's aggressive response to that anger (quickly approaching the Complainant and stating "really" and then "go ahead, swing") resulted in the Complainant standing up and NE#1 using force to twice push him down. As discussed more fully below, this force was caused in substantial part by NE#1's behavior. In this respect it was unnecessarily escalating in violation of the Department's professionalism policy.

OPA finds it surprising that NE#1 did not appear to recognize that much of his conduct during this incident was unprofessional, escalating, and that it undermined the public's trust and confidence in him. OPA finds that this was clearly the case here and, as such, recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

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

##### ***8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force***

"De-escalation tactics and techniques are actions used by officers, when safe and without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance." (SPD Policy 8.100-POL-1.)

The policy further instructs that: "When safe and feasible under the totality of circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution." (*Id.*) Officers are also required, "when time and circumstances permit," to "consider whether a subject's lack of compliance is a deliberate attempt to resist or an inability to comply based on factors" such as "mental impairment...drug interaction...[and/or] behavioral crisis." (*Id.*) These mental and behavioral factors should be balanced by the officer against the facts of the incident "when deciding which tactical options are the most appropriate to bring the situation to a safe resolution." (*Id.*)



The policy gives several examples of de-escalation, which include: mitigating the immediacy of the threat to give officers time to use extra resources and to call more officers or specialty units; and increasing the number of officers on scene to thus increase the ability to use less force. (*Id.*) Other examples of de-escalation include, but are not limited to:

- Placing barriers between an uncooperative subject and officers;
- Containing the threat;
- Decreasing exposure to the potential threat by using distance, cover and concealment;
- Avoidance of physical confrontation unless immediately necessary to protect someone or stop dangerous behavior;
- Using verbal techniques, such as “Listen and Explain with Equity and Dignity” (LEED) to calm an agitated subject and promote rational decision making;
- Calling extra resources, including CIT officers and officers equipped with less-lethal tools; and
- Using “any other tactics and approaches that attempt to achieve law enforcement objectives by gaining the compliance of the subject.

(*Id.*) De-escalation is inarguably a crucial component of the Department’s obligations under the Consent Decree; however, it is not purposed to act as an absolute bar to enforcing the law when necessary. That being said, where officers fail to fully de-escalate and instead act in a manner that increases the need for force and the level of force used, such conduct is inconsistent with the Department’s policy and expectations.

OPA concludes that NE#1 failed to comply with virtually every aspect of the Department’s de-escalation policy. He did not use time, distance, and shielding. In fact, NE#1 did the opposite and deliberately advanced towards the Complainant using an aggressive demeanor and bellicose language. He did not call other resources to the scene or apply other tactics that might have reduced the need for force. He did not consider whether the Complainant’s anger was due to a deliberate attempt to resist or whether it was based, instead, on the Complainant being in pain or being under the influence of alcohol and/or narcotics. Most notably, NE#1 did not use the LEED model during any part of his interaction with the Complainant.

To the contrary, NE#1 both spoke to the Complainant and acted rudely, disrespectfully, and antagonistically during nearly the entirety of this incident. When coupled with NE#1’s lack of compliance with the tactical requirements of the policy, NE#1’s failed to de-escalate. Moreover, NE#1’s actions increased the likelihood that force would be used and, in fact, substantially caused the need for him to twice push the Complainant.

For these reasons, OPA finds that NE#1 violated SPD’s de-escalation policy during this incident and recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

### **Named Employee #1 - Allegation #3**

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

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. 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



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8.200(1).) The policy lists a number of factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

NE#1 used force on three occasions during this incident. While that force was low-level, it must still have been reasonable, necessary, and proportional. Even though OPA finds that NE#1 was unprofessional and that NE#1 failed to comply with the Department’s de-escalation policy, OPA concludes that, at the time NE#1 used force, it was permissible.

On the first occasion that NE#1 used force, he did so to push the Complainant back after the Complainant chest bumped him. While OPA believes that this force was necessitated in substantial part by NE#1’s demeanor and statements towards the Complainant, NE#1 was permitted to prevent himself from being assaulted. Moreover, the force used to do so was minor and did not purposed to cause and did not cause any injury to the Complainant. The second time NE#1 used force was to again push the Complainant into a seated position when the Complainant was standing up and telling NE#1 to knock him out. Again, while the force was necessitated by NE#1’s conduct towards the Complainant, NE#1 was permitted to use this minor force to prevent against a potential assault. Like the first force used, this force was minor and did not result in any injury or complaint of pain. Lastly, NE#1 used force to control the Complainant’s person while the Complainant was in the process of calming down. This force was comprised of control holds. OPA finds that this force was consistent with policy under the circumstances.

For the above reasons, and even given OPA’s concerns with NE#1’s lack of professionalism and de-escalation during this incident, OPA finds his force was reasonable, necessary, and proportional. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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