



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 18, 2020

CASE NUMBER: 2020OPA-0019

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	Title 8 - Use of Force 1. Use of Force: When Authorized	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:

Two anonymous Complainants alleged that the Named Employee used excessive force when he pushed an older woman at a demonstration, causing her to fall to the ground.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the review and approval of the Office of Inspector General for Public Safety, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employee. As such, the Named Employee was not interviewed as part of this case.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

Title 8 - Use of Force 1. Use of Force: When Authorized

A permitted rally was held in downtown Seattle. The rally, entitled "United against Hate," was organized by right-affiliated demonstrators. SPD became aware that left-leaning individuals – including anti-fascists – would be counter-demonstrating. SPD officers, including Named Employee #1 (NE#1), were assigned to police the competing demonstrations.

NE#1 was assigned with other officers to form a line blocking the counter-protestors. An older woman was among the demonstrators and was speaking into a megaphone. After a period of time, a Lieutenant directed the officers to move the counter-protestors back. Given this direction and consistent with their training, the officers extended their batons and gave repeated loud orders to the counter-protestors to "move back." The officers moved forward and pushed several individuals back. They repeated the order multiple times, on each occasion moving forward and, at times, physically pushing back the counter-protestors. At one point, after having to push the counter-protestors back several times in a row, NE#1 moved forward and pushed back the older woman, who was standing still in front of him. She fell backwards onto the ground. She was helped up by counter-protestors. Several of the counter-protestors began yelling at NE#1 and the other officers. Shortly thereafter, the older woman, who did not appear injured, continued exhorting the other counter-protestors through her megaphone. The officers continued to try to move the counter-protestors back. The older woman remained in the near vicinity for nearly 20 more minutes before dispersing.

One of the individuals in the crowd recorded NE#1's pushing of the older woman. Two anonymous Complainants later filed complaints with OPA, including links to that video. This investigation ensued.

As part of its investigation, OPA reviewed the third-party video and the Body Worn Video recorded by NE#1 and another officer. OPA also reviewed the report generated by NE#1 that set forth his reasoning for using force.

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 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.*)

Based on OPA's review of the totality of the evidence, OPA finds that the force used by NE#1 did not violate policy. First, at the time he pushed the older woman back, NE#1 was permitted to use force. The counter-protestors had been given a lawful order to move back and the officers were allowed to use physical force, if needed, to ensure that they did so. Prior to NE#1 making contact with the older woman, he and other officers were required to physically compel other demonstrators to move backwards. When NE#1 walked forward, the older woman was standing in his immediate path and was not moving backwards. To the contrary she was moving towards and across the line. Accordingly, using force to push her backwards and, thus, to enforce the officers' lawful orders was reasonable.

The force was also necessary under the circumstances. Given the officers' repeated need to use physical force in the form of pushes with batons and bicycles to move the counter-protestors back, there did not appear to be any reasonable alternative to using this same force on the older woman. Moreover, the force appeared to be of a reasonable degree and did not seem any more expansive than what NE#1 and the other officers used throughout the demonstration.

Lastly, OPA finds that the force was proportional given the need to enforce the officers' lawful orders. While it is unfortunate that the physical contact caused the older woman to fall over, this does not make the force improper. In addition, the older woman did not appear to suffer any injuries and continued demonstrating for the next 20 minutes.

Ultimately, force, including that used here, is not pleasant to look at. However, that does not yield it out of policy. For the reasons stated above and when applying a preponderance of the evidence standard, OPA concludes that there is insufficient evidence to conclude that NE#1 used improper or excessive force. As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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