



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 8, 2020

CASE NUMBER: 2020OPA-0094

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. 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:

The Complainant alleged that he was subjected to excessive force by the Named Employee.

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

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

Named Employee #1 (NE#1) was among the officers assigned to work at a permitted demonstration. NE#1 recalled being aware of an individual in the crowd – later identified as the Complainant – who was engaging in disruptive behavior and was causing a disturbance. He stated that this information was relayed to him over radio and he further learned that bicycle officers were trying to locate the Complainant. Near the end of the demonstration, NE#1 was notified that the Complainant was “causing an altercation in the rally.”

NE#1 was able to locate the Complainant and, when he did so, an unidentified woman stated that the Complainant was “escalating the situation.” NE#1 detained the Complainant and informed him that he was being removed from the demonstration given his suspected involvement in an altercation. A Lieutenant arrived and also informed the Complainant that he was being excluded from the demonstration area. In addition, the permit holder for the demonstration confirmed that he wanted the Complainant removed. However, the Complainant later returned to the demonstration area.

What occurred next was not captured on video but is not disputed by the parties. The Complainant approached NE#1 and stood within two feet of him. NE#1 extended his arm and pushed the Complainant back. NE#1 then shifted his position and ordered the Complainant to move back.



The Complainant later asserted to a Department supervisor that the push constituted excessive force. The supervisor referred the Complainant's allegation to OPA, and this investigation ensued.

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.*)

It is undisputed that the only force used by NE#1 was pushing the Complainant back with an outstretched hand. It is further undisputed that the Complainant did not fall backwards as a result of that force or suffer any injuries. As such, the force was de minimis. Even though the force was the lowest possible level, it still must have been reasonable, necessary, and proportional. If not, de minimis force can be excessive as a matter of policy.

When evaluating the totality of the circumstances, OPA concludes that the push of the Complainant did not constitute excessive force. Prior to the force, the Complainant had engaged in several disturbances and an altercation within the demonstration. His actions were significant enough that the demonstration organizer requested that the Complainant be removed. NE#1 subsequently gave the Complainant a lawful order to leave the vicinity of the protest and to not return; however, he did so regardless. He further approached NE#1 and stood within two feet of him.

OPA finds that it was reasonable for NE#1 to have pushed the Complainant back from his immediate space. This is due to the Complainant's conduct – retuning to a protest that he had been removed from and approaching and standing close to the officer who removed him – and the possibility that the Complainant could escalate and pose a threat to NE#1. Ultimately, NE#1 was entitled to use minor force to ensure his personal safety.

As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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