



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 18, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0760

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.140 – Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 14. Retaliation is prohibited	Not Sustained (Unfounded)
# 3	14.090 - Crowd Management 14.090-TSK-2 Responsibilities of the Supervisor	Not Sustained (Lawful and Proper)
# 4	14.090 - Crowd Management 14.090-TSK-1 Responsibilities of the Incident Commander	Not Sustained (Lawful and Proper)

Named Employee #2

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	5.140 – Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	16.130 – POL – 2 Officers Providing Medical Aid 1. Recognizing the Urgency of Providing Medical Aid...	Not Sustained (Lawful and Proper)
# 4	5.001 - Standards and Duties 14. Retaliation is prohibited	Not Sustained (Unfounded)

Named Employee #3

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Lawful and Proper)
# 2	5.140 – Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 3	16.130 – POL – 2 Officers Providing Medical Aid 1. Recognizing the Urgency of Providing Medical Aid...	Not Sustained (Lawful and Proper)
# 4	5.001 - Standards and Duties 14. Retaliation is prohibited	Not Sustained (Unfounded)

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 Complainants alleged that the Named Employees targeted individuals in “black bloc” attire while treating other similarly situated people differently. The Complainants alleged that this was biased and retaliatory. The Complainants



also alleged that Named Employee #2 and Named Employee #3 used excessive force on the Subject and failed to provide the Subject with medical attention.

SUMMARY OF INVESTIGATION:

OPA received multiple complaints concerning an incident that occurred on December 20, 2020 in Cal Anderson Park. The Complainants generally alleged that SPD officers targeted a group of individuals dressed in “black bloc” attire who were playing soccer and ejected them from the park while other similarly situated individuals were not forced to leave. The Complainants also alleged that officers subjected one person – referred to here as the Subject – to excessive force and did not seek medical attention for the Subject. This OPA investigation ensued.

OPA identified that the officers who used force to take the Subject into custody were Named Employee #2 (NE#2) and Named Employee #3 (NE#3). OPA also added allegations against Named Employee #1 (NE#1) who was the on-scene supervisor.

OPA determined that, on June 30, 2020, the Seattle Parks Department (“Parks”) closed Cal Anderson Park. This closure remained in effect through the date of this incident and until December 23, 2020. On December 18, 2020, the park was cleared to allow Parks to engage in a “surge in maintenance...to address backlogs in grounds maintenance, building repair, graffiti removal, and litter pick-up.” This closure was effectuated with the assistance of SPD. The maintenance was ongoing through December 23. That day, approximately 25 to 30 officers, including NE#2 and NE#3 and supervised by NE#1, entered the park to clear out individuals who were therein. These officers’ actions were fully captured on Body Worn Video (BWV).

The BWV for both NE#2 and NE#3 showed that, prior to interacting with the individuals on the soccer field, they spoke with a number of other community members who were in the park and informed them that the park was closed and asked them to leave. Those community members did so. The officers then approached the individuals on the soccer field and told them that they had to leave and that the park was closed. The individuals did not leave and began interacting with and recording the officers. After a period of time, the officers then began to slowly move the individuals out of the park. While leaving, one of the individuals was recorded on video spitting at an officer – referred to here as Witness Officer #1 (WO#1). WO#1 and other officers took that person into custody.

This arrest caused increased tensions within the group of individuals. The individuals who were closest to the line of officers moved towards them and were pushed back. The officers began to give loud directions to the individuals to leave the park. A male who was part of the group threw a soccer ball at Witness Officer #2 (WO#2). The male then began yelling at officers to give him his ball back. Another female was standing with him. The officers continued to direct them to leave the park and eventually tried to take the male into custody. The female near him was also arrested. The BWV for both NE#2 and NE#3 also showed that the Subject tried to grab onto the male to prevent him from being arrested. NE#2 took hold of the Subject with the assistance of another officer – referred to here as Witness Officer #3 (WO#3) – and pulled the male down to the ground. With help from NE#3, they held the Subject down to the ground and handcuffed him. NE#2 informed the Subject that he was being audio and video recorded. The Subject responded: “so are you.”

After his arrest, the male again asked for his ball back. WO#2 told him he was not getting the ball back because the male threw it at him. The male said that he threw the ball because the officers arrested someone for no reason.



WO#2 told the male that the arrest was made for spitting on an officer and asked the male why he assumed that the arrest was for no reason. The male said: "Fair enough, fair enough."

At that time, the Subject could be seen lying on the ground and appeared unresponsive. Officers began attending to him and called for medical attention. Paramedics responded to the scene and treated the Subject. He was responsive at that time and was transported to a hospital.

OPA attempted to contact all of the Complainants who filed complaints with OPA concerning this incident. None were direct witnesses to what occurred. OPA further interviewed all of the Named Employees.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.140 – Bias-Free Policing-POL 2. Officers Will Not Engage in Bias-Based Policing

SPD policy prohibits biased policing, which it defines as "the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual." (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*)

The Complainants alleged that the officers engaged in biased policing by specifically targeting the individuals in "black bloc" attire while allowing others to remain in the park. Presumably, the Complainants are alleging that the individuals were discriminated against based on their political beliefs.

At his OPA interview, NE#1 provided evidence indicating SPD's overall intent to remove people from the park given its closure and to not allow any re-occupation. NE#1 explained that this order was given prior to officers being aware that this specific group of individuals would be in the park on this date.

He said that, when he observed the individuals on the soccer field, he recognized a number of them from prior demonstrations. The individuals clearly recognized NE#1 and others as well, as several of the individuals referenced officers and supervisors by name. Based on past experience, he did not believe that they would comply with orders to leave. Accordingly, he asked the officers under his command to speak with others in the park first. The officers did so, telling a number of other people to leave the park. Those community members complied. This was all confirmed by BWV. After doing this, the officers returned to the soccer field and told the individuals that they had to leave. As NE#1 anticipated, they were not compliant.

NE#1 stated that he spent several minutes trying to convince the individuals to leave the park, and that they ultimately complied. However, as the individuals were leaving, one of them spat at an officer, resulting in that person's arrest for assault. The crowd then became agitated and this necessitated a more proactive physical push by officers to remove the individuals from the park and resulted in several arrests.

NE#1 denied that he or any of the officers under his command engaged in biased policing. He again stated that the decision to move individuals out of the park was consistent with the closure orders and prior enforcement, as well as was content neutral and applied to all people within the park.



As discussed above, the evidence in the record establishes that the decision had been made to clear all persons out of the park, not just individuals who were members of a certain protected class. Moreover, the BWV proves that officers told a number of different people – not just the individuals – to leave the park. As such, there is no basis to conclude that the individuals were subjected to biased policing during this incident and OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 14. Retaliation is prohibited

Along with their allegation of bias, the Complainants also contended that the individuals' removal from the park constituted retaliation for their ongoing demonstrations against SPD.

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-14.) SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, "oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy" or "who otherwise engages in lawful behavior." (*Id.*) Retaliatory acts are defined broadly under SPD's policy and include "discouragement, intimidation, coercion, or adverse action against any person. (*Id.*)

As with Allegation #1, this allegation is conclusively disproved by the evidence. The BWV showed that multiple different persons within the park were told that they had to leave and that the park was closed. It further showed that the officers gave the individuals multiple opportunities to leave on their own power and without any force or other physical coercion being used. There is no support for the claim that these actions were retaliatory, rather than supported by a lawful basis.

As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #3

14.090 - Crowd Management 14.090-TSK-2 Responsibilities of the Supervisor

SPD Policy 14.090-TSK-2 concerns the responsibilities of a supervisor during crowd management. SPD Policy 14.090-TSK-1, which is referenced in Allegation #4, deals with the responsibilities of the incident commander.

OPA concludes that NE#1 properly exercised his supervisory responsibilities during this incident. He cleared people out of Cal Anderson Park consistent with the closure order and his conversations with the chain of command. He attempted to secure voluntary compliance from the individuals and was successful in this regard until one the members of the group spat at an officer. Moreover, once this occurred, NE#1 maintained control over the officers under his command, including limiting the arrests and uses of force that occurred.

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

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



Named Employee #1 - Allegation #4

14.090 - Crowd Management 14.090–TSK–1 Responsibilities of the Incident Commander

OPA finds that the conduct at issue here is that same as that discussed in the context of Allegation #3. Accordingly, for the same reasons as stated above, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #2 - Allegation #1

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 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.*)

As discussed above, BWV indicated that the Subject tried to intervene in the arrest of the male. When the Subject did so, NE#2 took hold of the Subject in order to take him into custody. NE#2 used his right hand to grab onto the Subject’s right arm, causing the Subject to lose his grip on the male. NE#2 pulled the Subject closer to him, causing a struggle between them. At this time, the Subject tried to pull away from NE#2 and, while doing so, crouched on the ground and pushed his back against a park wall. NE#2 readjusted his grip on the Subject, moving both his hands to grab onto the hood of the Subject’s hooded sweatshirt. The Subject continued to crouch with his back against the park wall, pulling away from NE#2. As NE#2 continued to pull on the Subject’s hood, WO#3 approached them and started to assist. She grabbed the Subject’s hood while NE#2 moved his grip to the Subject’s shoulder. WO#2 pulled the Subject away from the wall and the Subject moved quickly, causing WO#3 to fall down. NE#2 then regained control of the Subject’s hood, forcing the Subject down into a kneeling position. NE#2 was then able to get the Subject from a kneeling position onto the ground. NE#3 approached and took hold of the Subject’s head and body. NE#2 then handcuffed the Subject. No other force was used.

Under the circumstances of this case, OPA finds that this force was reasonable, necessary, and proportional. The officers had probable cause to arrest the Subject for both obstruction and trespass and he resisted their attempts to take him into custody. They were permitted to use control holds to take the Subject down to the ground, to control him there, and then to handcuff him. Neither NE#2 nor NE#3 ever struck the Subject or used anything other than low-level force on him. While he appeared to go motionless at one point, he was responsive when later treated and did not appear to have any significant injuries. Indeed, OPA saw no force on the video that would have been likely to cause the Subject to lose consciousness and that he did so does not yield the force out of policy.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both NE#2 and NE#3.

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



Named Employee #2 - Allegation #2

5.140 – Bias-Free Policing-POL 2. Officers Will Not Engage in Bias-Based Policing

To the extent it is alleged that the overall law enforcement activities engaged in by NE#2 and NE#3 were biased, this claim fails for the same reasons as discussed in the context of NE#1. Moreover, with regard to their conduct towards the Subject, his arrest was supported by clear probable cause and the force used by NE#2 and NE#3 was purposed to take him into custody. There is no basis to conclude that it was due to bias on their parts. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded as against both NE#2 and NE#3.

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

Named Employee #2 - Allegation #3

16.130 – POL – 2 Officers Providing Medical Aid 1. Recognizing the Urgency of Providing Medical Aid...

The Complainants alleged that NE#2 and NE#3 did not provide timely medical assistance to the Subject.

SPD Policy 16.130-POL-2(1) concerns the provision of medical aid by officers. The policy specifically provides the following instruction: “Recognizing the urgency of providing medical aid and the importance of preserving human life, officers will request medical aid, if needed, and render appropriate medical aid within their training as soon as reasonably possible.”

The BWV showed that NE#2 and NE#3 began assessing the Subject’s condition after his arrest and, when they realized that he was not responsive, they promptly called for medical attention. NE#3 continued to monitor the Subject until paramedics arrived and took over. In this respect, both officers complied with this policy.

As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against NE#2 and NE#3.

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

Named Employee #2 - Allegation #4

5.001 - Standards and Duties 14. Retaliation is prohibited

Similar to OPA’s assessment of the bias claim, the Complainants’ allegations of retaliation on the part of NE#2 and NE#3 are also unsupported by the evidence. This is based on the same reasons as articulated in the context of NE#1. Moreover, the arrest of the Subject was not retaliatory and was supported by probable cause.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded as against NE#2 and NE#3.

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

Named Employee #3 - Allegation #1

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

For the same reasons as stated above (see Named Employee #2 – Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.



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

Named Employee #3 - Allegation #2

5.140 – Bias-Free Policing-POL 2. Officers Will Not Engage in Bias-Based Policing

For the same reasons as stated above (see Named Employee #2 – Allegation #2), OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #3 - Allegation #3

16.130 – POL – 2 Officers Providing Medical Aid 1. Recognizing the Urgency of Providing Medical Aid...

For the same reasons as stated above (see Named Employee #2 – Allegation #3), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #3 - Allegation #4

5.001 - Standards and Duties 14. Retaliation is prohibited

For the same reasons as stated above (see Named Employee #2 – Allegation #4), OPA recommends that this allegation be Not Sustained – Unfounded.

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