



## ***CLOSED CASE SUMMARY***

ISSUED DATE: NOVEMBER 4, 2022

FROM: DIRECTOR GINO BETTS  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0094

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

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Lawful and Proper (Expedited)
# 2	5.140 - Bias-Free Policing 5.140-POL 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded (Expedited)

***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 Named Employee #1 (NE#1) used unjustified force against her based on her race and gender.

### **ADMINISTRATIVE NOTE:**

The Complainant also alleged responding officers were bare faced. If proven, that would violate Seattle's face covering policy (effective August 9, 2021 to April 3, 2022). During its intake investigation, OPA observed several unidentified officers in violation of the face covering policy. Identifying all involved officers would have required significant resources and only naming some officers would fail to address the scope of the concern. For those reasons, that allegation was returned to the chain of command for Supervisor Action.

This case was designated an Expedited Investigation. That means OPA, with the Office of Inspector General's (OIG) review and approval, believed it could reach and issue recommended findings based on its intake investigation, without interviewing the involved employees.

### **SUMMARY OF INVESTIGATION:**

The Complainant made an online OPA complaint alleging NE#1 "repeatedly assaulted" her on March 25, 2022. Specifically, the Complainant stated NE#1 "grabbed and physically tossed me." OPA opened an investigation.

During its investigation, OPA reviewed the OPA complaint, Computer-Aided Dispatch (CAD) call report and Body Worn Video (BWV). OPA made several attempts to contact the Complainant to arrange an interview. OPA received an emailed response noting the Complainant was on leave. The Complainant did not respond to further phone calls or emails.



OPA identified the incident by date, time, location, and involved officers. On BWV, OPA identified the Complainant based on her interactions with NE#1 and description of herself in the OPA complaint.

On March 25, 2022, SPD officers were on scene assisting the Parks Department clear an encampment. BWV showed community members standing in front of a tent. Officers repeatedly ordered the group to leave the encampment. The group did not comply. Officers attempted to arrest one of the subjects. NE#1 removed two subjects, one wearing a dark jacket (CM#1), from the group. NE#1 grabbed a community member in a yellow jacket.

The Complainant linked arms with a group in front of a tent. With both hands, NE#1 grabbed the Complainant's arm but let go after a community member quickly approached him from behind. The Complainant and the people she linked arms with appeared to trip and pull each other down against the tent. The Complainant screamed at the officers, "you're all attacking women of color!" NE#1 grabbed the Complainant's bicep area, pulled her from the tent and pushed her onto a pathway. A community member, recording on his cell phone, asked NE#1 to identify himself. NE#1 responded with his name and badge number.

### **ANALYSIS AND CONCLUSIONS:**

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

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

The Complainant alleged NE#1 used excessive force.

SPD Policy 8.200(1) requires force used by officers be reasonable, necessary, and proportional. Officers must use "objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective." 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 8.050. The policy lists several factors to evaluate reasonableness. (See *id.*) Force is necessary where "no reasonably effective alternative to the use of force appeared to exist" and "the amount of force used was reasonable to effect the lawful purpose intended." *Id.* Lastly, the force used must be proportional to the threat posed to the officer. *Id.*

Here, NE#1 used *de minimis* force to guide the uncooperative Complainant away from the tent. *De minimis* force is "Physical interaction meant to separate, guide, and/or control without the use of control techniques that are intended to or are reasonably likely to cause any pain or injury." SPD Policy 8.050. The policy provides the following example of *de minimis* force: "Using hands or equipment to stop, push back, separate, or escort a person without causing any pain, or in a manner that would reasonably cause any pain." *Id.* NE#1 used his hands to escort the Complainant away from the encampment. BWV did not capture the Complainant mention pain or injuries, nor was NE#1's use of force reasonably likely to cause pain or injury. Under SPD Policy 8.400, *de minimis* force does not require a report.

Further, officers advised the uncooperative group at the encampment to leave or face arrest. The group, including the Complainant, elected to stay and actively prevent officers' from clearing the area. At that point, officers began arresting the group. Accordingly, NE#1's *de minimis*, reasonable, necessary, and proportional force was authorized under SPD Policy 8.200.



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

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

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

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

It was alleged NE#1 engaged in biased policing based on the Complainant's race and gender.

SPD policy prohibits biased policing, defined 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-POL. That includes different treatment based on race and/or gender. *See id.*

This allegation was premised on the Complainant stating officers were "attacking women of color." BWV does not support the Complainant's assertion NE#1—or any officer—based their decision to clear the area on anyone's sex or race.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

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