



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 11, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0432

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	Not Sustained - Training Referral

Named Employee #2

Allegation(s):		Director's Findings
# 1	8.000 - Use of Force Core Principles 8.000 - POL 1. Every Member of the Seattle Police Department is Committed to Upholding the Constitution, Laws of the United States [...]	Not Sustained - Unfounded (Expedited)
# 2	8.000 - Use of Force Core Principles 8.000 - POL 4. An Officer Will Use Only Force That Is Objectively Reasonable, Necessary, and Proportional to the Threat or Resistance of a Subject	Not Sustained - Unfounded (Expedited)

Named Employee #3

Allegation(s):		Director's Findings
# 1	8.000 - Use of Force Core Principles 8.000 - POL 1. Every Member of the Seattle Police Department is Committed to Upholding the Constitution, Laws of the United States [...]	Not Sustained - Unfounded (Expedited)
# 2	8.000 - Use of Force Core Principles 8.000 - POL 4. An Officer Will Use Only Force That Is Objectively Reasonable, Necessary, and Proportional to the Threat or Resistance of a Subject	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:

It was alleged that Named Employee #1 (NE#1) was unprofessional by laughing while officers cleared an encampment. It was also alleged that Named Employee #2 (NE#2) and Named Employee #3 (NE#3) used unauthorized and unlawful force against encampment inhabitants.

ADMINISTRATIVE NOTE:

On May 12, 2023, the Office of Inspector General (OIG) certified OPA's investigation as thorough, timely, and objective. OIG also agreed with designating the allegations against NE#2 and NE#3 for Expedited Investigation. That means OPA



believed it could reach and issue recommended findings based solely on its intake investigation without interviewing the involved employee about those allegations. Under the related collective bargaining agreement, an Expedited Investigation may not result in a sustained finding. The allegations against NE#1 underwent a full investigation. NE#1 is currently an OPA investigator, but he had no ties to OPA at the time of the incident or during OPA's investigation. NE#1's first day at OPA was May 24, 2022, almost two weeks after OIG's certification. OPA also attempted several contacts with Community Member #1 (CM#1)—who posted a video of the encampment clearing on Twitter—to arrange an interview but was unsuccessful.

SUMMARY OF INVESTIGATION:

The Complainant—a local politician—emailed the mayor's office and OPA about CM#1's Twitter posting showing a video and 11 photos from the encampment clearing. The Complainant described the officers' behavior as disturbing and indicated that most encampment inhabitants were not offered alternate shelter. The Complainant wrote, "... there is no cause for the hostility shown towards housed neighbors who are just trying to help..." and there was "... definitely no cause to physically touch any of those individuals...." Further, the Complainant suggested officers "[stood] around laughing as people around them cry because they are displaced once again." A senior representative from the mayor's office responded to the Complainant's email, noting that all encampment residents were offered alternate shelter.

Witness Employee #1 (WE#1) wrote the related incident report. In it, he wrote:

"There were about fifteen subjects present. Four subjects accepted shelter provided by the HOPE Team. Four vehicles were towed." WE#1 also wrote:

Officers assisted Seattle Pacific University (SPU) "and Seattle Parks with an encampment clean. We arrived and stood by as eight structures and ten vehicles were removed from the scene. There were about fifteen subjects present. Four subjects accepted shelter provided by the HOPE Team. Four vehicles were towed. There were about six activists/protestors present."

Body-worn video (BWV) captured the named employees' actions. In summary, it showed officers approaching a tow truck near a motorhome. Community Member #2 (CM#2) and Community Member #3 (CM#3) stood in front of the motorhome to prevent the tow truck from taking it.



NE#2 ordered CM#2 and CM#3 to move, but they refused. This exchange followed:

- NE#2- So we're going to ask you to move out of the way, or you're going to get arrested for obstruction.
- CM#3- This RV is going to drive away in less than five minutes.
- NE#2- It should have drove away 30 minutes ago.
- CM#3- This person wasn't there.
- NE#2- Okay. So, you need to move. We're going to escort you off the site. Okay? Otherwise, you're going to be arrested if you don't move.
- CM#3- This is her home.
- NE#2- You're getting arr... Okay. You're getting escorted off the site right now.

CM#2 and CM#3 maintained their position in front of the motorhome. About twenty seconds later, NE#2 put his right hand on CM#3's left arm. CM#2 pulled CM#3 and yelled, "Get your hands off of her."





NE#2 used both hands to grab CM#2's left arm. NE#3 twice said, "Time to go," and an unidentified person said, "You're going to get arrested." CM#2 and CM#3 stepped away from the motorhome. Officers followed them as CM#3 argued that the motorhome's owner was nearby:

- CM#3- [The motorhome's owner is] going to be on the street. In the winter.
- NE#2- Let's move out of the way. There's outreach on-site. They can talk to outreach.
- CM#3- What is outreach offering?"
- NE#2- I don't know.
- CM#3- They haven't talked to this person. This person isn't here.
- NE#2- They've been out here every day for a week and a half.
- CM#3- I've been out here also. I haven't seen them.
- NE#2- Okay.

NE#3 grabbed a nearby shopping cart with his right hand and rested his right foot on the chassis. CM#3 approached NE#3 and yelled, "Get your feet off of her property right the fuck now!" NE#3 extended his left arm with his hand open to stop CM#2's advancement, contacting her right shoulder.



CM#2 yelled, "Don't put your hands on me." CM#3 and an unidentified onlooker physically restrained CM#2. CM#2 told NE#3, "Don't put your hand on me, you piece of shit." NE#3 replied, "Back up." CM#2 said, "I wasn't even touching you. You touched me." NE#3 lowered his arm as CM#2 was pulled away. NE#3 repeated, "Back up." CM#2 replied, "I'm not going to back up." NE#2 told CM#2, "You're getting way too close." This exchange followed:

- CM#2- I'm not going to back up. And what are you going to do about it?
- NE#2- Back up.
- CM#2- Or what? Or what?
- NE#2- You just need to move so they can work.
- CM#2- Okay. And we're working. So, make me back up. Cause it's back up or what, right? Isn't that the threat?
- NE#2- You're going to go to jail (unintelligible).

¹ The white box covers emblems on CM#2's jacket.



- CM#2- I'm not even moving. You said backup. I haven't even moved.
- NE#2- Okay. We're good.

CM#2 stared at NE#2 before she and CM#3 walked off. CM#2 said as they walked away, "How about you pick something up, you useless pig?" CM#2 and CM#3 started cleaning up the campsite. NE#2 spoke with a campsite resident:

- NE#2- You leaving your tent?
- Resident- Yeah.
- NE#2- Congrats on the tiny home.
- Resident- Yeah. I'm done.
- NE#2- Thank you.

NE#1's BWV showed him and other officers approaching a tent. As they got close, a woman's voice inside said, "Get the fuck out of my face! Fucking dump truck bitch!" She then exited the tent and crossed the street. After that, WE#1 told NE#1, "Well, that turned out alright, I guess." NE#1 replied, "I don't see what your guys' concern was." WE#1 said, "Safety first. You never know." NE#1 laughed.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant alleged that NE#1 was unprofessional by laughing during an encampment clearing.

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers," whether on or off duty. SPD Policy 5.001-POL-10. Additionally, the policy instructs Department employees to "avoid unnecessary escalation of events even if those events do not end in reportable uses of force." *Id.* Furthermore, the policy states: "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 derogatory, contemptuous, or disrespectful toward any person.” *Id.*

Here, CM#1’s Twitter post showed NE#1 broadly smiling while talking to other officers during the encampment clearing. The Twitter caption read, “Cops laughing while the people they are sweeping are on the sidewalk crying.” However, BWV or CM#1’s photos captured any campsite resident crying, but a photo showed someone with their hands on their head and back to the officers. NE#1 told OPA, and BWV confirmed he was laughing at another officer, not a civilian. BWV showed a campsite resident about 15 feet away gathering belongings inside a tent when NE#1 laughed. While it is clear NE#1’s broad smile was not directed at any civilian, as the acting sergeant, NE#1 should have been aware of the unintended message potentially sent to nearby campsite evacuees and protestors. Although no civilian looked to be within earshot, they were still watching, as evidenced by him being photographed mid-laugh. Overall, the suggests NE#1’s misstep was unwilful and “...best addressed through training, communication, or coaching by the employee’s supervisor.” See Internal Operations and Training Manual (7.2)(A). Moreover, NE#1 worked at the department for 13 years and has no prior sustained findings.

Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

- **Required Training:** NE#1’s chain of command should discuss OPA’s findings with NE#1, review SPD Policy 5.001-POL-10 with NE#1, and provide training and counseling deemed appropriate. Retraining and counseling should be documented and maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**

Named Employee #2 - Allegation #1

8.000 - Use of Force Core Principles 8.000 - POL 1. Every Member of the Seattle Police Department is Committed to Upholding the Constitution, Laws of the United States [...].

NE#2 allegedly unjustifiably relied on force to accomplish a police mission.

“It is the policy of the Seattle Police Department to accomplish the police mission with the cooperation of the public and as effectively as possible, and with minimal reliance upon the use of physical force.” SPD Policy 8.000-POL-1. “The community expects, and the Seattle Police Department requires that officers use only the force necessary to perform their duties and that such force be proportional to the threat or resistance of the subject under the circumstances.” *Id.* “An officer’s commitment to public safety includes the welfare of members of the public, the officer, and fellow officers, emphasizing respect, professionalism, and protection of human life, even when force is necessary.” *Id.* “Officers who violate those values by using objectively unreasonable force degrade the community’s confidence, violate the rights of individuals upon whom unreasonable force is used, and may expose the Department and fellow officers to legal and physical hazards.” *Id.* “Conversely, officers who fail to use timely and adequate force when necessary may endanger themselves, the community, and fellow officers.” *Id.*

Here, officers exhibited patience with CM#2 and CM#3 before touching either. For about two minutes, with calm and polite tones, they asked them to relocate and awaited their compliance. Without aggression, NE#2 grabbed CM#3’s arm after several failed orders to relocate. However, CM#2 responded aggressively as she pulled CM#3 and yelled, “Get your hands off of her.” NE#2 unforcefully grabbed CM#2’s left arm as Witness Employee #2 (WE#2) guided her forward with his extended left hand against her right shoulder.



CM#2 aggressively turned, flung WE#2's hand off her, and stared down NE#2 as CM#3 restrained her.



When NE#3 put his foot on the bottom part of a nearby shopping cart, CM#2 suddenly charged him and demanded he remove it "...right fucking now." NE#3 non-forcefully extended his arm to create separation and ordered her to back up.



CM#2 repeatedly refused to back up and asked, “What are you going to do about it?” and “Or, what?” Nevertheless, no greater than *de minimis*² force was used against her. Therefore, officers used lawful and minimal force to gain the community members’ compliance and create separation from CM#2.

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

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

Named Employee #2 - Allegation #2

8.000 - Use of Force Core Principles 8.000 - POL 4. An Officer Will Use Only Force That Is Objectively Reasonable, Necessary, and Proportional to the Threat or Resistance of a Subject.

NE#2 allegedly used unauthorized force against community members.

An officer’s force must be reasonable, necessary, and proportional. SPD Policy 8.200(1). Officers shall only use “objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective.” *Id.* 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. Reasonableness must consider that officers are often forced to make “split-second decisions” in tense, dynamic circumstances. *Id.* The policy also lists several factors that should be weighed when evaluating 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.* Last, the force used must be proportional to the threat posed to the officer. *Id.*

² *De minimis* force is physical interaction meant to separate, guide, and/or control without using control techniques that are intended to or are reasonably likely to cause any pain or injury. SPD Policy 8.050.



Here, as outlined above, officers used *de minimis* force against CM#2 and CM#3. Further, each force application was objectively reasonable, necessary, and proportional to carry out their lawful purpose of clearing the campsite. While OPA applauds CM#2 and CM#3 empathy for the campsite residents, prohibiting the motorhome's towing was unlawful. See RCW 9A.76.020 (A person is guilty of obstructing a law enforcement officer if they willfully hinder, delay, or obstruct any law enforcement officer in discharging their official powers or duties.) The officers told CM#2 and CM#3 that the campsite residents were notified about the deadline to remove their property and that the deadline had passed. The motorhome also had a green 72-hour relocation notice on its windshield, suggesting its owner had prior notice to move it.



Nevertheless, rather than lawfully arresting them, the officers demonstrated patience and restraint by only touching the community members when necessary, despite CM#2's aggression.

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

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

Named Employee #3 - Allegation #1

8.000 - Use of Force Core Principles 8.000 - POL 1. Every Member of the Seattle Police Department is Committed to Upholding the Constitution, Laws of the United States [...].

NE#3 allegedly unjustifiably relied on force to accomplish a police mission.

For the reasons at Named Employee #2 – Allegation #1, OPA recommends this allegation be Not Sustained – Unfounded.

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

³ The red arrow points to the relocation notice.



Named Employee #3 - Allegation #2

8.000 - Use of Force Core Principles 8.000 - POL 4. An Officer Will Use Only Force That Is Objectively Reasonable, Necessary, and Proportional to the Threat or Resistance of a Subject.

NE#3 allegedly used unauthorized force against community members.

For the reasons at Named Employee #2 – Allegation #2, OPA recommends this allegation be Not Sustained – Unfounded.

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