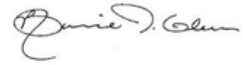

Issued Date: JULY 4, 2024

From: Deputy Director Bonnie Glenn on Behalf of Director Gino Betts, Jr.
Office of Police Accountability



Case Number: 2024OPA-0015

Allegations of Misconduct & Director's Findings

Named Employee #1

- 1. Allegation #1:** 14.090 – Crowd Management, Intervention, and Control, 14.090-POL-3
The Department Uses the Incident Command System (ICS) for Crowd Management Events, 2. The Incident Commander Retains Ultimate Responsibility for the Actions of Subordinates (Effective April 24, 2023)
Finding: Not Sustained - Unfounded
- 2. Allegation #2:** 14.090 – Crowd Management, Intervention, and Control, 14.090-POL-6
The Incident Commander Will Employ Crowd Management Strategies Prior to and During an Event, Whenever Feasible (Effective April 24, 2023)
Finding: Not Sustained - Unfounded
- 3. Allegation #3:** 14.090 – Crowd Management, Intervention, and Control, 14.090-POL-8
Crowd Control and Dispersal, 1. The Incident Commander May Order that a Public Safety Order be Issued (Effective April 24, 2023)
Finding: Not Sustained - Unfounded

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections may be written in the first person.

Executive Summary:

The Complainants alleged that Named Employee #1 (NE#1)—a captain coordinating SPD's response to a protest— failed to remove protestors blocking Interstate 5 (I-5).

Administrative Note:

During its intake investigation, OPA identified that Witness Employee #1 (WE#1) authorized an inaccurate posting on SPD's X (formerly known as Twitter) account indicating dispersal orders were issued at protestors to clear I-5. WE#1 cited a miscommunication between public information officers and dispatch. OPA sent WE#1's potential SPD Policy 5.001-POL-10 (Employees Will Strive to be Professional) violation to WE#1's chain of command for Supervisor Action. Supervisor Action generally involves a minor policy violation or performance issue that is

best addressed through training, communication, or coaching by the employee's supervisor. See OPA Internal Operations and Training Manual section 5.4(B)(ii).

On June 25, 2024, the Office of Inspector General certified OPA's investigation as thorough, timely, and objective.

Summary of Investigation:

A. OPA Complaint

On January 6 and 7, 2024, three complainants submitted OPA complaints, expressing dissatisfaction that SPD failed to remove protestors blocking traffic on I-5.

OPA investigated the complaints, reviewing the computer-aided dispatch (CAD) call report, police reports, the Washington State Patrol's (WSP) after action statement, SPD's after action report (AAR), and body-worn video (BWV). OPA also interviewed NE#1 and Witness Employee #3 (WE#3). OPA did not interview the Complainants because their OPA complaints were commentaries about the length of time protestors blocked I-5 and the lack of arrests.

B. Computer-Aided Dispatch (CAD) Call Report

On January 6, 2024, at 10:56 AM, CAD call remarks noted, "FLOOD SEATTLE DEMO[NSTRATION]."

C. Police Reports

Witness Employee #2 (WE#2)—a lieutenant—wrote an incident report, documenting that on January 6, 2024, around 200 protestors entered I-5 northbound while around 300 protestors were divided between two overpasses. WE#2 wrote that the protestors placed makeshift bodies in sheets on the roadway and hung banners from the overpasses. WE#2 wrote that the protestors employed a "sleeping dragon" device on I-5 and refused to leave. According to WSP, a "sleeping dragon" device is used to hinder responders as it requires safe extraction, which could only be done in a controlled environment, not while a protest is active. Handling this device requires highly skilled and trained personnel due to its complexity and difficulty to resolve safely. WE#2 wrote that the "well-coordinated event" disrupted I-5 for nearly six hours without any arrests executed.

Witness Employee #3 (WE#3)—a Community Response Group (CRG) lieutenant—wrote a supplement report documenting that protestors blocked I-5 northbound with 12 vehicles. WE#3 wrote that protestors were warned via a long-range acoustic device (LRAD) that they were subject to arrest for blocking I-5, which was a crime and dangerous. WE#3 wrote that WSP and SPD's Public Order Engagement Team (POET) negotiated with the protestors for about four hours until rain caused the group to disperse. WE#3 wrote that WSP towed the abandoned vehicles. WE#3 described the event as highly planned and executed.

D. WSP's After Action Statement – January 6th Closure of I-5 Due to Protests

WSP's communications director (WSP#1) wrote the after-action statement. WSP#1 wrote that eight protestors chained themselves with "sleeping dragon" devices, delaying I-5's reopening.

WSP#1 wrote that WSP needed time to assemble sufficient resources to execute mass arrests. WSP#1 noted, “Despite the enormous impacts to the motoring public, the situation was at this point stable; troopers and SPD officers were engaging with the group, and there was no violence. Rushing things had the potential to turn an otherwise peaceful event violent.” WPS#1 wrote that POET utilized de-escalation tactics to acquire the protestors’ voluntary compliance. WSP#1 wrote that communication via LRAD, person-to-person engagement, and heavy rain caused the protestors to disperse.

WSP#1 wrote that I-5’s reopening was further delayed because WSP summoned bomb-sniffing dogs to inspect the vehicles before they could be towed. WSP#1 wrote that WSP was prepared to execute arrests if the protestors did not leave. WSP#1 noted, “The crowd size necessitated waiting for the additional resources to ensure the safest possible outcome of a potentially mass arrest incident. When it comes to safely resolving complicated, volatile, and potentially dangerous situations, time is usually our friend. We have a duty to do it right with safety for all, and we accomplished that.” WSP#1 acknowledged I-5’s reopening required significant time because:

This was a highly organized and coordinated effort by a very large number of committed individuals. The sheer size of the crowd and new tactics of clustering a significant number of vehicles and then abandoning them once the protestors left the freeway, along with the use of the Sleeping Dragon device, combined to create unique safety challenges that increased and prolonged the tasking and efforts, as well as increasing the tools and personnel necessary for the eventual safe resolution.

E. SPD’s Action Report (AAR)

NE#1’s AAR documented the protest and the decision making process. NE#1 wrote that SPD had no intel indicating the protestors would march on I-5 since marches were often fluid and dynamic. NE#1 wrote that SPD aimed to “keep people safe, enforce the law[,] and preserve order.” NE#1 wrote that SPD could not prevent protestors from marching on I-5 but would support WSP since SPD could not provide large-scale crowd movement support. NE#1 wrote that CRG and the Situational Awareness Team implemented crowd control measures and reduced the need to use force by monitoring crowd activity, arresting individuals engaged in criminal activity, and intervening if violent crime or large-scale property destruction occurred. NE#1 wrote that SPD utilized de-escalation tactics for everyone’s safety.

NE#1 described how the protest unfolded consistent with the abovementioned evidence. NE#1 wrote that he responded to the scene and deployed LRAD and POET, believing their engagement would be effective based on prior successes in managing protests. NE#1 wrote that WSP—while awaiting additional resources to arrive—was preparing to issue a dispersal order and remove protestors, but the protestors naturally dispersed due to deteriorating weather conditions. NE#1 believed POET’s engagement with the protestors contributed to a peaceful resolution.

F. Body-Worn Video (BWV)

WE#3’s BWV captured the following:

WE#3 was with SPD officers and WSP troopers on I-5. WE#3 told a WSP commander that SPD's chief did not authorize them to use force on I-5. The WSP commander acknowledged, saying his goal was not to use any force. WE#3 approached NE#1, telling him that WSP and POET were attempting to engage the protestors using LRAD. NE#1 told WE#3 that WSP should use LRAD, which WE#3 acknowledged.

G. OPA Interviews

1. Named Employee #1 (NE#1)

On June 12, 2024, OPA interviewed NE#1, whose statements were consistent with the abovementioned evidence. NE#1 said SPD responded to weekly protests starting October 7, 2023, and details about each protest—like size, nature, or location—often remained unknown. NE#1 said he was the incident commander for the January 6, 2024, protest and noted limited SPD and WSP knowledge about the protest. Also, that no intel was provided suggesting the protestors intended to march on I-5. NE#1 said I-5 was WSP's jurisdiction while SPD would supplement with limited support. NE#1 said SPD would intervene for life safety concerns, not crowd management purposes. NE#1 said SPD used LRAD to warn protestors that they could be arrested for entering I-5, which was unlawful and dangerous. NE#1 said the 12 parked vehicles, not the street protestors, caused I-5's closure. NE#1 said WSP utilized LRAD and POET to acquire voluntary compliance, but the protestors refused to leave. NE#1 said the protestors intended to leave once WSP issued a dispersal order, but the deteriorating weather conditions caused them to disperse instead.

NE#1 said officers would likely have needed to deploy pepper spray, blast balls, and similar munitions to prevent protestors from entering I-5. NE#1 disapproved this approach because the protestors were nonviolent, the location where officers would be positioned was unsafe, SPD was understaffed to execute denial tactics, and use of force under these circumstances contravened SPD's philosophy on facilitating First Amendment rights. NE#1 said that the protestors on I-5 appeared to invite a physical confrontation by goading officers to arrest them, but officers sought de-escalation instead. Citing SPD policy, NE#1 said there were insufficient acts or conduct creating a substantial risk of injury to people or substantial harm to property that justified NE#1's issuance of a dispersal order. NE#1 noted no safety concerns after the 12 parked vehicles shut down I-5. NE#1 reiterated that WSP, not SPD, was responsible for managing the approximately 100 protestors on I-5, so WSP was responsible for issuing the dispersal order.

Citing CMIC Matrix strategies, NE#1 said SPD developed an incident action plan for the protest, mitigated issues during the protest, communicated with the protestors using LRAD, considered the protestors' history and risk, identified and deployed appropriate resources, provided direction and expectations to officers, monitored the crowd's behavior, utilized de-escalation tactics like maintaining distance, sought voluntary compliance, and planned to execute limited and isolated arrests. NE#1 said he ensured a peaceful assembly as no force was used and no one was injured. NE#1 said SPD's command staff approved his plans.

2. Witness Employee #3 (WE#3)

On June 14, 2024, OPA interviewed WE#3, whose statements were consistent with the abovementioned evidence. WE#3 cited a lack of actionable intel that prevented SPD from developing a plan to address the protest. WE#3 said because WSP would not prevent the protestors from entering I-5, SPD would not use force against them. WE#3 said NE#1 decided that SPD's role was to support WSP. WE#3 said I-5's closure occurred quickly. WE#3 said officers were prepared to respond to the protestors on the overpass if they became violent or threw items. WE#3 said it was impossible to secure all on and off ramps in the area and prevent 500 protestors from marching on I-5, given insufficient staffing and SPD's decision to not deploy munitions or use physical force.

Analysis and Conclusions:

Named Employee #1 – Allegation #1

14.090 – Crowd Management, Intervention, and Control, 14.090-POL-3 The Department Uses the Incident Command System (ICS) for Crowd Management Events, 2. The Incident Commander Retains Ultimate Responsibility for the Actions of Subordinates (Effective April 24, 2023)

It was alleged that NE#1 failed as the incident commander to respond to protestors blocking I-5.

In crowd management events, the incident commander retains ultimate responsibility for subordinates' actions. SPD Interim Policy 14.090-POL-3(2) (effective April 24, 2023). To fulfill this obligation, the incident commander will be available for consultation. *Id.* A tactical advisor is assigned to the incident commander when feasible. *Id.* Tactical advisors are advisory, and the incident commander retains ultimate responsibility for subordinates' actions. *Id.*

As the incident commander, NE#1 assumed responsibility for SPD's response to the protest. However, WSP's jurisdiction over I-5 relegated SPD to a support role, limiting SPD's authority to act against the protestors. SPD's support role included deploying LRAD and POET, utilizing de-escalation tactics, prohibiting use of force, and ultimately ensuring a peaceful resolution—all of which NE#1 oversaw as the incident commander. OPA finds NE#1 did not abdicate his responsibility.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 – Allegation #2

14.090 – Crowd Management, Intervention, and Control, 14.090-POL-6 The Incident Commander Will Employ Crowd Management Strategies Prior to and During an Event, Whenever Feasible (Effective April 24, 2023)

It was alleged that NE#1 failed to employ crowd management strategies.

The incident commander will employ crowd management strategies before and during an event, whenever feasible. SPD Interim Policy 14.090-POL-6 (effective April 24, 2023). The incident

commander will consider strategies in the Crowd Management, Intervention, and Control (CMIC) Matrix when planning and managing an event. *Id.*

NE#1 directed many crowd management strategies as reflected in the CMIC Matrix. SPD's responses, at NE#1's direction, included officers determining the history and risk of the group, engendering facilitation, not confrontation, monitoring and assessing crowd behavior, developing an incident action plan, deploying POET to communicate with the protestors, using amplified sound to communicate intent and gain compliance, and using low profile tactics. Thus, NE#1 directed police responses as reflected in the CMIC Matrix.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 – Allegation #3

14.090 – Crowd Management, Intervention, and Control, 14.090-POL-8 Crowd Control and Dispersal, 1. The Incident Commander May Order that a Public Safety Order be Issued (Effective April 24, 2023)

The Complainants alleged that NE#1 failed to remove protestors blocking I-5.

The incident commander may issue a public safety order to move, disperse, or refrain from specified activities in the immediate vicinity upon determining that acts or conduct within a crowd create a substantial risk of causing injury to persons or substantial harm to property. SPD Interim Policy 14.090-POL-8(1) (effective April 24, 2023). The incident commander will not issue a public safety order unless the incident commander has determined that the risk observed cannot be contained through crowd management or crowd intervention strategies. *Id.*

Here, a dispersal order was not issued due to complicated factors. First, protestors used 12 vehicles to block I-5 and chained themselves using “sleeping dragon” devices, delaying law enforcement's attempt at reopening I-5. Second, WSP and SPD were inadequately staffed to execute mass arrests. Third, WSP and SPD aimed to resolve the protest peacefully by utilizing de-escalation tactics, communicating via LRAD, and deploying POET rather than authorizing force against a nonviolent crowd. However, despite repeated warnings, the protestors were noncompliant and appeared eager to engage in a physical confrontation with law enforcement—an invitation that WSP and SPD rejected to ensure no injuries. Fourth, NE#1 believed there were insufficient acts or conduct creating a substantial risk of injury to people or substantial harm to property that justified NE#1's issuance of a dispersal order. NE#1 noted no safety concerns after I-5's closure. Fifth, WSP had jurisdiction over I-5, meaning WSP, not SPD, was responsible for managing the protestors on I-5 while SPD provided support.

NE#1's supervision of SPD's response to the protest reflected careful consideration of these facts during a rapidly evolving situation. NE#1's authority to issue a dispersal order was constrained, but OPA finds that NE#1 exercised reasonable discretion in coordinating SPD's response based on the information known to him at the time.

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

Recommended Finding: **Not Sustained - Unfounded**