



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 3, 2020

CASE NUMBER: 2020OPA-0350

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)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	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 they were subjected to excessive force when they were pushed back by officers. Complainant #1 further alleged that officers violated policy by not recording Body Worn Video. Lastly, Complainant #2 asserted that he was treated aggressively because of his sexual orientation.

SUMMARY OF INVESTIGATION:

A. Background and Allegations

This case arises out of the demonstrations that occurred within Seattle and across the nation in the wake of George Floyd’s murder by a Minneapolis Police Officer. The specific case addressed here occurred on the evening of June 4, 2020, during the first week of the protests.

The Complainants reported that they were standing in the vicinity of a fence barricade located at East Pine Street and 13th Avenue. They said that they were forcefully pushed back by officers and that this constituted an inappropriate use of force. Complainant #2 also asserted to a Lieutenant that he felt that he was aggressively targeted by the officers because of his sexual orientation. As Named Employee #1 (NE#1) gave the order for the officers – referred to here as Witness Officer #1 (WO#1) and Witness Officer #2 (WO#2) – to push the Complainants and others back, the force and bias allegations were classified for investigation against him.

It was also alleged that officers failed to record Body Worn Video (BWV). This allegation was added to a separate case in which the overall absence of video at demonstrations is being evaluated (see 2020OPA-0326).

B. Complainant Interviews

With regard to its investigation of the force and bias claims, OPA attempted to interview both of the Complainants. Complainant #1 responded to OPA and was interviewed; however, Complainant #2 did not.



Complainant #1 told OPA that there was a group of demonstrators at the barricade with the intention of preventing vehicles from moving through. She stated that she was situated in the center of the street but a few feet away from that other group. She heard officers say, "move back," but she thought the officers were speaking with the other group. She said that officers then approached her and told her to move back. She said that she was only given a few seconds before she was pushed back by the officers. She said that she was stepping back when the baton made contact with her. She told OPA that the shove was not forceful, and it did not cause her pain or injury. She asserted that her primary issue with this case was the apparent lack of BWV.

C. Analysis of Body Worn Video

As part of its investigation, OPA reviewed BWV, including the video recorded statements provided by both Complainants. OPA also evaluated the documentation generated by the involved and witness officers. This evidence indicated that officers were staffing a fenced barricade that crossed the street. A charter bus drove toward the barricade. Individuals were standing in the middle of the street with their arms linked. NE#1 requested that the individuals move multiple times. The individuals declined to do so. NE#1 then ordered officers to push the individuals who were in the street back to the side. WO#1 and WO#2 pushed the Complainants back. They did so by walking forward with their batons extended and positioned across their bodies. BWV showed the charter bus driving through the middle of the street, approximately three feet from the center line.

Both of the Complainants immediately asserted that this was improper. They raised their concerns with a Lieutenant. As discussed above, this was recorded on BWV.

Complainant #1 told the Lieutenant that she was standing by the center line of the roadway. She felt that she was moved over far enough and did not have to go any further. She said that, regardless and even after she told WO#1 and WO#2 that she was already far enough out of the way, they still pushed her back. She heard officers saying that demonstrators needed to move back, but she was not aware that they were talking to her. She told the Lieutenant that she did not suffer any pain or injury from the push. Consistent with her statement to OPA, Complainant #1 articulated that her main complaint concerned the apparent lack of BWV.

Complainant #2 said that the officers were "aggressive" with him. He added that, "especially as a queer man, it seemed homophobic." Complainant #2 specifically pointed to WO#1 as being aggressive and said that she pushed him back with her baton even though the bus had already moved through. He felt that this was inappropriate even though he was being "loud."

The Lieutenant interviewed one more witness. The witness said that he observed what occurred from an apartment six floors up. He said that he saw the demonstrators in the street and heard officers give orders for them to move back. He told the Lieutenant that, when the demonstrators did not do so, the officers moved forward in a "slow march." The witness said that he did not observe any yelling or shoving by the officers. The witness also referenced his concern with the lack of BWV.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - 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.*)

Based on a review of the totality of the record, OPA identified the following facts as not being in dispute: (1) the Complainants were in the street, near the center line; (2) officers generally directed demonstrators in the street to move back; (3) a charter bus was attempting to pass through and did drive up the middle of the street within feet of the center line; (4) WO#1 and WO#2 pushed the Complainants back with their batons; and (5) neither of the Complainants suffered pain or injuries.

Given these facts, OPA finds that the force used to move the complainants back did not violate policy. As a threshold matter, while the Complainants had a First Amendment right to demonstrate and, if they were so inclined, to do so in the street, that right was not unfettered. Notably, the government was permitted to impose reasonable time, place, and manner restrictions that were content neutral. Moving the Complainants back to allow for the charter bus to make egress was an appropriate restriction. Notably, it was temporary, it had nothing to do with the content of the Complainants’ speech, and it was purposed to effectuate a legitimate law enforcement objective. The BWV further established that the charter bus traveled near the center line of the street, which, in Complainant #1’s own version of facts, was where she was standing. Lastly, while not dispositive standing alone, OPA finds it significant that the force used was only that needed to move the Complainants back and that there was no allegation that the Complainants suffered any pain or injuries.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

Named Employee #1 - Allegation #2

5.140 - Bias-Free Policing 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.*)

As discussed above, Complainant #2 asserted that he was aggressively pushed by WO#1 due to his sexual orientation. In its analysis of the Complainants’ force allegation, OPA concluded that WO#1 and WO#2 pushed the Complainants back based on an order given by NE#1 and because they were trying to clear the road for the oncoming charter bus. There was no evidence that this was done for any other improper motive, including based on WO#1’s perception of Complainant #2’s sexual orientation. To this end, Complainant #2 provided no evidence indicating how WO#1 would have known what his sexual orientation was or, for that matter, that her actions were informed by this information. The failure to do so undercuts Complainant #2’s allegation.



For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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