

Portland Police Bureau _____

Police Review Board: Summaries and Reports

February 2022



**Portland Police Bureau
1111 SW 2nd Ave.
Portland OR 97204**

Police Review Board Case Outcomes and Stipulated Discipline

Publication: February 2022

Police Review Board Performance or Conduct

Board or Finding Date: 4/28/2021 Case # 2021-B-0001

Final Decision Two Workweek SWOP Decision made by: Chief Charles Lovell

Discipline Guide Category: C (Aggravated)

Recommendation 1 Status: Declined by Deputy Chief Davis. Employee expected to modify their driving behavior and decision-making in such a way as to meet the Bureau's standards. Additional training required of the employee was completed.

Recommendation 2 Status: -

Recommendation 3 Status: -

Police Review Board Force

Board or Finding Date: 6/23/2021 Case # 2020-C-0269

Final Decision Resigned Decision made by: Deputy Chief Chris Davis

Discipline Guide Category: D (Presumptive)

Recommendation 1 Status: Amended by Deputy Chief Davis to review the Bureau's application of the code language and a clarification for members about how to evaluate objects possessed in parks for their potential to be used as weapons.

Recommendation 2 Status: -

Recommendation 3 Status: -

Police Review Board Performance or Conduct

Board or Finding Date: 7/7/2021 Case # 2020-C-0133

Final Decision CC Decision made by: Deputy Chief Michael Frome

Discipline Guide Category: B (Mitigated)

Recommendation 1 Status: "Other" recommendation declined as impractical by Deputy Chief Frome.

Recommendation 2 Status: Training Recommendation declined by Deputy Chief Frome: The Bureau recently developed training regarding options for officers who find their vehicles surrounded or blocked by protesters. Officers are already trained in decision-making, and it is impossible to anticipate and provide specific training for every situation officers may find themselves in. There was nothing in this incident requiring a report be written.

Recommendation 3 Status: Policy recommendation already in progress.

Police Review Board Force

Board or Finding Date: 9/2/2021 Case # 2020-C-0208

Final Decision LOR Decision made by: Chief Charles Lovell

Discipline Guide Category: C (Mitigated)

Recommendation 1 Status: -

Recommendation 2 Status: -

Recommendation 3 Status: -

Police Review Board Case Outcomes and Stipulated Discipline Publication: February 2022

Police Review Board Force

Board or Finding Date: 12/1/2021 Case # 2020-C-0137

Final Decision Not Sustained Decision made by: Deputy Chief Michael Frome

Discipline Guide Category: N/A - Not Sustained Finding

Recommendation 1 Status: Amended by Deputy Chief Frome to have the PPB's DOJ team to bring up this issue with the DOJ as part of a larger conversation being recommended by the COCL about the selection of trainers.

Recommendation 2 Status: -

Recommendation 3 Status: -

Police Review Board Performance or Conduct

Board or Finding Date: 12/2/2021 Case # 2021-B-0006

Final Decision Exonerated Decision made by: Deputy Chief Michael Frome

Discipline Guide Category: N/A - Exonerated Finding

Recommendation 1 Status: Accepted

Recommendation 2 Status: -

Recommendation 3 Status: -

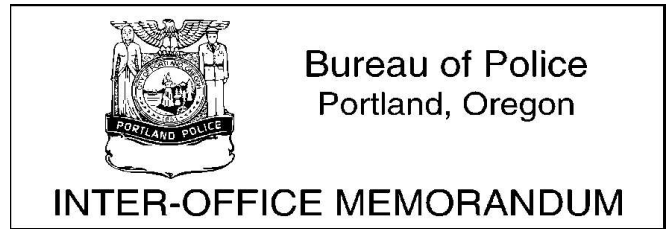
Notes:

No cases with stipulated discipline to report.

If an employee resigns or retires during an Internal Affairs (IA) investigation, the Portland Police Bureau (PPB) takes the following steps:

- IA completes the investigation. This includes a PRB and/or recommendations for discipline if allegations are sustained.
- PPB notifies the state Department of Public Safety Standards and Training (DPSST) that the employee resigned/retired while under investigation.
- IA makes available to DPSST all investigative materials as required by state law.
- If there is proposed discipline, PPB places documentation to this effect in the employee's personnel file.
- The personnel file can be made available for review by any other prospective employer looking to hire the employee.

DATE: May 4, 2021
TO: Charles Lovell
Chief of Police
FROM: Adrienne DeDona
Police Review Board Facilitator
SUBJ: Police Review Board Recommended Findings



CONFIDENTIAL

The Police Review Board met on Wednesday, April 28, 2021 to review the following case:

IA Case Number: **2021-B-0001**

Employee: **Employee 1**

Summary of Alleged Complaint:

On [Date], Employee 1 was driving west on [Location] [Location] [Location]. Employee 1's patrol vehicle collided with a vehicle that was turning onto [Location]. GPS data showed Employee 1 was driving 90 MPH, without the use of lights or sirens.

Case referred to the Police Review Board under City Code 3.20.140(B)(1)(b).

Allegation 1: Employee 1 was driving without due regard and caused a collision. (CONDUCT)

Recommended Finding: **Sustained (Unanimous)**

Applicable Directives: **315.30 – Satisfactory Performance**
630.10 – Driving Responses
317.40 – Authorized Use of Resources

Opinion:

Board members felt the allegation should be sustained noting that Employee 1 was traveling at 90 mph in a 30 mph zone without using lights or sirens and despite not being on an active call that required a response. They noted that Employee 1 explained the excessive speed was in an effort to follow a vehicle that had alluded Employee 1, but the Board did not feel that Employee 1 would have been able to catch the car making the behavior unnecessary and dangerous. The Board felt Employee 1 was driving without due regard and that Employee 1 endangered others ultimately leading to an accident. It was also mentioned that it is concerning that Employee 1 indicated that Employee 1 was not aware of how fast the vehicle was travelling.

Recommendations: Corrective Actions/Discipline

Opinion:

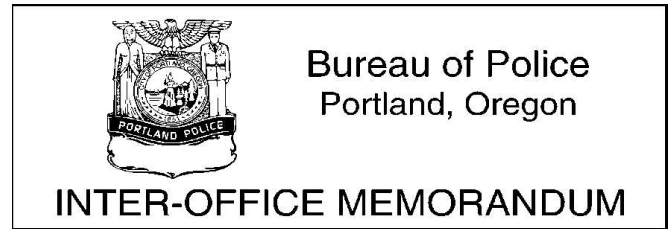
Two Workweeks SWOP – Unanimous

The Board believed Category C best described Employee 1's misconduct. Based on the facts presented, it was their opinion that Employee 1's behavior involved a risk to public safety due to a significant deviation from bureau policy resulting in a vehicle crash. The board members felt that Employee 1's bureau history and vehicle incident record including three vehicle related disciplinary actions in the last three years were aggravating factors in making their recommendation. The Board discussed the fact that speed has been a consistent issue for Employee 1 and that remediation training will not adequately address this issue. The Board felt that officers should be aware of their speed. Additionally, the Board noted that Employee 1 indicated that Employee 1 was pursuing a vehicle, but Employee 1 did not officially radio that information to dispatch or other officers.

Other Recommendations

The Board recommended that Employee 1 be moved to a position at the Bureau that does not require operation of a police vehicle due to the number of vehicle-related incidents indicating that remedial driving training would not be sufficient for correcting Employee 1's driving behavior. Additionally, the Board recommended that the Bureau Risk Division research the liability issues that may exist and whether Employee 1 can be insured if Employee 1 continues to drive a police vehicle given Employee 1's history of vehicle related incidents.

DATE: July 2, 2021
TO: Christopher Paille
Police Review Board Coordinator
FROM: Adrienne DeDona
Police Review Board Facilitator
SUBJ: Police Review Board Recommended Findings



CONFIDENTIAL

The Police Review Board met on Wednesday, June 23, 2021 to review the following case:

IA Case Number: **2020-C-0269**

Employee: **Employee 1**

Summary of Alleged Complaint:

Subject 1 was in Location where a protest was occurring and carrying a pole with attached sign. Video depicts Subject 1 being contacted by PPB officers who eventually confiscate the pole and sign, pepper spray him, and employ a take down and strikes while taking him into custody.

IPR opened this investigation on its own initiative to determine how PPB members came to approach Subject 1, and whether the involved PPB members engaged in misconduct when confiscating his property, using force, and arresting him.

Allegations numbered 1-5 were found *Exonerated* during the administrative investigation.

This case was referred to the Police Review Board under City Code 3.20.140(B)(1)(a). The RU manager made a recommended finding of *Exonerated*. IPR and the branch assistant chief controverted the finding and recommended a finding of *Sustained*.

Allegation 6: Employee 1 used inappropriate force against Subject 1. (FORCE)

Recommended Finding: **Not sustained with debrief (4)**
Sustained (3)

Applicable Directive: **1010.00 – Use of Force**

Majority Opinion:

Four board members felt the allegation that Employee 1 used inappropriate force was not sustained. Board members expressed the belief that objectively the force used by Employee 1 was reasonable given the circumstances. It was noted that the Crowd Control unit was instructed to remove weapons from the location and that the subject repeatedly resisted and denied to relinquish the sign pole to police even after police used pepper spray. Additionally, some board members believed Employee 1 could have not seen the subject raise his arms before applying the knee strikes to the subject, or that Employee 1 could have reasonably seen the subject's raised arms as a response to the fall and not as a gesture of surrender. Other board members noted that it's important to look at the situation from Employee 1's and belief that the subject was continuing to resist post takedown.

Two board members did feel that the takedown and knee strikes were ill-advised, but within policy. One board member noted that these situations are high stress and it's difficult for anyone watching the video to understand without having experience with that sort of environment.

All four board members that recommended not sustaining the finding believed that if Employee 1 was still employed with the Bureau this allegation would warrant a debrief on control tactics and coordination and communication with other officers.

Minority Opinion:

Three board members felt the allegation that Employee 1 used inappropriate force was sustained. It was noted that Employee 1's actions were ill-advised, but within policy up until the knee strikes. One board member expressed the belief that the subject should have been given the chance to surrender (more time) before Employee 1 applied the knee strikes and that the use of force was excessive given that the subject was alone and surrounded by multiple officers. Additionally, board members believed according to the video that the subject released the pole and did not appear to be able to move when the knee strikes were applied. One board member noted that the other involved officers expressed surprise at Employee 1's decision to perform a takedown which implies the decision lacked coordination with the other officers, which is necessary in these instances. Two board members noted that the subject was being pulled back by two other police officers and did not appear to have the ability to adequately communicate the intention of surrender or put his arms behind his back. Some board members also expressed the belief that the action that ultimately controlled the subject was being flipped over and having his arms pulled behind his back, and not the knee strikes. This was followed by another board member noting that Employee 1's justification that **E1** was trying to get the subject into custody as fast as possible is not valid rationale for the use of force. All three board members that recommended sustaining the finding felt that the subject was under control by other officers before Employee 1 applied the knee strikes.

Recommendations:

Corrective Actions/Discipline

Minority Opinion:

One workday SWOP – Three members

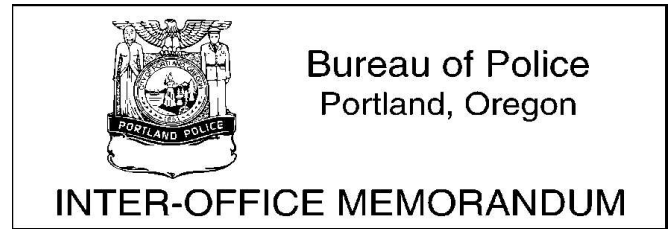
Three board members believed Category C best described Employee 1's misconduct. Based on the facts presented, it was their opinion the officer's misconduct involved a risk to public safety and the safety of other officers and may have a pronounced negative impact to the professional image of the department and/or relationship with other officers, agencies or the public. The board members did not feel there were any mitigating or aggravating factors in making their decision.

Other Recommendations

Policy

Three board members recommended a review and potential revision of City Code Section 20.12.050 to reduce potential Bureau liability due to the definition of a weapon. As it relates to this case, the definition of a weapon could be argued against Employee 1's actions due to the subject's unclear intention for the sign pole.

DATE: July 14, 2021
TO: Christopher Paille
Police Review Board Coordinator
FROM: Jeanne Lawson
Police Review Board Facilitator
SUBJ: Police Review Board Recommended Findings



CONFIDENTIAL

The Police Review Board met on Wednesday, July 7, 2021 to review the following case:

IA Case Number: **2020-C-0133**
Employees: **Employee 1**
Unidentified Officer #1

Summary of Alleged Complaint:

[Redacted] Video Owner video footage filmed on [Redacted] Date and Time [Redacted] hours shows police vehicles moving through the intersection of [Redacted] Location [Redacted]. The video shows protesters assembling barricades within the intersection in a manner that would obstruct vehicular traffic. The video shows a police vehicle move westbound through the intersection without activated emergency lights, striking one of the barricades in close proximity to several protesters who move out of the way, and a second police vehicle enter the intersection without activated emergency lights followed by three more police vehicles with activated lights.

The video footage was circulated widely on social media and community members expressed concern about the incident. IPR initiated an investigation of the incident.

Case referred to the Police Review Board under City Code 3.20.140(B)(1)(a). The RU Manager recommended a finding *Exonerated* for Allegations 4 and 7. The captain of Internal Affairs and IPR controverted the finding and recommended a finding of *Sustained*.

Allegation 1-3, 5-6, and 8-9 found *Exonerated* and not subject to review by the Police Review Board

Allegation 4: Employee 1 operated an emergency vehicle in an unsafe manner. (CONDUCT)

Recommended Finding: **Sustained (three members)**
Exonerated (two members)

Applicable Directive: **630.10 – Driving Responses**

Majority Opinion:

Three board members believed the finding should be sustained and noted that Directive 630.10 is clear in that it explicitly allows driving through a red light in specific instances, but that none of the evidence indicated that those exceptions applied during this instance. They acknowledged that the directive does not address operating in chaotic protest situations, but noted that there was nothing in the evidence that indicated a justifiable reason for not using lights or sirens. A board member noted that there was nothing from the interview with Employee 1

that implied the decision to run through the red light without audible or visible warning was made with the intention of safety in mind, which would have potentially altered their perspective on the finding. This board member emphasized that nothing in the interview indicated that disregarding the policy in the case was a tactical decision. Another board member felt that the action of the officers was a risk to public safety because going through the light to break the barricade without audible or visible warning was unnecessary and had the potential to cause harm, and that it would have been the right thing to give people warning because they could not have adequately predicted how the barricade would break and whether people could be hit by the objects from the barricade. The same board member agreed that the decision was not a tactical decision, and felt it was driven by adrenaline. This board member continued and noted that the fact that Employee 1 had turned to the MMF Sergeant, who one member noted was also a member of [redacted] assignment, to question the decision was an indication that they understood it was a violation of policy. All three board members agreed that using lights and sirens in this situation would have been the more reasonable and safer thing to do; however, they did not feel the actions of the officers were reckless, but rather an undeniable break in policy.

Minority Opinion:

Two board members believed the allegation should be exonerated noting that the allegation specifically said Employee 1 was driving in an unsafe manner, and Employee 1 did not appear to drive in an unsafe manner according to their interpretation of Directive 630.10; Employee 1 consulted with the MMF Sergeant before proceeding without lights or sirens, and Employee 1 was working in unique circumstances of the protests which justified their decision. One board member mentioned that had this been under regular circumstances (not during a protest) they would likely sustain the finding, but given the continued unrest and violence surrounding the protests, Employee 1's decision was warranted. This board member continued, explaining that Directive 630.05 allows leniency for officers to turn off their lights and sirens for the purpose of serving a greater goal, such as pursuing a suspect. And, while this situation is not cited as an exception, the board member felt clearing the barricade met the intent of the directive. Additional factors that informed this board member's decision include: Employee 1 has a reputation for being a highly qualified officer and trains other officers in operating a police vehicle; people were being verbally warned to leave the area; and the visible presence of other police vehicles made the need for lights sirens nonessential. The board member concluded that, given the tangibles involved, Employee 1 should be exonerated, specifically noting that according to the "Objectively Reasonable" clause, whereas an officer should be judged by the scene at the time, not by what can be determined using 2020 hindsight. The two board members that recommended a finding of exonerated shared the belief that Employee 1's decision was deliberate and intentional in response to the dynamics of the situation, and the board members did not believe the directive applied. The second board member noted that the car was illuminated by streetlights, and pedestrians were aware of its presence, which they felt made turning on the lights and sirens redundant.

Allegation 7: Unidentified Officer #1 operated an emergency vehicle in an unsafe manner.

(CONDUCT)

Recommended Finding: **Sustained (3 members)**
 Exonerated (2 members)

Applicable Directives: **630.10 – Driving Responses**

Majority Opinion:

The three board members that sustained Allegation #4 stated that they sustained this allegation for the same reasons. They noted that Directive 630.10 is clear in that it explicitly allows driving through a red light in specific instances, but that none of the evidence indicated that those exceptions applied during this instance. They acknowledged that the directive does not address operating in chaotic protest situations, but noted that there was nothing in the evidence that indicated a justifiable reason for not using lights or sirens. A board member felt that the action of the officers was a risk to public safety because going through the light to break the barricade without audible or visible warning was unnecessary and had the potential to cause harm, and that it would have been the right thing to give people warning because they could not have adequately predicted how the barricade would break and whether people could be hit by the objects from the barricade. All three board members agreed that using lights and sirens in this situation would have been the more reasonable and safer thing to do; however, they did not feel the actions of the officers were reckless, but rather an undeniable break in policy.

Minority Opinion:

The two board members that exonerated Allegation #4 stated that they believed this allegation should be exonerated for the same reasons. The allegation specifically said the unidentified officer was driving in an unsafe manner, and the officer did not appear to drive in an unsafe manner according to their interpretation of Directive 630.10, especially considering the unique circumstances of the protests which justified the decision. One board member mentioned that had this been under regular circumstances (not during a protest) they would likely sustain the finding, but given the continued unrest and violence surrounding the protests, the officer's decision was warranted. This board member continued, explaining that Directive 630.05 allows leniency for officers to turn off their lights and sirens for the purpose of serving a greater goal, such as pursuing a suspect. And, while this situation is not cited as an exception, the board member felt clearing the barricade met the intent of the directive. Additional factors that informed this board member's decision include: people were being verbally warned to leave the area; and the visible presence of other police vehicles made the need for lights sirens nonessential. The board member concluded that, given the tangibles involved, the officer should be exonerated, specifically noting that according to the "Objectively Reasonable" clause, whereas an officer should be judged by the scene at the time, not by what can be determined using 2020 hindsight. The two board members that recommended a finding of exonerated shared the belief that the officer's decision was deliberate and intentional in response to the dynamics of the situation, and the board members did not believe

the directive applied. The second board member noted that the car was illuminated by streetlights, and pedestrians were aware of its presence, which they felt made turning on the lights and sirens redundant.

Recommendations: Corrective Actions/Discipline

Majority Opinion:

CC – Three members

Three members believed Category B best described the Employee 1's misconduct. Based on the facts presented, it was their opinion that the officer's behavior may have had a negative impact on operations or professional image of the Bureau and involved a minor deviation from policy. This was the first violation in two years and the board members felt that the chaotic nature of the situation was a mitigating factor in making their recommendation.

Other Recommendations

A board member forwarded an advisory board member's suggestion that all police vehicles be equipped with GPS, lights, sirens, and MDT at all times.

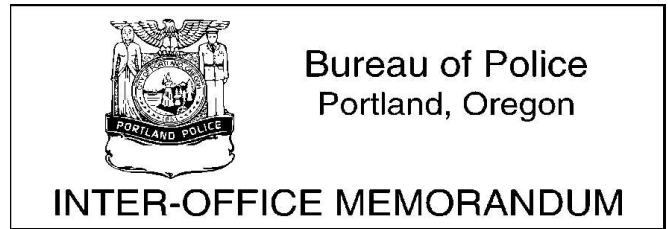
Training

A board member recommended that officers should be trained on what to do in protests situations to help prevent potential risk to public safety and remove any question for officers about how to approach this kind of situation. Two other board members agreed with this recommendation. A board member also felt that officers may need additional training or other communication to ensure they write reports following these sorts of situations to prevent the issue of the extraordinary effort required to identify the officers.

Policy

A board member suggested that the policy needs to be examined to determine whether or not there should be more flexibility and leniency in certain protest situations and to provide clarity for how officers should engage in these kinds of situations.

DATE: September 15, 2021
TO: Christopher Paillé
Review Board Coordinator
FROM: Tracy M. Smith
Police Review Board Facilitator
SUBJ: Police Review Board Recommended Findings



CONFIDENTIAL

The Police Review Board met on Thursday, September 2, 2021, to review the following case:

IA Case Number: **2020-C-0208**

Employee: **Employee 1**

Summary of Alleged Complaint:

Complainant provided the City of Portland with a statement that outlined their complaint of an improper use of force by Portland Police Officers.

Independent Police Review conducted an intake investigation of the complaint. On December 18, 2020, the case was assigned to Internal Affairs for investigation.

Case referred to the Police Review Board under City Code 3.20.140(B)(1)(a). The Employee 2 recommended the findings of *Not Sustained* for Allegations 2. The Employee 3 controverted the finding for Allegation 2 and recommended a finding of *Sustained*. Allegations 1, 3, and 4 are not subject to review by the Police Review Board.

Allegation 2: Employee 1 used inappropriate force when they pepper-sprayed Person 1.
(FORCE)

Recommended Finding: **Sustained – Four Members**
Exonerated – Three Members

Applicable Directive: **1010.00 – Use of Force**

Majority Opinion:

Four members recommended a finding of Sustained on Allegation #2.

One member did not believe Person 1 posed a threat at the time Employee 1 used the pepper spray and noted the vehicle was repeatedly discussed with minimal discussion about Person 1. This member provided the following rationale for their finding: Employee 1 told the Internal Affairs Investigator they didn't believe Person 1 was an operator of the vehicle; Employee 1 stated Person 1 was outside the vehicle and further highlighted the vehicle needed to be immediately capable of being driven, which they did not think was the case; Employee 1 intended to prevent Person 1 from potentially gaining access to using the vehicle as a weapon, thus resulting in a higher level of force required to stop it. This member also said the vehicle may have been a threat, but questioned what Person 1 represented at the time, as they were standing still, not following commands, and wearing

goggles on their head. The member didn't find Person 1 was doing anything that constituted physical resistance or active aggression that required the use of an aerosol restraint as authorized by Directive 1010.00 Use of Force, 6.4.3. Aerosol Restraints., 6.4.3.1. Authorized Uses., 6.4.3.1.1. When a person(s) engages in physical resistance or indicates the intent to engage in physical resistance. The member also noted that Employee 1 and their driver were concerned when they first drove by the vehicle, which was parked the wrong way in traffic. They returned, saw it in the same position, and perceived it as a threat.

One member stated the way to address the threat of a vehicle was to address the vehicle, not the person standing outside it. This member understood Employee 1 did not want Person 1 to get inside the vehicle, but the rules were clear about what type of level of resistance or aggression a person had to display in order to justify the use of pepper spray and the use of force. This member also said the training in the Portland Police Bureau (PPB) on passive resistance predated the protests that occurred in 2020. The *State v. McNally* (361 OR 314, 339 (2017)) was the law in Oregon for several years and it was not ex post facto law.

Two members agreed that the aerosol restraint, under Directive 1010.00 Use of Force, required the recipient to be engaged in physical resistance to justify its use, and noted that the record suggested Person 1 was standing five to ten feet from the vehicle, not making verbal threats, or moving closer to the vehicle at the time they were sprayed. Employee 1 attributed Person 1's wearing of swim goggles as an indication of a willingness to resist employees, with which they disagreed.

One member believed a reasonable employee in Employee 1's position should recognize that a person who was not saying anything or making any physical movements indicating an attempt to evade or resist control was not engaging in physical resistance or active aggression.

Another member said the notion of being preemptive and trying to determine what Person 1 was going to do, was not appropriate. Although Person 1 did not comply with commands, they were not taking any action. The verbal commands were not sufficient attempts at de-escalation before the use of force. Another member agreed, and referenced Directive 1010.00 Use of Force, 3. Warning Issuance., 3.1. which states that, unless it would present a danger to the member(s) or others, members shall issue a clear and intelligible verbal warning or attempt to utilize hand signals where there is a language barrier or the subject is deaf or hard of hearing, prior to using any force.

A member questioned whether reasonably objective evidence showed Person 1 engaged in active resistance, such as reaching for the door or attempting to get in the driver's seat to use the vehicle, and stated they found no such evidence. The member also found the verbal commands were insufficient under the requirements of Directive 1010.00.

One member stated that employees had previous knowledge of the vehicle, which was seen on multiple nights at protests. However, the member believed it had not previously been used as a weapon and did not present a threat to employees. Even though the vehicle was believed to have been moving recklessly and providing aid to protestors on previous occasions, it had not been used as a weapon. The

member did not believe it was reasonable to consider the vehicle a threat. Thus, they found the use of pepper spray to stop Person 1 was not reasonable.

Minority Opinion:

Three members recommended a finding of Exonerated on Allegation #2.

Three members believed Employee 1 used appropriate force, based on Directive 1010.00 Use of Force, Constitutional Force Standard: Under *Graham v. Connor* and subsequent cases, the federal courts have established that government use of force must comply with the “reasonableness” requirement of the Fourth Amendment. Under this standard, members must choose from the objectively reasonable force options at a scene; Force: Physical coercion used to effect, influence or persuade an individual to comply with an officer, to include the intentional pointing of a firearm at an individual. Control holds and handcuffing without resistance do not constitute force., Objectively reasonable: The reasonableness of a use of force is based on the totality of circumstances known by an officer at the time of action or decision-making. It shall be judged from the perspective of a reasonable officer on the scene, without the clarity of 20/20 hindsight after the event has concluded. The measure of reasonableness gives consideration to the reality that officers are often forced to make split-second decisions in circumstances that are tense, uncertain, and rapidly evolving. In the application or evaluation of the use of force, uses of the terms reasonable and reasonably in this policy refer to objective reasonableness., Passive Resistance: A person’s non-cooperation with a member that does not involve violence or other active conduct by the individual., and Physical Resistance: A person’s physical attempt to evade a member’s control that does not rise to the level of active aggression.

Three members agreed the following policy was relevant to the circumstances of this case. Directive 1010.00 Use of Force, 2. Authorized Use of Force, 2.1.1., Prevent or terminate the commission or attempted commission of an offense, and 2.1.2., Lawfully take a person into custody, make an arrest or prevent an escape. Directive 1010.00 Use of Force, 3. Warning Issuance., 3.1. Unless it would present a danger to the member(s) or others, members shall issue a clear and intelligible verbal warning or attempt to utilize hand signals where there is a language barrier or the subject is deaf or hard of hearing, prior to using any force. Directive 1010.00 Use of Force, 5. Graham Standard: Force Performance Requirements., 5.1., in relevant part, members shall only use force that is objectively reasonable under the totality of circumstances. When determining to use any force, members must balance the individual’s Fourth Amendment rights against the government’s interest., and 5.2., in relevant part, a reasonableness inquiry is not limited to these factors and force will be evaluated under the totality of the circumstances.

The three members believed the use of pepper spray was further governed by Directive 1010.00 Use of Force., 6. Less Lethal Force., 6.4.3. Aerosol Restraints., 6.4.3.1. Authorized Uses., 6.4.3.1.1. When a person(s) engages in physical resistance or indicates the intent to engage in physical resistance.

Three members noted the City experienced unending civil unrest and believed some groups and individuals engaged in criminal acts that placed employees and community members at risk. They also noted that an attack on the Justice Center where it was breached and set on fire followed the looting and rioting; a state of emergency had been declared in the City; employees did not have time off from work; employees were ordered to work 12-hour shifts and had limited sleep; there were no Temporary Restraining Orders (TROs) and no additional training at the time. Given the totality of these circumstances, the members believed Employee 1's use of force was reasonable.

One member found it reasonable to connect Person 1 to the vehicle, given their proximity and their unwillingness to disperse when ordered. They also found the description of the vehicle, described as parked the wrong way and facing employees and on-coming traffic a consideration. The member added that the vehicle had previously been observed acting as a support vehicle for the crowd. The member found that the actions of the group escalated to alarming life-safety levels with an assault on a civilian security person who needed help. A dumpster was set on fire in a parking lot and projectiles were thrown. Person 1 refused to disperse as ordered despite the force warnings, which they believed were significant factors to consider. Additionally, the member found indications of Person 1's pre-planning, and the wearing of swimming goggles was another indicator of their mindset to engage in physical resistance. Therefore, there was an urgency to safely secure the vehicle so no one could be run over, which could have precipitated a much higher level of force, potentially resulting in a loss of life. The board member found that Employee 1 was Specific Assignment and had limited options and used the least intrusive option after providing warnings and orders.

One member observed that the definition of Passive Resistance states: A person's non-cooperation with a member that does not involve violence or other active conduct by the individual. The member said, while there was no violence in this instance, there were other important factors to consider including the placement of the vehicle with the door open and the information about the vehicle's previous behavior. The member believed that the vehicle standing alone without anyone near it would not be a threat in and of itself, but the presence of Person 1, their proximity to the vehicle, their failure to comply, and their attire were factors to consider in evaluating the threat of the situation. The member believed there was active conduct by Person 1 that created the situation, and their unresponsiveness to commands increased the potential threat to the employees in the area. In totality and based upon the factors listed and Employee 1's statements during their interview, the member found it reasonable to consider Person 1's actions were more than passive resistance

Another member noted that the After Action report documented Person 1 was moving toward the vehicle, which the member found was concrete evidence of their intent to engage in physical resistance. The member provided that Person 1 was moving towards an open door of the unoccupied running vehicle, and the vehicle was previously seen offering support to agitators and protesters. The member stated Employee 1 believed, based on their observations, that Person 1 would enter the vehicle and drive into the assembled line of employees. It was also mentioned PPB was given information that vehicle-borne attacks were

possible tactics to be used against employees. Due to the proximity of the vehicle and employees standing nearby, the member found Employee 1's ability to stop Person 1 by using pepper spray was reasonable, as Person 1 had been warned to move but failed to comply. The member found the After Action Report contained compelling evidence to support Employee 1's perception and observations regarding Person 1's actions and intent, and why they felt it necessary to use pepper spray. Another member added that, based upon their review of the facts and circumstances of the incident, vehicles and their related threats as well as Employee 1's recollection of previous instances where vehicles had driven into groups of employees and other people, which may have influenced their perception of a threat at the time, and Employee 1's concerns with the positions of employees and community members and their inability to box in the vehicle because they were the passenger of another vehicle, and their limited ability to affect changed at that moment, resulted in their use of a low level of force and that their use of force was appropriate under the *Graham Standard*.

During the discussion, one of three members also provided their four areas of concern related to this incident: the complexity of the crowd dynamics; the issuance of warnings; Directive 1010.00 Use of Force, 6.4.3. Aerosol Restraints., 6.4.3.1. Authorized Uses., 6.4.3.1.1.; and Person 1's statements. The member found the incident was multi-layered and unprecedented in terms of the number of protests and the risks to employee safety. The member stated it was important to consider Employee 1's experience at that moment and how mental schematics were created over time based on the environment. The member shared the following observations: Person 1 intended to engage in physical resistance when they were standing by the vehicle; Employee 1 may have had time to issue a warning but they had to balance whether the warning would have resulted in the de-escalation or an escalation of Person 1's behavior, which the member believed would have created a specific danger at that moment; if Employee 1 had taken the time to give a specific pepper spray warning; given everything that was happening at that moment, it could have led to a higher level of force or greater danger to members of the public. The member concluded by offering their observations around the FDCR Form: the FDCR form has three boxes for Passive Resistance, Active Aggression, and Physical Resistance, but it does not have a box that captures intent to engage. The member stated this is an ongoing issue when officers are in contact with someone that displays intent but not physical action which they concluded is generally described as physical resistance.

Two members noted that Person 1 admitted they were told to disperse and intended to disobey this order by attempting to get in the vehicle. Employee 1 described intent when they explained how another vehicle had attempted to run through a line, the placement of the vehicle in the road which was facing the wrong directive on a one-way street, and the dynamics of the crowd.

Recommendations: Corrective Actions/Discipline

Letter of Reprimand – Two Members
One Workday Suspension without Pay – Two Members

Majority Opinion:

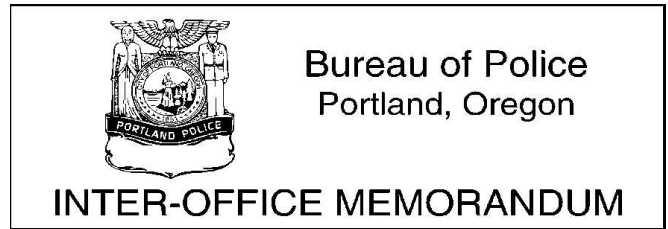
Two members recommended a Sustained finding related to Allegation #2, Category C (Mitigated, 1st violation in 3 years). The mitigating factors considered included their length of service, commendations on file, and their first Sustained finding for a use of force. Another member stated the totality and factual complexity of the circumstances were also mitigating factors. The protests had been going on for a long time and the vehicle was running.

Two members recommended a Sustained finding related to Allegation #2, Category C (Presumptive, 1st violation in 3 years). One member described the circumstances of this incident as surreal but noted there were higher expectations of members at a higher rank. One member said they did not see this as a violation of the *Graham Standard*, but a violation related to the Use of Force Directive based on the level of resistance.

Minority Opinion:

None

DATE: December 9, 2021
TO: Christopher Paille
Police Review Board Coordinator
FROM: Adrienne DeDona
Police Review Board Facilitator
SUBJ: Police Review Board Recommended Findings



CONFIDENTIAL

The Police Review Board met on December 1, 2021, to review the following case:

IA Case Number: **2020-C-0137**

Employee: **Employee 1**

Summary of Alleged Complaint:

A complainant was filed with IPR alleging a person was struck by a blue 40 mm sponge round in the **Location**.

Video footage at the scene showed several guests and a security officer were in front of **Location** entrance when a Police Bureau vehicle approached with one door open. An officer with a 40mm less lethal launcher approached and appeared to direct the guests to enter the hotel. Those seen in the video moved toward a door away from the officer and out of camera view. The officer then raised and fired the 40mm less lethal launcher, reloaded it, and returned to the SUV.

Subsequent investigation identified Employee 1 as the involved member.

Case referred to the Police Review Board under City Code 3.20.140 (B)(1)(a). The RU manager recommended a finding of *Not Sustained*. The IA captain and branch assistant chief agreed with the RU manager's recommended finding. IPR recommended a controverted finding of *Sustained*.

Allegation 1: Employee 1 utilized inappropriate force when Employee 1 fired an impact munition which struck the complainant's hand outside **Location**.
(FORCE)

Recommended Findings: **Not Sustained – 5 members**
Sustained – 2 members

Applicable Directive: **1010.00 – Use of Force**

Majority Opinion:

The majority of the board found the allegation not sustained. One board member said the evidence was insufficient to prove a violation of policy because the video from the surveillance camera showed Employee 1's actions of firing a 40mm less lethal round but not the actions of the complainant. In addition, the witness's interview account was inconsistent with Employee 1's and the complainant's accounts of events, which were consistent with each other. This board member believed there was not a preponderance of evidence to prove that Employee 1 used inappropriate force.

Four board members believed that it was reasonable for Employee 1 to believe that the complainant had intent to cause harm when, after being told by Employee 1 to go inside, the complainant stopped walking towards **Location**, turned around, and put their hand in or towards their pocket. They reasoned that Employee 1 had seen the complainant earlier in the night with a crowd engaged in violent activity towards police and believed it was reasonable for Employee 1 to suspect that the complainant might have an object or weapon to cause harm and that the complainant therefore posed a threat. Based on the totality of circumstances that night, they believed Employee 1 was within policy when Employee 1 fired the 40mm less lethal round at the complainant.

One board member noted that the complainant was out of compliance with the closure of downtown. Broadcast announcements had been given earlier in the night and a curfew was in place; however, the complainant was still outside in the closure area.

Minority Opinion:

Two board members found the allegation sustained. They reasoned that the complainant did not display active aggression and therefore Employee 1 violated Directive 1010.00 with Employee 1's use of force. They asserted that a person reaching for their pocket was not a sign of active aggression.

One board member said the video showed that the complainant, and those they were with, were standing around in front of **Location** passively watching things happen at the time, and it was not reasonable for Employee 1 to paint everyone downtown, at the time of the occurrence, with a very broad brush. These two board members believed Employee 1 should have assessed the situation based on the complainant's behavior in that moment. Both board members believed the officer's use of force was not justified under Directive 1010.00 because they did not find evidence of active aggression on the part of the complainant and therefore found the allegation to be sustained.

One board member acknowledged that Directive 1010.00 was not written for protest events and that it was difficult for officers to remain in compliance with the directive during protest events. This board member believed the Bureau should reexamine its policies around protest events.

Recommendations:

Corrective Actions/Discipline

Majority Opinion:

LOR – Two members

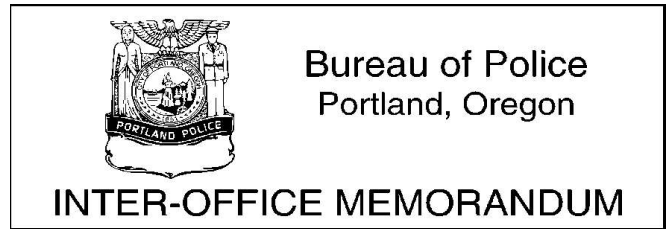
The two board members with sustained findings believed Category C best described Employee 1's actions. Based on the facts presented, it was their opinion that Employee 1's behavior was a minor deviation from the use of physical force policy. They believed there were several mitigating factors, such as Employee 1's numerous commendations, position as **Assignment Related Info** within the Bureau, and

how difficult the climate was for officers during the nightly protest events.

Other Recommendations

The Police Review Board recommended that the City approach the DOJ on a case-by-case basis when there is a sustained finding related to crowd control situations with minor deviations of the Use of Force policy, to determine whether the officer be exempted from disqualification as outlined in the DOJ agreement.

DATE: December 13, 2021
TO: Christopher Paille
Police Review Board Coordinator
FROM: Adrienne DeDona
Police Review Board Facilitator
SUBJ: Police Review Board Recommended Findings



CONFIDENTIAL

The Police Review Board met on Thursday, December 2, 2021 to review the following case:

IA Case Number: **2021-B-0006**

Employee: **Employee 1**

Summary of Alleged Complaint:

IPR received a complaint alleging disparate treatment of Police Bureau members on the basis of a protected class. The City requested an outside party conduct the investigation. IPR also conducted its own investigation into the alleged complaints.

The RU manager recommended findings of *Exonerated, Not Sustained, or Unfounded* for the eight allegations. The branch assistant chief, IPR, and IA agreed with the majority of the recommended findings, though IPR controverted the recommended finding of *Exonerated* for Allegation #5 and recommended a finding of *Sustained*.

Case referred to the Police Review Board under City Code 3.20.140(B)(1)(a). Allegations 1-4, and 6-8 not subject to review by the Police Review Board.

Allegation 5: Employee 1 treated Employee 2 in a disparate manner on the basis of a protected class. (CONDUCT)

Recommended Finding: **Exonerated – 3 members
Not Sustained with debrief – 1 member
Sustained – 1 member**

Applicable Directive: **310.20 – Discrimination, Harassment, and Retaliation Prohibited; HRAR 2.02 – Prohibition Against Workplace Harassment, Discrimination, Racism, and Retaliation**

Majority Opinion:

Three members of the Board found the allegation exonerated because they believed a preponderance of evidence proved Employee 1's conduct was within policy. They believed the evidence showed that Employee 1 worked with business partners to ensure E1 was making a fair and unbiased decision regarding the long-term, assignment and did not treat Employee 2 in a disparate manner.

Two board members noted that Employee 2 was never transferred to the Unit Unit Assignment against Employee 2's wishes. They asserted that Employee 1 inquired if Employee 2 would be willing to take the long-term,

temporary [redacted] assignment but after Employee 2 expressed that Employee 2 did not want to be transferred there to perform the assignment, Employee 1 had Employee 2 return to [redacted] assignment, where Employee 2 wanted to be.

Minority Opinion:

One board member found the allegation sustained because they believed several previous complaints had identified that [redacted] gender [redacted] Rank on [redacted] assignment felt they were being disproportionately assigned clerical work, compared to their [redacted] gender counterparts. This board member believed that this pattern of disproportionately assigning [redacted] gender [redacted] Rank to light duty clerical work was problematic and felt that this should change.

One board member found the allegation not sustained. This board member found that although there was evidence there was a pattern of disproportionately assigning [redacted] gender [redacted] Rank to [redacted] assignment, there was a demonstrated business need to do so. This board member recommended Employee 1 receive a debrief about being more aware of equity in making job assignments, consider blind spots, and be more empathetic even when following the legal process.

Recommendations:

Corrective Actions/Discipline

Majority Opinion:

CC – One member

The board member who had a sustained finding believed that Category D best described Employee 1's conduct because they believed Employee 1's actions exhibited disparate treatment. This member felt there were significant mitigating factors, such as the fact that Employee 1 worked with HR and the City Attorney's Office before offering the assignment to the [redacted] Rank. This board member found it appropriate to mitigate the discipline level down to the CC level and indicated that had HRAR 2.02 not been part of the allegation, they would have found Employee 1's conduct to fit within Category B, which would have resulted in a disciplinary action of CC at the mitigated level, being the first violation in a year.

Other Recommendations

Training

The Board recommended that the personnel division and equity team work together to identify issues of equity within the assignment of duties and the transfer process.