



Brandon Johnson  
Mayor

Department of Police · City of Chicago  
3510 S. Michigan Avenue · Chicago, Illinois 60653

Fred L. Waller  
Interim Superintendent

June 13, 2023

Andrea Kersten  
Chief Administrator  
Civilian Office of Police Accountability  
1615 West Chicago Avenue, 4th Floor  
Chicago, Illinois 60622

Re: Superintendent's Non-Concurrence with Findings and with Penalty Recommendation  
Complaint Log No. 2020-0001964

Dear Chief Administrator Kersten:

After a careful review of the above referenced complaint log number, the Chicago Police Department (Department) does not concur with both of the recommended findings nor with the recommended penalty as they pertain to Officer Derek Sanderson # 5090. Pursuant to the Municipal Code of Chicago, the Department provides the following comments.

The COPA investigation recommended a 60-day suspension as the penalty for Officer Sanderson after concluding that he:

1. Failed to comply with G03-02-07 by swinging his baton at the head of a citizen;
2. Failed to comply with G03-02 by failing to deescalate the situation with same citizen.

Allegation #1:

The Department does not concur with COPA's finding as the Department does not believe that the burden of proof has been met. After viewing the video surveillance footage from the Chicago Transit Authority (CTA), COPA states that "Officer Sanderson, with his left hand, appears to swing his baton towards [REDACTED] head." SRI at page 4. COPA cannot definitively state that the baton was swung at his head.

Further in the SRI, the investigator states that "In his interview with COPA, Officer Sanderson did not dispute the fact he swung his baton at [REDACTED] head. Sanderson stated he swung his baton to create space and out of fear for his own safety." SRI at page 4. However, this is not a completely accurate description of Officer Sanderson's statement. In his interview, Officer Sanderson was asked and then answered:

Q: "What made you swing the baton at the head of Mr. [REDACTED]"

A: "My intention was to swing above his head. And it was trying to create distance." Att # 10 at 19:48.

Officer Sanderson then goes on to explain why he was trying to swing above the man's head. Officer Sanderson gives the same explanation in his Tactical Response Report when he states "I perceived that the offender was going to charge at me. I swung my asp above the offender's head to create distance between me and the offender." Tactical Response Report as Attachment #15.

This swing also leads to the second reason why the Department does not feel that the burden of proof has been met. The COPA analysis quotes the Department directive on Baton Use Incidents which states "members will not use batons to intentionally strike a subject in the head or neck except when deadly force is justified." But the issue here is that Officer Sanderson did NOT strike the citizen. Therefore, the member is not in violation of the directive concerning baton use nor the directive concerning the use of force, including deadly force.

In the Matter of the Arbitration between the City of Chicago Department of Police and the Policemen's Benevolent & Protective Association of Illinois, Unit 156B-Lieutenants, Grievance No. 546-21-012, the arbitrator ruled that "an attempted baton strike by an officer that did not result in physical contact was not deemed by CPD to be covered by its Use of Force policy, regardless of whether the attempted strike was justified." Id at page 23. A copy of the Arbitrator's decision is attached.

It is for these reasons that the Department recommends a finding of Unfounded for this allegation.

#### Allegation #2:

The Department does not concur with the COPA's finding as the Department does not believe that the burden of proof has been met. There is no way to determine if Officer Sanderson attempted to de-escalate the situation. Regarding the CTA surveillance video footage, the COPA report acknowledges that "details of the conversation could not be determined because there was no audio." SRI at page 3. The video of Officer Sanderson shows him wearing a face-covering due to Covid issues.

Further, the analysis by COPA includes the following:

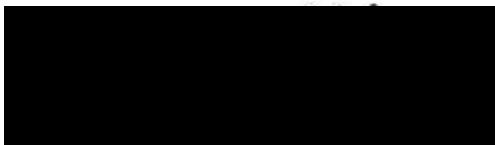
1. "Both [REDACTED] and Officer Sanderson *appear* to engage in a heated conversation."
2. "the verbal argument *appears* to escalate."
3. "Officer Sanderson *appears* to be the aggressor during the encounter."
4. "Officer Sanderson *appears* to take a fighting stance on several occasions and *appears* to aggravate the encounter by his aggressive tone."
5. "At no point did Officer Sanderson *appear* to attempt to de-escalate the situation."
6. "Officer Sanderson *appears* to aggravate the situation by continually engaging with [REDACTED]"

No definitive statement could be made regarding Officer Sanderson's actions. As such, the Department recommends a finding of Not Sustained.

As the Department believes that neither allegation should be sustained, there should be no penalty assessed to Officer Sanderson. The Department looks forward to discussing this matter with you

pursuant to MCC 2-78-130(a)(iii).

Sincerely,



Fred L. Waller  
Interim Superintendent  
Chicago Police Department