

MINUTES

May 22, 2007

The 360th meeting of the NH Police Standards and Training Council was called to order at 9:05 a.m. by Chairman Michael L. Prozzo, Jr., Sullivan County Sheriff's Department, in the John D. Morton conference room at the Police Standards and Training Facility in Concord, New Hampshire.

Members Present: Chief Peter P. Morency, Berlin Police Department; Chief Gregory C. Dodge, Epping Police Department; Chief Timothy Russell, Henniker Police Department; Chief Michael J. Magnant, Portsmouth Police Department; Sheriff Scott A. Carr, Carroll County Sheriff's Department; Associate Justice Stephen H. Roberts, Dover District Court; Associate Justice Norman E. Champagne, Manchester District Court; Major Susan R. Forey, designee of Colonel Frederick H. Booth, NH State Police; Deputy Attorney General Bud Fitch, designee of Attorney General Kelly A. Ayotte; Commissioner William L. Wrenn, Jr., Department of Corrections.

Staff Present: Director Donald L. Vittum, Assistant Director Robert B. Stafford, Jr., Paralegal Cassandra A. Erickson, Keith H. Lohmann, and Account-Technician Helen L. Robinson.

Deputy Commissioner Charles Annal, designee of Commissioner William G. Simonton of the NH Community Technical College System was excused from today's meeting due to prior commitments.

Guests Present:

PSTC staff included Captain Kim Roberts, Captain Benjamin Jean and Lieutenant Jill Moran; Chief George Taylor and Lt. Joseph McGann, Madbury PD; Officer Michael Lyczak, Durham PD; Officer Jason Lamontagne, New Durham PD; Deputy Paul Rowe, Strafford County Sheriff's Office; William Brouse, Harlan Adams, Chad McGann, Joseph Moriarty, Town of Madbury; Sabrina Beavens and Paul Cox, Attorney's for Chief Taylor; Thomas Ferrini, Attorney for Madbury; George Wattendorf, Attorney for Jason Lamontagne; Bruce Hodson, Selectmen for the Town of Madbury.

Approval of Minutes

The Council unanimously approved the Minutes of April 17, 2007 as presented, following a motion by Sheriff Carr, seconded by Chief Morency.

Director's Report

The Director's written report, attached, was accepted as submitted.

Chief Russell commended Director Vittum for his meetings with local agencies, is hearing very positive feedback and thinks it's a great idea. Chairman Prozzo also stated he received a telephone call from a local Chief who received the Council Agenda. The Chairman advised the Chief that Director Vittum informed Council members the Agenda would be mailed to all police departments for informational purposes and thanked the Director for taking this action.

Previous and/or Unfinished Business**Madbury Compliance Audit Hearing**

Chairman Prozzo informed members of the Council on Friday afternoon, May 18, 2007, at about 2:45 p.m. he received a request for a continuance of the hearing due to one witness being kicked by a horse. The Chairman denied this motion based on the fact that this case has been going on for quite some time, the hearing would go forth as scheduled, and if this witness was important to the case, the testimony could be heard at the June Council meeting.

The Chairman indicated that Sheriff Carr would not be in attendance for the hearing due to another commitment. Commissioner Wrenn indicated he may be summons to a Senate Finance Committee hearing and may have to leave the meeting.

Chairman Prozzo read and reviewed Council protocol with Chief Taylor. He advised Chief Taylor he could be represented by legal counsel, have a court stenographer present at his expense, and asked if he wished to have a public or non-public hearing at which time Chief Taylor requested a non-public hearing. Chief Taylor was represented by Attorney's Paul Cox and Sabrina Beavens.

Following a motion by Commissioner Wrenn, seconded by Chief Morency, the Council voted unanimously on a roll-call vote, to enter into a non-public session at 10:45 a.m.

Following the hearing, on a motion made by Chief Dodge, seconded by Chief Magnant, the Council voted unanimously to seal the minutes of the non-public session.

Chief Dodge made a motion, seconded by Chief Morency, which carried unanimously by the Council, on a roll-call vote, to exit the non-public session at 4:30 p.m.

This matter will be discussed at the next Council meeting on June 26, 2007.

Other Business:

Officer Gerard Reppucci, Wilton Police Department – 1300-Hours Rule Violation

Chairman Prozzo read and reviewed Council protocol with Officer Reppucci. He advised Officer Reppucci he was entitled to be represented by legal counsel or have a court stenographer present at his own expense with the hearing to be held in public or non-public session. Officer Reppucci was not represented by legal counsel and requested the hearing be heard in non-public session.

Following a motion by Commissioner Wrenn, seconded by Sheriff Carr, the Council voted unanimously on a roll-call vote, to enter into a non-public session at 9:08 a.m.

Following discussion of the matter, on a motion by Commissioner Wrenn, seconded by Chief Magnant, the Council voted unanimously to seal the minutes on the non-public session.

Commissioner Wrenn then made a motion that carried unanimously following a second by Chief Russell and a roll-call vote, to exit the non-public session at 9:25 a.m.

Upon return to public session, on a motion by Commissioner Wrenn, seconded by Chief Magnant to suspend the certification of Officer Reppucci for five weeks to make up the 192 ½ hours beginning on a date agreed upon by Director Vittum and the Chief in order to arrange for additional manpower assistance during this time-frame.

Commissioner Wrenn explained sometimes the 1300-hour rule is looked upon as a minor issue, and reiterated it has been the Council rule for many years. It's not a unique occasion for an officer to come before the Council who has worked too many hours, which happens in his own Department of Corrections unbeknownst to them until the end of the year, but make-up the time the following year. Commissioner Wrenn believes this is a unique situation to not act on this violation which has set a very bad precedent. It could be used in future hearings by other officers to say, "Well, you're taking time away from me, what happened to that Wilton officer." The Commissioner feels it is necessary to take some form of suspension action.

Discussion ensued with Sheriff Carr inquiring of Director Vittum if he had any recommendations and if he felt the motion was appropriate. The Director stated it was appropriate.

Chairman Prozzo asked Commissioner Wrenn if he imposes a deadline on the motion. Commissioner Wrenn stated he would leave this up to the Director and Chief to work out a starting and ending date.

Chief Russell questioned if Officer Reppucci's certification was suspended would he be allowed to enter the next academy? In answer to the question, the Director stated the suspension would have to be served before the next academy's physical agility test in August.

After discussion on the motion, the Council voted unanimously.

Previously and/or Unfinished Business

Entrance Fitness Testing

Director Vittum indicated documents have been submitted to Council members and are now looking for guidelines for fitness testing issues. Cooper's Institute, as well as some physicians, have been consulted with in reference to the **Entrance Fitness Procedure (Draft #3)**. The Director asked the Council to reconsider the wording "**few minutes**" on **Draft #3, page 2. e. paragraph 6** which indicates the following:

If the higher (systolic) number equals or exceeds 150, then repeat the measurement after a **few minutes** of quiet rest. If the lower (diastolic) number equals or exceeds 95, then repeat the measurement after a **few minutes** of quiet rest. Record the rest time.

We need to stipulate the number of minutes (3 minutes, 5 minutes), going from the test to the blood pressure issue. The Director reminded Council members of the issues encountered at the previous entrance exam; therefore, a guideline needs to be determined what the appropriate "**few minutes**" would be.

Chief Morency inquired if there was a medical recommendation as to what a "**few minutes**" would be. In response to his inquiry, Assistant Director Stafford indicated there was not a medical recommendation. Staff recommends that 3 minutes in between each would be appropriate. Cooper's does not make a recommendation, but states "**few.**" Chief Morency asked if we could support this through staff training. Assistant Director Stafford indicated this was the practice somewhere in that time-frame.

When asked by Director Vittum if the blood pressure tests were 3 or 5 minutes between tests at the last academy, Capt. Roberts stated she could not recall specifically.

Chairman Prozzo felt a firm number should be established.

Commissioner Wrenn inquired where the 3-5 minutes originated from and felt these numbers were arbitrarily being chosen with no basis. Assistant Director Stafford explained the

Entrance Fitness Procedure and stated he consulted with a couple of doctors in a clinical setting who stated 3-5 minutes in a field setting. Three minutes would allow the participant enough time and to get us through the testing process.

Chief Russell asked if the measurement of blood pressure was set at 5 minutes would this be problematic to the testing procedure? Capt. Roberts stated it would slow the process down, but didn't see a problem with it.

Sheriff Carr asked, percentage-wise, how many participants typically required the second blood pressure test. Capt. Roberts stated she couldn't give an accurate number without looking at the results. She stated it wasn't an issue with the last class. Prior to that there wasn't as many. The Director noted prior to that the rules weren't being followed. He stated there were 25 participants (almost one-third), during the previous PT test who didn't pass the blood pressure test. Five minutes is a reasonable amount of time in between tests to be cautious. This would be current with the new Cooper standards.

On a motion by Chief Magnant the Draft #3 Entrance Fitness Procedures, Page 2 Section e, Paragraph 6 where indicated as **few minutes** for blood pressure testing should be amended to **5 minutes**. This motion was seconded by Sheriff Carr.

Systolic and Diastolic (150/95) numbers were questioned by Associate Justice Roberts stating these numbers seem somewhat high. Assistant Director Stafford reiterated these were Cooper's numbers and we are in the process of working with Concord Group to obtain a physician. A quote from Cooper's Institute says "Consistent readings greater than equal to 150/95 warrant referral to a physician."

Director Vittum advised the Council on the first day of agility testing the Chiefs and Training Officers aggressively questioned everything done. If amended to five minutes, the staff will monitor this with the Director's backing.

Associate Justice Champagne felt they should have a range of numbers due to contesting by participants and departments. The Director noted if contested, they may request to appear before the Council to discuss.

Chief Dodge also concurred a minimum of five minutes would be substantial.

Chief Russell questioned why Chief's and Training Officer's were in attendance and challenging the physical agility tests. Director Vittum reiterated this will not be allowed and didn't approve of the arrogant mannerisms of some of these administrators.

Commissioner Wrenn agreeing with Chief Dodge, noted it will take additional time to place the cuff back on and pump it up. If stated the participants are to sit in a quiet area for no less than or a minimum of 5 minutes, there will be no disputing this.

Chief Magnant amended the motion to read a *minimum of 5 minutes in a quietly sitting position*.

After a lengthy discussion, the Council members voted unanimously on the amended motion.

Chairman Prozzo noted due to adopting Cooper's standards a number of years ago, the Council needs a ruling until something different is adopted.

On a motion by Associate Justice Champagne, seconded by Associate Justice Roberts, the Council voted unanimously to adopt the Entrance Fitness Testing packet as presented.

Commissioner Wrenn asked to have Deputy Attorney General Bud Fitch convey to the Council's legal representative, Assistant Attorney General Nancy Smith, the nice job, time and effort she put into the research on this project.

Director Vittum asked for clarification regarding the Entrance Fitness Testing inquiring if the same blood pressure test would be utilized for the Corrections Academy. He indicated a variation of tests were performed in the past. The Director stated he now has clear guidance and will go forward. He asked Lt. Moran if the blood pressure test had been performed on the Corrections participant?. In response to the question, Lt. Moran indicated they were not being tested. Commissioner Wrenn inquired who made the decision not to perform blood pressure tests. Lt. Moran stated the decision was made a couple of years ago by Lisa Angelini and others (she could not recall names) at the Department of Corrections. That decision rescinded performing blood pressure checks on the Corrections participants.

Commissioner Wrenn inquired if this was in the PSTC policy. Lt. Moran was not aware of one. The Commissioner instructed the Director and Lt. Moran to follow the policy.

Chief Russell suggested developing a mechanism where if the command staff wishes to challenge the results of the fitness testing requirements they should not be allowed to arbitrarily approach the staff during the test procedure. Chairman Prozzo suggested maybe the Director should create a procedure. The Director challenged the situation and felt he had the situation under control at this point.

Three-Year Fitness Test Procedure (Draft #2)

The Director advised members the Schwinn Air Dyne Evolution Stationary Bike has been purchased. Two staff members have been trained on monitoring the bike readings. A decision needs to be made reference the Three-Year PT alternative testing. Director Vittum commented on the nice job and research Keith Lohmann did putting together the Fitness & Agility Testing Manual. This represents a comprehensive understanding of procedures since 1992.

Commissioner Wrenn inquired if the bike testing was the only changes in this manual. Assistant Director Stafford responded indicating the bike is not mentioned in the manual. The participant tested has to obtain a physicians letter, to be given to PSTC, asking for alternative testing. The Director reminded members, at the Council Retreat, they discussed the Air Dyne Bike as an alternative testing method. It was Chief Magnant's understanding the bike would not be put into the policy in case it was changed. Right now the bike is the only alternative for aerobic testing.

After a brief discussion, on a motion by Chief Magnant, seconded by Chief Morency, the Council voted unanimously to accept Draft #2 Three-Year Fitness Test Procedure.

Director Vittum informed Council members this material will be mailed to all the Chiefs of Police in the State of New Hampshire. He will be meeting with the Hillsborough County Chiefs this week and will review the material with them. Police departments will then be aware of the changes for the August PT testing. There are a couple participants that have to be tested by July for the Three-Year Fitness Test. If not completed, PSTC will take the necessary steps.

New Business

Decertifications/Suspensions/Revocations/Surrenders/Certifications

No matters presented

Prior Training and Experience Requests

No requests submitted

Requests For Extensions

Full-Time

No requests submitted

Part-Time

The Director informed the Council at the June meeting he will be discussing the 100 hours added to the Part-Time Academy and his proposals. Also, there are issues to discuss with the Full-Time Academy.

Associate Justice Champagne wondered if the Council previously voted on a curriculum. The Director indicated they previously voted on the computer-based, he has an alternative proposal and will this information with the Council at a future meeting.

Geoffrey S. Bardeen, Gorham Police Department

After the Director outlined the reason for the request, on a motion by Chief Dodge, seconded by Chief Russell, **the Council voted unanimously to grant the extension through the 251st Part-Time Academy for Officer Bardeen.**

Department of Corrections

After the Director explained the reason for requests for extensions through the 85th Corrections Academy for failing the PT test, on a motion by Sheriff Carr, seconded by Chief Russell, the Council unanimously approved extensions as presented to **Corrections Officers Michael Cotton, Heather Dasmata, Hagen Esty-Lennon, Jennifer Goduti, Jeremy Hook, Kelly Lucius and Matthew Smith.**

Specialized Training Grant Requests

No requests submitted

Other Business**Adoption of Rule H.R. 218 the Law Enforcement Officers' Safety Act of 2004**

Cassandra Erickson advised the Council this rule went to the Administrative Rulemaking Committee, passed on the Consent Calendar, and as the final step in the process a vote would be needed to adopt the rule. Once adopted, Chairman Prozzo will sign the letter to be effective this Friday (5/25/07) or the Council may vote to change the effective date.

Following a motion by Chief Russell, seconded by Sheriff Carr, the Council voted unanimously on the motion to adopt H.R. 218, Law Enforcement Officers' Safety Act of 2004.

The Director indicated now that this rule has been adopted, he would like interpretation on the 4 hours.

After introducing Captain Ben Jean to Council members, Capt. Jean explained he was receiving telephone calls from retired officers reference the "Use of Force" training under this new rule. Currently for police officers they require 4 hours "Use of Force" training; 1 hour consisting of classroom (minimum of 6275) and Use of Force, Force Continuum and they can do 3 hours of other type classes, Lowlight qualification, DT's, etc. The 4 hours is a training requirement. The only requirement under Pol 404.1 (2) is that RSA 627.1,2,3,4,6,7 and 8 and specific portions of the Pol 404 policies are covered, but there's not an hourly requirement. Captain Jean feels this will drum up confusion.

Captain Jean stated clarification is needed with regards to the hourly requirement with this new rule or do these topics have to be successfully covered?

In response, Chief Morency indicated whereas they are acting as a private person, (Pol 627.07), we need to make sure it's covered with them more so then the Pol 627.05 and need to allot some time so it should be covered to protect all of us.

Captain Jean noted the rule does address the other RSA's but excludes Pol 625 which is used for law enforcement purposes. Police officers are required the 4 hours, but for the retired law enforcement officers we have to make sure the topics outlined in the policy for the rule are covered, but there's not a time requirement. Captain Jean wished to clarify if an officer completes 2 hours of training and all items are covered, is this going to be sufficient or is it a mandatory 4 hours of training.

Chief Russell stated they will have the same issues as with the PT testing if this is left open-ended. He inquired of Captain Jean what his thoughts were on this. The Captain responded if PSTC developed the lesson plan, curriculum, and the powerpoint presentation, we would have an idea how long this would take, introduce it to the Firearms Instructors giving them the lesson plan and material to teach which would somewhat force the time issue without actually setting a time limit. PSTC would instruct and provide the material to cover specifically.

Associate Justice Roberts inquired of Captain Jean if he or someone from the Council would verify that the "Use of Force" class taken by a retiree is adequate. Asked how will PSTC know if the component of the rule has been completed? Captain Jean responded the officer will have to be a certified Firearms Instructor and forward a letter indicating the training has been conducted as set-forth by the Council.

Associate Justice Roberts asked once the instructor certifies the retiree has passed all portions, would PSTC accept this on good faith? In response his question, Captain Jean stated basically this is on good faith. If we investigate and learn otherwise, they will have to appear before the Council to determine whether they should be a Firearms Instructor.

Chief Russell felt it was a good idea to have PSTC provide the curriculum, powerpoint, etc. This would be an assurance the material is consistent and covered by the statute.

After discussion, on a motion by Chief Russell, seconded by Sheriff Carr the Council instructed Captain Ben Jean or whoever designated to develop a curriculum to be provided to Firearms Instructors throughout the state relative to classroom instruction to satisfy H.R. 218, the "Law Enforcement Officers' Safety Act of 2004." The motion carried unanimously.

Non-Public Session – Personnel Matter

Chairman Prozzo stated the Director has requested a non-public session for the purpose of discussing personnel matters.

On a motion by Chief Dodge, seconded by Chief Morency, the Council voted unanimously on a roll-call vote, to enter into a non-public session at 10:10 a.m.

Following the discussion, on a motion by Chief Dodge, seconded by Chief Morency, the Council voted unanimously to seal the minutes of the non-public session.

Chief Dodge then made a motion that carried unanimously following a second by Chief Morency and a roll-call vote, to exit the non-public session at 10:25 a.m.

Adjournment

After scheduling the next meeting for the Council at 9:00 a.m. on Tuesday, June 26, 2007, in the John D. Morton Conference Room, the Council unanimously voted to adjourn the meeting at 4:35 p.m., on a motion by Associate Justice Champagne that was seconded by Associate Justice Roberts.

Chairman Michael L. Prozzo, Jr.