

## ***MINUTES***

***April 26, 2005***

The 335th meeting of the NH Police Standards and Training Council was called to order at 9:05 a.m. by Chairman Michael L. Prozzo of the 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:*** Vice-Chairman William L. Wrenn, Jr., Hampton Police Department, Chief Gregory Dodge, Epping Police Department; Associate Justice Norman E. Champagne, Manchester District Court; Attorney General Kelly A. Ayotte; Colonel Frederick H. Booth, NH State Police; Les Dolecal, Assistant Commissioner, Department of Corrections and designee of Stephen J. Curry, Commissioner of the Department of Corrections; and Charles Annal, Deputy Commissioner and designee of Commissioner William G. Simonton of the NH Community Technical College System; and Chief Peter Morency of the Berlin Police Department.

***Staff Present:*** Director Keith H. Lohmann, Assistant Director Robert B. Stafford, Jr., Paralegal Cassandra Erickson, and Council Secretary Denise Crocker.

Chief Michael J. Magnant, Portsmouth Police Department, Sheriff Scott A. Carr, Carroll County Sheriff's Department; Associate Justice Stephen H. Roberts, Dover District Court; and Stephen J. Curry, Commissioner of the Department of Corrections were excused from the meeting due to prior commitments.

***Guests Present:*** Chief Michael French, Goffstown Police Department, Chief Patrick Tighe, Sutton Police Department, Chief Arthur A. Reed, Newfields Police Department and Melissa LaJoie, Accreditation Manager and Administrative Assistant, Newfields Police Department.

### ***Approval of Minutes***

Following a motion by Chief Dodge, seconded by Attorney General Ayotte, the Council voted unanimously to accept the minutes of March 22, 2005, as presented.



***Director's Report***

The Corrections Academy continues with 38 recruits. One recruit was lost the first week but the count has remained status quo since that time. The Police Academy lost one recruit on day one claiming he was injured but the Director's sense was the individual was not ready to be at the Academy. The Academy lost a second recruit last Thursday, April 21<sup>st</sup>, also complaining of an injury. In both cases, the recruits were offered medical attention and could have stayed on until they reached their 10-days of PT if that would have occurred, but in both cases they chose to leave. The Police Academy is down to 45 recruits.

The Chief's Association had asked the Director to put together a Police Chief's Survival class and that has been scheduled for June 22<sup>nd</sup> and June 23<sup>rd</sup> and will be advertised shortly. Andy Volinsky and Holly Babin from the Nackey Loeb School have both agreed to participate.

Director Lohmann is also continuing to work on developing a more substantive command college that will be developed over the course of several months on the order of a Penn State or Northwestern University type program. It will be geared for police chiefs and command level officers. The Director is in discussions with Plymouth State University. The University has a new Master's program in Criminal Justice and he is trying to build this into this new Master's program as a certificate program. He has also asked the university to incorporate it in such a way that if prospective a student does not have a Bachelor's degree he or she could get undergraduate credit; or if in fact the student did not want any academic credit at all, he or she would still be able to participate in the program. Therefore, this certificate program would actually work on three tiers. Probably the number and complexity of the assignments would determine what credit the student would receive. Plymouth State seems to be very enthusiastic about this. It remains to be seen where this will lead.

This is the second week of computerized testing in the Police Academy. The response from the recruits and staff has been positive. From a recruit standpoint it is very effective because we can do an immediate item analysis which tells us when we have a "bad" question on a test. In fact, on one of the tests last week, there was a question that 60% of the recruits scored incorrectly and that could only be one of two things: the material was not covered or it was a poor question. It was decided it was a poor question and the software allows us to change the answer to the question and then re-grade all the exams automatically which is very positive. The software is working well. By this evening all recruits should have laptops issued to them. It has taken a couple of weeks to get this accomplished but we are definitely making progress.

The goal to have the memo on homeland defense training out last week did not make the anticipated date set; it, however, should go out by the end of this week. The delay in getting this memo out resulted from two hold ups: the first being whether the Director can get SWAT I and II training approved for SOU teams which is something he has been trying to do, but Washington is currently concerned with whether that would be considered supplanting which is something that can not be done with federal grants; he has been trying hard to convince Washington that it is not supplanting and he is going to suggest that



the individuals who come to do the training add some kind of a WMD theme which should resolve the issue; the second issue is that there has been an internal disagreement between PSTC and the Department of Safety, specifically with regard to the amount of backup that is needed for backfill/overtime information by departments who apply for the grants. PSTC would prefer the local departments to maintain the backup information. We, however, have been informed that we can't do that. Some agencies do not want to provide PSTC with the level of detail that we are requesting. PSTC, however, needs to standardize the form for Police Standards, Fire Standards, Emergency Management, etc.

House Bill 698 has been retained in committee in House Finance. The Director heard informally that the committee is going to hold hearings over the summer. Other than that the only other alternative for the Bill would have been that it was killed outright. He was advised that at least this bill was put into study and was not amongst the other 100 bills that were killed outright. We now need to convince House Finance that this Bill is worthy and hopefully get it reintroduced next session.

ICS/NIMS Compliance – Department of Homeland Security has mandated that all police have training in National Incident Management Systems, which is the federal version of ICS, by 2007. Their current requirement is that there be a plan in place by 2005, have substantial compliance in 2006 including training for command staff, and then full compliance by 2007. There is a 3-hour program available on-line from the Federal Emergency Management Agency (FEMA) which fulfills the requirement for the command staff or we can teach it in a traditional classroom setting. The Director will include a link on the PSTC website for people to access the on-line program but what he would prefer to do is to be able to teach it here. The Director has been advised that the FEMA website has numerous access problems. The Director has contacted FEMA about posting their course on our website but they have not been enthusiastic about permitting PSTC to do so. The Director has put a request into Washington (given that Jeff Noyes, our ICS trainer, is trained to teach NIMS) for permission to put Jeff Noyes' program on our website and then there would be no need to ask for FEMA's program. By 2007, if officers have not been trained then PSTC will not be able to get any federal funding. The last conversation the Director had with Washington was that unless Washington gives the Director the ability to do this there is no way the State of New Hampshire will be up to speed in time to meet the 2007 deadline.

The Police Memorial is scheduled for May 20, 2005, at 10 a.m. at the Legislative Office Building. Last year we made one change by having all the officers march in together and that seemed to meet with much success for the officers and for the audience. We, therefore, will include this procession again in this year's ceremony. It was impressive to see all the officers march in as a group. Please send as many representatives as each of your departments can as it is important to the survivors.

The next item discussed was the House version of the budget. The Governor's budget was submitted and PSTC received our request unchanged. The House version of the budget was submitted and we again received our request unchanged. The Director heard, however, there was going to be a provision added to the budget to raise some of the fines. The idea behind that is the money would go to the General Fund to lessen the State's financial deficit. On the face of it, if the fines go up, so do the penalty assessments so



given that HB 698 died, the Director was looking forward to that providing some revenue for PSTC and then he found out at the last minute that there was a floor amendment filed by Representatives Hager and Wallner.

The Floor Amendment reads

“ Section 27 to 55 of this act are increases to current motor vehicles fines contained in the uniform fines schedule which pursuant to 502 A19(b)5 may be changed only by statute. For the purposes of the increase in fines provided in this act no penalty assessment shall be added to the increase in the fine if the statute containing the fine states that the penalty assessment is in addition to the specified fine amount.”

In essence what this amendment did was to prevent the agency from acquiring any additional income from being realized through penalty assessment from the fines. The Director will talk with Representative Hager regarding the reasoning behind the floor amendment. This amendment will create administrative havoc in court system.

The audit continues. There still have been no major issues that have surfaced. A couple of items that are expected to be in the auditor's report are first that the Annual Report is about nine months behind and secondly, the auditor's felt that that the equipment that the Council accepted from the Littleton grant in January should have been gifted to the agency at the beginning of the grant and not the end of the grant period. On today's agenda we have the equipment from Pease and Keene which is going to be gifted using their same argument that PSTC got that equipment in January and it didn't get accepted until April. It is expected that the auditors will be submitting a draft report to the Director in the next few weeks. The Director is hopeful that the audit will be completed by June. The cost is expected to be approximately \$60,000 which he will have to go to Fiscal Committee and request funds to pay for it.

The Director went to the Fiscal Committee last week to request \$137,000 in funds for the repair of the Administrative wing from the water damage that occurred from the water pipe that burst. The Fiscal Committee approved the funds and PSTC will be on the G & C agenda for the next meeting.

The final item of the Director's Report, involved the silk screening of Academy tee shirts. At the end of each Academy the class creates its own tee shirts. At the end of the 136<sup>th</sup> Academy, the class decided they were going to be comedians and the staff had a lapse of judgment in that the Commandant approved a series of comic sayings that were imprinted on the back of the tee shirts. There was nothing patently offensive, but it did have the Academy's name on the front of the shirt; and, therefore, it was unprofessional and not conducive to what the Academy represents. Chief Wrenn noted that in the future everything that has the Academy's name on it must be approved by the Director before it leaves the building. Deputy Commissioner Annal noted as a member of the general public he didn't find anything he would really understand from the comments and that he did not find anything offensive with the sayings on the back of the tee shirts.



***Previous and/or Unfinished Business***

The Strafford County Sheriff's Department had requested Part-Time Deputy Sheriff Andrew Benaris to exceed the 1300-hour rule for 2004 at the February meeting. The Council deferred action on this matter to give Sheriff Estes time to provide a breakdown of hours. The original letter stated that he had worked 2019 hours in 2004. Correspondence was received from Sheriff Estes, dated April 19, 2005, indicating Deputy Benaris had worked 1422 hours as a bailiff/deputy doing courthouse duties which was in of itself in excess of the allowable hours and then worked an additional 72.75 hours as hospital security for Father McGuire due to shortages at the Sheriff's Department. Of note, it was not the 2,019 hours as stated in the original letter. The Director's sense is that in Council rules if the Deputy was in uniform as a deputy sheriff, then regardless of the fact that he was working as a bailiff, those hours count toward the 1300 hours; and as far as the hospital security hours go, he was clearly functioning in the capacity of a police officer so he believes what the Council would do in this case is to deduct the overage of 194.75 hours in 2004 from his 1300 hours in 2005.

On Strafford County Sheriff's Department's request that Deputy Sheriff Benaris be permitted to exceed the 1300-hour rule for 2004, the Council unanimously approved the motion made by Chief Wrenn and seconded by Judge Champagne that Deputy Sheriff Andrew Benaris of the Strafford County Sheriff's Department be required to make up the overage of hours that exceeded the 1300-hour rule in 2004 during 2005.

The Chairman handed the Director a copy of 302.12(g) which states "bailiffs shall be considered police officers, and shall be certified as such, unless their duties are limited to maintaining order in the courtroom, custody of prisoners at the courthouse and carrying out related activities such as security on jury views at the discretion of the presiding justice." The Director noted past precedent has been based on uniform.

Chairman Prozzo's question was "Is the magnetometer security of the court or is 302.12(g) talking actual courtroom. Chairman Prozzo wants to be sure the Council gives clear direction to the departments and he felt the wording of the 303.12(g) is unclear. Chairman Prozzo has requested that the Director meet with the Sheriff's departments to provide the departments a sense of awareness and develop a sense of consistency with regard to how the process will be handled in application of the 1300-hour rule.

***New Business******Accreditation*****Sutton Police Department**

The Director noted that in the initial report by the Assessment Team there were some conditions noted for New Hampshire Recognition and he took issue with that, stating that if are you issuing recognition with conditions then you probably should not be issuing recognition. He further noted this is not necessarily the way CALEA views things. Since the initial report was issued, however, a letter was received from the Assessment Team stating the conditions in the original report have been complied with and, therefore, at this



point, the Director would recommend the Council confer Recognition on the Sutton Police Department.

Chairman Prozzo introduced Chief Michael French of the Goffstown Police Department and NNEPAC Assessment Team Leader. Also in attendance was Chief Patrick Tighe, Sutton Police Department.

Chief French noted that he was representing Lt. Sean Kelly, Durham Police Department, and On-Site Assessment Team Leader for The Sutton Police Department. Lt. Kelly could not be here today because he was in the midst of his own On-Site Assessment for CALEA reaccreditation. Chief French then explained the On-Site Assessment process conducted on March 18, 2005 at the Sutton Police Department and concluded with his recommendation that the department be granted New Hampshire Recognition.

Chief Wrenn made a motion based on the recommendation of the Assessment Team, to award the Sutton Police Department with New Hampshire Recognition. The motion was seconded by Colonel Booth and carried unanimously by the Council.

### **Newfields Police Department**

Chief Michael French of the Goffstown Police Department and NNEPAC Assessment Team Leader also represented Newfields Police Department. Also in attendance were Chief Arthur Reed, Newfields Police Department and Melissa LaJoie, Accreditation Manager and Administrative Assistant.

Chief French explained the On-Site Assessment process conducted on April 1, 2005 at the Newfields Police Department and concluded with his recommendation that the department be granted New Hampshire Recognition.

Chief Wrenn made a motion based on the recommendation of the Assessment Team to award the Newfields Police Department with New Hampshire Recognition. The motion was seconded by Attorney General Ayotte and carried unanimously by the Council.

Chief Wrenn noted for the record that he commends Chief French and all the other Assessors for the excellent jobs they do. They put a great deal of effort into the on-site visits, the reports they write and the presentations they deliver before the Council. Chief French and the other Assessors deserve to be recognized for their efforts.

### ***Decertifications/Suspensions/Revocations/Surrenders***

#### **Decertification – Michael J. Plunkett, formerly of the New Hampshire State Police**

The Director presented the case of Michael J. Plunkett who was discharged for violation of 402.02(a)(5) for intoxication on duty. He indicated he was going to be present for this hearing which was scheduled for 9:30 a.m. At 10:08 a.m., the Council decided to move forward without his presence.

Paralegal Cassie Erickson advised the Council of the rule Pol 206.03 for failure to appear:



“If the party to whom notice has been served in accordance with this chapter fails to appear at this hearing and fails to advise the Council of nonappearance prior to the scheduled time of nonappearance he or she shall have a decision rendered against him or her which shall result in an adverse administrative action by default.” So not only can the Council go forward, the finding can be that if there is probable cause to decertify them it can be based on that and the fact that they did not show up.

The Director noted it is actually under a 402.02(a)(5) which states the Council shall unless it finds just cause to do otherwise as provided in (d) below order the suspension or revocation of the certification of any police or corrections officer for any of the following reasons: the officers discharge has become final, he or she has been allowed to resign in lieu of discharge from police or corrections employment in this or any other state, country or territory for reasons of lack of moral character as defined in Pol 101.28 or moral turpitude as defined in Pol 101.29 or for acts or omissions of conduct which would lead a reasonable person to have doubts about the individual's honesty, fairness and respect for the rights of others and the laws of the state or nation. The following was entered into evidence:

- Exhibit A - Form A, dated December 5, 1994
- Exhibit B - Full-Time Officer's Certification, dated March 17, 1989
- Exhibit C - Form B, dated October 4, 2004

**Synopsis:** On September 15, 2004, Trooper Plunkett was assigned fall firearms training at the New Hampton range. He arrived 15 minutes late. After the classroom portion, the officers were instructed to retrieve their shotguns and report to the range. Trooper Plunkett was observed walking from his cruiser holding his issued shotgun in an unsafe manner. Instructor Caulder, one of the range instructors, was approached by two other attendees, and they told him they smelled an odor of alcohol coming from Trooper Plunkett. Trooper Plunkett was removed from the range and questioned by Sergeant Dave Griffin and Trooper James Legace, the primary instructor. Trooper Plunkett denied having consumed any alcohol that day or the prior evening. He denied the use of any medication. Sergeant Griffin had Trooper Plunkett blow out a breath of air three different times and on the third time Sergeant Griffin noted an odor of alcohol and indicated Trooper Plunkett's eyes were bloodshot and glassy. Trooper Plunkett agreed to take a portable breath test which was administered by Trooper Legace at 5:35 p.m. and the result was a .094. That was approximately 2 hours after he had driven his cruiser to the range. Trooper Legace removed Trooper Plunkett's duty pistol; Trooper Plunkett was administered Garrity warnings and asked to recap his day. He spent the day at the International New Hampshire Speedway painting. He admitted to drinking five 12-ounce beers and stopped drinking about 1:30 p.m. when he left the track for the day. He knew he was assigned to firearms that day. At 6:43 p.m., Trooper Legace administered a second portable breath test which resulted in a .083. At 8:11 p.m. Sergeant McCormack administered an intoxilyzer test at Troop B which registered a .004. He was discharged from the State Police on October 4, 2004. The Director added that in his conversations with Trooper Plunkett, he had indicated that he was going to appear, he had stated he didn't have any witnesses but he wanted to come and make his case before the Council.



On a motion by Chief Wrenn to decertify Michael J. Plunkett, seconded by Judge Champagne, with Colonel Booth abstaining, the Council voted unanimously to decertify Trooper Plunkett.

### ***Prior Training & Experience Requests***

#### **Part-Time**

The Director outlined the request of Brad Zarba, Hampton Police Department, for prior training and experience. The Council then voted unanimously on a motion by Colonel Booth, seconded by Chief Morency, with Chief Wrenn abstaining, to accept staff recommendation and grant part-time certification to Brad Zarba, Hampton Police Department, on prior training and experience upon successful completion of the law package at the PT school.

### ***Requests for Extensions***

#### **Full-Time**

After the Director outlined the reasons for the extension requests, on a motion by Chief Wrenn, seconded by Attorney General Ayotte, the Council voted unanimously to grant extensions through the 139<sup>th</sup> Academy to Full-Time Officers Daniel J. Ball, Jr., Boscawen Police Department and Anthony D. Swett, Plainfield Police Department.

### ***Specialized Training Grants***

The Director noted the current balance of the Specialized Training Grant Fund, highlighting the reasons for the return of two grants; namely, the cancellation of one class and secondly an officer not being able to attend the other program.

The Director outlined the request of the Jaffrey Police Department to be reimbursed \$518.67 for funds spent for training on March 28 and 29, 2005 to send Sergeant William J. Oswalt to training at the Public Agency Training Council, Bomb and Bomb Threat Management in Schools in Atlantic City, New Jersey. Staff recommendation was that grants should not be awarded retroactively. On a motion by Judge Champagne seconded by Chief Morency to accept staff recommendation and not award grants retroactively, the Council unanimously denied the request of the Jaffrey Police Department.

Hollis Police Department withdrew its request for funds at this time as a result of being understaffed and not being able to send the officer to training on the training dates requested.

The Director outlined the request of the Durham Police Department to send Officers Bob Joslin and Luke Vincent to the IACP Law Enforcement Management Training Conference in Greensboro, North Carolina, May 22 – May 27, 2005 at a cost of \$1,704.68. On a motion by Chief Dodge, seconded by Chief Wrenn to accept staff recommendation and approve the request of the Durham Police Department, the Council voted unanimously to grant the request of the Durham Police Department to send the two officers to the IACP



Law Enforcement Management Training Conference in North Carolina from May 22 – May 27, 2005.

Chief Dodge asked if the Council requires proof of attendance at the training programs it approves. The Director noted that typically we do not require proof of attendance. He further noted that the auditors had also made a recommendation to have paper back up of attendance. The Director indicated that it would be fairly easy to do in situations in which certificates were issued but in programs like the IACP Conference above the attendees may not get anything indicating attendance, so unless we ask for a travel manifest the Director was not sure what we could require. Departments are very good about returning monies that do not get used as was seen this month. Chairman Prozzo thought this was a good point and felt some documentation was in order and could be accomplished by creating a form letter requesting the Chief to sign off confirming that the officers did in fact attend the training.

### ***Other Business***

#### **Requests to Exceed 1300-Hour Rule**

**Lyndeborough Police Department.** The Director outlined Lyndeborough's request that Part-Time Captain Richard Bailey be granted a waiver of the 1300-hour rule and be permitted to work unlimited part-time hours. Captain Bailey served as a full-time officer with the Nashua Police Department and retired with over twenty years of service. On a motion by Chief Wrenn to approve the request for part-time Captain Richard Bailey to be granted the waiver of the 1300-rule due to his full-time certification, seconded by Colonel Booth, the Council unanimously approved the request of the Lyndeborough Police Department to grant Part-Time Captain Richard Bailey a waiver of the 1300-hour rule.

#### **3-Year PT Testing for Corrections**

In the Department of Corrections there were three people listed as not in compliance with NH RSA 188-F:27, III-d and III-f. These individuals were Officers Nellie Chancey, Daniel LeBlanc, and Jessica Simino Riendeau. As of this morning, we received Nellie Chancey's verification that she has complied with the 3-year PT testing, Daniel LeBlanc is supposedly in Iraq; we, however, do not have any verification of that yet. The Director suggests that this be put on hold until he can verify that. As of this date, we have heard nothing from Jessica Simino Riendeau. The Director would suggest a show cause order be issued to Officer Riendeau.

On a motion by Chief Wrenn to issue a show cause order to Jessica Simino Riendeau, NH Department of Corrections, seconded by Judge Champagne, with Les Dolecal abstaining, the Council voted unanimously to issue the show cause order to Officer Riendeau.

### **Gift Acceptance**

#### **Acceptance of Equipment from NHCTC**



Based on the MOA dated May 4, 2004, between the New Hampshire Community Technical College System and PSTC, all videoconference equipment items purchased to date at the PSTC sites at Pease and Keene are considered the property of PSTC. This includes all videoconferencing equipment items purchased from View Communications totaling \$110,015.06.

On a motion by Chief Wrenn to accept the videoconferencing equipment so noted, seconded by Colonel Booth, the Council unanimously voted to accept the equipment from NHCTC.

#### Acceptance of Exercise Equipment

The Nashua Police Department donated a Nautilus lateral raise machine, decline bench machine and pullover machine to PSTC for use by the recruits in assisting them to maintain their physical fitness requirements. On a motion by Chief Wrenn to accept the exercise equipment given as a gift to PSTC from the Nashua Police Department, seconded by Attorney General Ayotte, the Council unanimously voted to accept the exercise equipment from the Nashua Police Department. The Director was requested by the Council to send a thank you note to the Police Department.

#### Non-Public Session to Discuss Personnel Issues

The Director requested to go into nonpublic session to discuss two personnel issues.

Following a motion made by Chief Wrenn and seconded by Chief Dodge, the Council voted unanimously on a roll-call vote to enter into a non-public session at 10:40 a.m. for the purposes of discussing personnel matters.

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

Chief Wrenn then made a motion, seconded by Chief Morency that carried unanimously on a roll-call vote to exit the non-public session at 11:13 a.m.

#### *Next Meeting Date/Adjournment*

After scheduling the next Council Meeting for 9:00 a.m., Tuesday, May 24, 2005, in the John Morton conference room, the Council unanimously voted to adjourn the meeting at 11:15 a.m. on a motion by Chief Dodge and seconded by Colonel Booth.

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Chairman Michael L. Prozzo