

MINUTES

April 18, 2006

The 347th Meeting of the NH Police Standards and Training Council was called to order at 9:04 a.m. by Chairman Michael L. Prozzo, Jr., 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: Chief Timothy Russell, Henniker Police Department; Sheriff Scott A. Carr, Carroll County Sheriff's Department; Chief Gregory C. Dodge, Epping Police Department; Chief Peter P. Morency, Berlin Police Department; Associate Justice Norman E. Champagne, Manchester District Court; Colonel Frederick H. Booth, NH State Police; Commissioner William L. Wrenn, Jr., Department of Corrections; and Assistant Attorney General Ann Rice, designee of Attorney General Kelly A. Ayotte.

Staff Present: Director Keith H. Lohmann, Assistant Director Robert B. Stafford, Jr., Paralegal Cassandra Erickson, Assistant Attorney General Nancy Smith, PSTC's Counsel, and Secretary Denise Crocker.

Chief Michael J. Magnant, Portsmouth Police Department; Deputy Commissioner Charles Annal, designee of Commissioner William G. Simonton of the NH Community Technical College System, Attorney General Kelly A. Ayotte and Associate Justice Stephen H. Roberts, Dover District Court were excused from today's meeting due to prior commitments.

Guests: Director David T. Barrett, New Hampshire Marine Patrol.

Approval of Minutes

Following a motion by Judge Champagne, seconded by Sheriff Carr, the Council voted unanimously to accept the Minutes of the March 28, 2006, meeting as presented.

Director's Report

Police Academy. The 139th Police Academy graduated March 31st with 55 recruits. The Governor once again was in attendance. This is his third graduation out of four since he became Governor. He is very supportive of what Police Standards does. The Director thanked the Council Members who were able to attend. He noted it is important to the recruits and family members to have the Council Members attend graduation and the Director appreciates the time the Council Members are

able to commit to this event. The Director also publicly thanked Chief Jaskolka of Manchester for sending a Cadre member on short notice for the last session and then again at this session when PSTC had people scheduled and they were pulled at the last minute because of staff shortages. The new Academy has begun with 46 recruits. This is a small session as Spring sessions typically are.

Part-time School. This session of the part-time school is also very small. There are less than 30 recruits enrolled in this session. The Director has asked the staff to review the possibility of altering the scheduling dates of the part-time school to achieve better attendance.

Corrections Academy. There is also a Corrections Academy currently in session.

Staffing. A new maintenance person was hired last Friday. He came from NHTI. He has experience with carpentry, electrical, etc. We are still trying to hire the other maintenance position that is vacant. The current status on the 3 vacant LETS positions stands at two conditional offers have been made. The two candidates have passed the polygraphs and the backgrounds are in the process of being completed. Hopefully these two candidates will both be on board before the May meeting.

Legislation. HB 1243 (which was the Bill in the House that was amended in a manner that was agreeable to the Agency) passed the full Senate. The Director noted that there was such a full house that the Senate did not take any testimony, they voted the bill out and it went to the full Senate and passed. That bill, as it is amended right now, would repeal the fines at the end of FY07 and would put the percentages for penalty assessment and crime victims fund back at the levels they were prior to the fines increase, which puts PSTC back to the 2005 level.

The Director noted that there was work still left to be accomplished on Senate Bill 298. This is the bill that repealed the fines and did nothing to the percentages (which was not to our advantage) and it is currently in House Ways and Means. This bill will probably be killed now that HB 1243 has passed. However, encouragement to Representatives in House Ways and Means to ensure this bill moves in the direction that most benefits this Agency would be helpful to ensure a positive outcome for PSTC.

The Director advised the Council members there is a probability that a bill will be proposed again to increase the fines since the biggest issue surrounding the raising of the fines was that it had gotten attached to a trailer bill and no hearings were held in the House and the Senate.

Audit Findings. The Legislative Audit is complete. However, the department is currently undergoing an audit by the Department of Administrative Services. One of the items that these auditors are requesting changes to be made in is paperwork back up in the area of training grant requests. They have indicated that the PSTC has no back up for the monies that are sent to the departments for the approved training grants.

On in-state grants the departments are required to send a certificate of completion for each person who took the training due to the fact that reimbursement for in-state training is paid after the training is complete. With out-of-state grants, however, the funds are issued in advance, and we have not required certificates of completion. In order to meet the auditors' recommendations, it will

be necessary to develop a policy requiring notification of completion of the training. The Director suggested that starting with FY07, that the departments be informed when the officer returns from the training the department must submit a certificate of completion to this office. Council Members agreed that a procedure needed to be put in place to track training grant funds issued.

Council Members also requested that copies of the LBA audit be sent to them.

Polygraph School. The Director informed the Council that Chief Gendron has approached him and requested the Director to put on a polygraph school in FY07. Typically this program would be 12 weeks in length and cost about \$12,000 plus equipment. The Chief has at least two people he would like to send. The Chief was primarily asking if PSTC could provide space for this program and since the FY07 calendar hasn't been put together yet the Director indicated that it would be a possibility to do this. The Director asked the Council if this was something the Council was interested in pursuing and because of the cost of the class was this something the Council was interested in funding through an in-state grant. Chief Gendron feels there is a definite need for this class.

If the Council is interested in this proposal, the Director will ask the Chief from Derry to send out an e-mail to the Chiefs to gauge the interest in having such a class and proceed from there. Sheriff Prozzo asked if this would be just classroom space? The Director indicated it would entail reserving one classroom for the 12-week period and could possibly require residential space for out-of-state attendees but the Director would make no commitment to space for overnight accommodations.

Commissioner Wrenn felt that this was a good idea and he would be interested in a couple of spots for his people. He felt it would be a cost savings by not having to send officers out of state for this training. Dave Crawford may be a good resource to use for locating an organization to run this program. Chief Russell also supported running this program. Assistant Attorney General Ann Rice also supported running such a program but noted it needed to be accredited.

The consensus of the Council was that this program could benefit the Council and that the Director should further investigate the possibility of scheduling this program for FY07 and return to the Council with more information.

Sweepstakes Commission Investigator Training. The Director has been approached the Sweepstakes Commission and been requested to do the investigator training. Historically, years ago the Bingo investigators, by statute, had to be certified as part-time police officers. They had to attend the part-time school and through an exemption could then work full-time. Then, these investigators were absorbed into the Department of Safety; last year the law changed again and returned them to the Sweepstakes Commission. At the beginning of this year the Director had numerous communications with the people at the Sweepstakes Commission which resulted in a decision by the Commission that the people they hire from this point forward will not be certified as part-time police officers and they will not have powers of arrest. These investigators will simply have the authority to enforce the Commissions Administrative Rules concerning gaming; but the Commission still wants their people to attend training such as the Law Package, etc. The Director has asked them to put their request in writing to see precisely what their expectations are.

The Director's thought on this was that if these investigators are going to simply be enforcing the Commissions Administrative Rules and are not going to have any powers of arrest, they will not be contributing to the penalty assessment and thus, they will, in essence, be getting their training here for free. The Council has the right, under our rules, to charge outside entities who receive training a fee of \$15 an instructional hour which is something that we have not exercised to date. If the Council were going to consider to start charging folks that do not contribute to the care and upkeep of this facility this might be the best opportunity to initiate such action.

Colonel Booth felt that the Council has to take a position and start somewhere. He feels that from a budgetary standpoint this organization could pay for its training. He also stated that if the Council decides to take this position for one agency which is noncontributory to penalty assessment then the Council is going to be faced with others down the road. Commissioner Wrenn indicated that consistency once again is the key. Colonel Booth felt that the Council needed to take action and do this training because the roots should really generate from here. He further stated that if the Council does get involved in this type of training then the organizations should be charged to help our own revenues. He felt that by delaying to initiate an action these organizations will find another source to do the training and the opportunity and revenue stream would be lost and then there is a competitor in the field; in the long range this could be a significant factor. Judge Champagne also felt that the Council should do this training and charge for the service.

Sheriff Prozzo summed up that the consensus of the Council was the Council was interested in developing programs for the training of gaming investigators and also court officers and the Director should pursue gathering information and developing potential programs for these organizations and return to the Council with status updates.

New Business

Decertifications/Suspensions/Revocations/Surrenders

Jason R. Morrow, employed by Sandown Police Department since 6/21/2000,

Convicted in Haverhill, Massachusetts District Court of one felony count of Assault with a Dangerous Weapon on March 26, 2006. Sentenced to one year probation. Staff Exhibits were

Exhibit A - Employee Status Notification Form A dated 11/13/00

Exhibit B - Full-Time Officer Certification dated June 28, 2002

Exhibit C - Council Form G received January 25, 2006

Exhibit D - Police Report from Haverhill, Massachusetts

Exhibit E - Conviction from Haverhill District Court received April 4, 2006

Synopsis: On January 14, 2006 Haverhill, MA Officer Sean Scharneck met Ms. Candace Furber and her six year old son, Aaron. She stated she was in the parking lot of Gold's Gym near the ATM and had just put her son in his car seat. A vehicle pulled up to the space next to hers. Her car door

was still open and she was reaching to grab it when the approaching vehicle beeped at her. She closed her door. She states the driver mouthed unknown statements to her. He exited the car and proceeded to the ATM.

As a result Ms. Furber states she was upset at the way the driver acted and not knowing what to do she backed from the parking spot, stopped behind the vehicle and began to write down the plate number. A passenger got out and stood in front of the plate.

The driver, later identified as Morrow, exits the ATM and 'charged' at her vehicle. As he approached he reached for the passenger door handle but did not grab it. She locked the doors. Her son began to cry. Morrow began yelling at her and stated "What are you trying to do get my plate? I got something better for you". He reached into his pocket and took out a black trifold wallet, opened it up, displayed a silver color badge and put it to her passenger window. He stated, "I'm a cop, what are you going to do about it? How's that for you?"

He then put it away and walked back to his truck. She rolled down her window and asked for his name and badge number. He came back to the vehicle and stated, "I'll give you my badge number, its S-U-K-D-I-K". She asked for his number again as he walked away and he stated, "You better move your car cause I'll drive through you".

He got into his truck and she saw the reverse lights come on and he began to back up. The tires were squealing and smoke was coming from the truck, the truck came very close to her mini van. The truck stopped and then went forward over a yellow parking curb, over the sidewalk and onto the road.

She stated it took her 15 minutes to calm her son down and she decided to go to the police station. On her way, the truck drove by her in the opposite direction and the driver beeped at her and blew her a kiss.

Officer Scharneck went to the scene and measured 6 feet of skid marks and noted the parking curb had been moved and there were tire marks in the mud by the sidewalk.

He interviewed three witnesses from Papa Ginos restaurant who saw the truck squeal its' tires as it was backing up towards the mini van. One employee said it looked as if the truck was going to hit the van. Another employee described the truck as doing a brake stand and then drove forward over the curb.

When Morrow was interviewed he stated he showed his badge because she would not move her vehicle and at not time did he threaten her with his badge. He stated he waited patiently for a few moments and gave her a quick beep. She began swearing and throwing up her arms. He ignored her and went into the lobby. He said he told his friend to get back in the truck because he didn't care if she got his plate number. He stated he did drive backward a short distance but did not attempt to crash or threaten her. His two passengers said he gave a quick beep.

PSTC sent a Certified Letter on sent April 3, 2006 and got the return on April 13, 2006, which was signed by his wife. No communication has been received from Jason Morrow. According to the

Chief in Sandown, he is in Florida.

On a motion by Commissioner Wrenn to decertify Jason Morrow for violation of 402.04(a)(2) as a result of his conviction for felony assault with a dangerous weapon in the Haverhill, Massachusetts District Court on March 26, 2006, seconded by Colonel Booth, the Council voted unanimously to decertify Jason Morrow based on the above charges.

Thomas Indelicato, formerly on UNH Police Department and Strafford County Sheriff's Department, surrendered his certification. The circumstances surrounding the surrender of this certification were unclear since there were no reports from UNH. Mr. Indelicato was informed by the Director that surrendering his certification would have the same effect as decertification and that it would be treated as such and would be entered into the national decertification database. Mr. Indelicato indicated to the Director that his wish was to allow the surrender to move forward.

On a motion by Commissioner Wrenn to accept Thomas Indelicato's surrender of certification which would have the same effect as a decertification, seconded by Chief Morency, the Council opened up the matter for discussion. Judge Champagne questioned whether the Council had ever acted upon accepting a surrender without cause in the past and whether the Council could justly do so. The Director indicated what he surmised had happened was that the UNH Police Department started an investigation and Mr. Indelicato resigned which halted the investigation. The Director was not sure that UNH was entirely aware of what happened. The Director indicated anyone could surrender certification but what was important in this case was that Mr. Indelicato was aware that surrendering his certification has the same effect as decertification. The B Form shows he resigned.

The Commissioner indicated that Mr. Indelicato had made certain statements in his letter to the Director which stated "I felt that had I not asked to have 'my ticket' pulled, it would have automatically initiated an investigation and an adversarial situation with my accuser." The Commissioner believed that he resigned to avoid the investigation and termination. The Director felt his situation might have had to do with a relationship on campus.

Sheriff Carr felt that Mr. Indelicato might have acted to avoid a confrontation with the other individual involved being concerned that this individual would make his life intolerable. Chief Morency noted in his original letter he states that "I made a foolish mistake which was deemed, rightfully so, as conduct unbecoming a police officer." Discussion was held on the wording of the motion in light of the circumstances of the surrender.

After much consideration the original motion was brought back to the table based on the understanding the Mr. Indelicato had made statements in his correspondence to the Director that he believed that an investigation would have been pending and that "there could have been no other outcome but termination from that institution". Mr. Indelicato additionally stated that "If you feel termination of my certification is appropriate given what you know, I will accept that without contest or complaint." And he further commented in his letter of March 23, 2006 about his conduct being "unbecoming a police officer."

On a motion by Commissioner Wrenn to accept Thomas Indelicato's surrender of his certification

based upon his own comments and which will have the same effect as a decertification, seconded by Chief Morency, the Council voted to unanimously accept Mr. Indelicato's surrender of his certification.

Requests for Extensions

Full-Time

Tracy N. Trammell, Sanbornton Police Department

After the Director outlined the reason for the request for extension through the 141st Academy, on a motion by Commissioner Wrenn, seconded by Chief Dodge, the Council voted unanimously to grant the extension through the 141st Full-Time Academy to Officer Trammell, Sanbornton Police Department.

Philip M. Dion, New Hampton Police Department

After the Director outlined the reason for the request for extension through the 141st Academy, on a motion by Commissioner Wrenn, seconded by Chief Dodge, the Council voted unanimously to grant the extension through the 141st Full-Time Academy to Officer Dion, New Hampton Police Department.

Joshua M. Costa, State Police - New Hampshire Hospital Campus Security

After the Director outlined the reason for the request for extension through the 141st Academy, on a motion by Commissioner Wrenn, seconded by Chief Dodge, the Council voted unanimously to grant the extension through the 141st Full-Time Academy to Officer Dion, New Hampshire Hospital Campus Security.

Department of Corrections

Stephen Allen. After the Director outlined the reason for the request for extension through the 83rd Academy, on a motion by Chief Russell, seconded by Colonel Booth, the Council voted unanimously, with Commissioner Wrenn abstaining from the vote, to grant the extension through the 83rd Academy to DOC Officer Allen.

William Duffy. After the Director outlined the reason for the request for extension through the 83rd Academy, on a motion by Chief Russell seconded by Colonel Booth, the Council voted unanimously, with Commissioner Wrenn abstaining from the vote, to grant the extension through the 83rd Academy to DOC Officer Duffy.

Ryan Flynn. After the Director outlined the reason for the request for extension through the 83rd Academy, on a motion by Chief Russell seconded by Colonel Booth, the Council voted unanimously, with Commissioner Wrenn abstaining from the vote, to grant the extension through the 83rd Academy to DOC Officer Flynn.

Matthew Lewis. After the Director outlined the reason for the request for extension through the 83rd Academy, on a motion by Chief Russell, seconded by Colonel Booth, the Council voted unanimously, with Commissioner Wrenn abstaining from the vote, to grant the extension through the 83rd Academy to DOC Officer Lewis.

Brian Moriarty. After the Director outlined the reason for the request for extension through the 83rd Academy, on a motion by Chief Russell, seconded by Colonel Booth, the Council voted unanimously, with Commissioner Wrenn abstaining from the vote, to grant the extension through the 83rd Academy to DOC Officer Moriarty.

Specialized Training Grants

Command Training Programs

Salem Police Department. The Director outlined the request of the Salem Police Department to send **Lieutenant Philip Smith, Jr.** to the Massachusetts Police Leadership Institute's Program—"Training Police Managers to Manage Change" at the Lowell Police Training Center at Cross Point in Lowell, MA from April 10 – 21, 2006 at a cost of \$1,000. This request was retroactive as a result of an oversight by staff this request did not get placed on the March Agenda along with Salem's request for Officer Patten. On a motion by Commissioner Wrenn, seconded by Judge Champagne, the Council unanimously approved the grant request of the Salem Police Department for Lieutenant Smith. Judge Champagne noted for the record that the Council does not approve retroactive training grant requests and the only reason this exception was granted and the request was approved was the fact that this was due to staff error.

The Council decided at this point that as a course of business that a certificate of completion will be required for all those issued funds for training programs in the future.

Other Business

Request to Exceed/Exemption of the 1300 Rule

Hillsborough County Sheriff's Department. The Director outlined the request of the

Hillsborough County Sheriff's Department requesting a waiver be granted to Deputy Sheriff Richard Young so that he may be permitted to work unlimited hours. On a motion by Commissioner Wrenn, seconded by Chief Morency, the Council unanimously voted to grant Deputy Sheriff Richard Young the waiver of the 1300-hour rule and permission to work unlimited hours.

New Hampshire Marine Patrol. Director David T. Barrett of the New Hampshire Marine Patrol spoke to the Council regarding an exemption from the 1300-hours rule for hourly wages paid to part-time officers for on land travel time pay in lieu of per mileage reimbursements. As a cost savings to his department, it has been decided to pay for travel time in 15-minute hourly increments instead of a per mileage rate during the winter months. These hours will be documented separately and the officers would not have any authority to carry out any law enforcement duties while on the commute. It is expected this will affect about 8 – 10 officers.

On a motion by Commissioner Wrenn, seconded by Sheriff Carr, that the Council approve the request of the New Hampshire Marine Patrol to exempt the travel time pay from the 1300-hour rule calculations for the marine patrol officers between their residences and their workstations in Portsmouth Harbor, the Council unanimously approved the New Hampshire Marine Patrol's request for the exemption from the 1300-hour Rule.

Show Cause Hearings

The show cause hearing scheduled on the agenda today required no action. All the individuals listed on the agenda have either passed the fitness testing or have provided paperwork to support the reasons for not completing this requirement.

General Discussion

Medical Issues and Continued Attendance at the Corrections Academy

Commissioner Wrenn brought an issue before the Council regarding a recruit who has indicated that she may be pregnant with four weeks to complete the Corrections Academy and requesting to continue in the program. Under the policy, staff has indicated that she can continue in the nonphysical parts of the Academy only. She, however, wants to graduate with her class and be granted full participation with doctor approval. Commissioner Wrenn posed the question whether the Council was going to over rule the woman's request and not allow her to participate even if she gets her physician's approval to continue. The question she raised to the Commissioner was whether men who have a medical condition are prohibited from participating in parts of the Academy because of a specific medical problem that gets discovered while they are at the Academy.

Sheriff Carr indicated that training at the FBI Academy indicated that the employer should follow the Doctor's recommendation otherwise the employer might find themselves in litigation; even though the employer may be well meaning they are not doctors.

The Council went off the record at 10:21 a.m. for advice from legal counsel. They Council returned to public session at 10:35 a.m.

The Council members were having difficulty with a determination on what to do in this instance since there was not a confirmation that the recruit was, in fact, pregnant. Colonel Booth felt the first course of action was to mandate that the recruit medically confirm that she was pregnant. Colonel Booth then felt if the doctor certifies that it is safe for her to fully participate and she is comfortable in participating then she should be permitted to participate. If the doctor feels that she should be excluded from OC, defensive tactics and perhaps Firearms and the doctor so states that then she should participate in all other phases and complete the sections that she was excluded from after the condition resolves itself.

The Director indicated that the issue in front of them is timeliness in this situation. He indicated that he could invoke the Medical Review Board and request she see a specialist through them and that way the information would be provided to her and the Council.

On a motion by Colonel Booth that the recruit seek out medical confirmation within 48 hours from her physician that she is in fact pregnant and that the physician sign a release that she can safely complete the physical requirements of the Corrections Academy as outlined on a sheet from PSTC and that if she refuses to comply with this mandate that she be suspended from DOC, seconded by Sheriff Carr, the Council opened up the motion for discussion. The Council went off the record briefly to get advice from their legal counsel. The Council voiced their concerns regarding the description of the physical activities she will be involved in to be sure that the doctor understood the extent of the physical contact. Sheriff Prozzo asked for an amendment to the motion regarding the 48 hours in the event that she couldn't get an appointment in that time period. The Director asked what position he should take regarding her participation in physical activities until she has the doctor's release. The Commissioner asked for a delay in those activities until she can get the release. The Director indicated he would do his best to accommodate that request.

The amended motion reads: On a motion by Colonel Booth that the recruit seek out a medical appointment within 48 hours or the closest available appointment to that time and receive confirmation from her physician that she is in fact pregnant and that physician sign a release that she can safely complete the physical requirements of the Corrections Academy as outlined on the sheet from PSTC, and that if she refuses to comply with this mandate that she be suspended from the Academy, seconded by Sheriff Carr, and agreed unanimously by the Council. Commissioner Wrenn abstained from the vote.

Then on a motion by Colonel Booth that the Council adopt a policy in regard to the standards that will be followed regarding pregnancies occurring while recruits are in an Academy prior to this issue presenting itself again, seconded by Judge Champagne, the Council unanimously agreed to review this whole issue and develop a policy at a forthcoming Council meeting.

Non Smoking Policy

The Council reviewed the letter from Brad Parker regarding his request to reconsider the restriction of smoking areas and the limited designated smoking areas currently being provided. It was the

Council's decision to take no action on Mr. Parker's letter.

Nonpublic Session – Hiring Issue

Director Keith Lohmann requested that the Council enter into a nonpublic session to discuss a matter involving a hiring issue.

Following a motion made by Sheriff Carr, seconded by Commissioner Wrenn, the Council voted unanimously on a roll-call vote to enter into a nonpublic session at 11:15 a.m.

Following the discussion of the matter, on a motion made by Commissioner Wrenn, seconded by Sheriff Carr, the Council voted unanimously to seal the minutes of the nonpublic session.

Then on a motion by Assistant Attorney General Ann Rice, seconded by Commissioner Wrenn which carried unanimously by the Council on a roll-call vote to exit the nonpublic session at 11:26 a.m.

Upon return to public session, on a motion by Commissioner Wrenn, that the Director write a letter to Chief Bailey informing the Chief that this matter will only be considered if a Form A is submitted showing his intent to hire this individual and if that is forthcoming to further inform the Chief that an eligibility hearing will be scheduled on the matter for the Council to consider circumstances at a future meeting, seconded by Chief Russell, and unanimously approved by the Council.

The Director indicated he will investigate further what constitutes an auxiliary officer in that particular town in the Commonwealth of Massachusetts and relay that information back to the Council.

Next Meeting Date/Adjournment

After scheduling the next Council Meeting date for 9:00 a.m., Tuesday, May 23, 2006, in the John D. Morton Conference Room, the Council unanimously voted to adjourn the meeting at 11:35 p.m., on a motion by Assistant Attorney General Ann Rice and seconded by Chief Russell.

Chairman Michael L. Prozzo, Jr.