

## ***MINUTES***

***September 26, 2006***

The 352<sup>nd</sup> Meeting of the NH Police Standards and Training Council was called to order at 9:10 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 Michael J. Magnant, Portsmouth Police Department; Chief Gregory C. Dodge, Epping Police Department; Sheriff Scott A. Carr, Carroll County Sheriff's Department; Associate Justice Norman E. Champagne, Manchester District Court; Executive Major Barry Hunter designee of Colonel Frederick H. Booth, NH State Police; Commissioner William L. Wrenn, Jr., Department of Corrections; Deputy Commissioner Charles Annal, designee of Commissioner William G. Simonton of the NH Community Technical College System; and Associate Attorney General Ann Rice, designee of Attorney General Kelly A. Ayotte.

***Staff Present:*** Director Keith H. Lohmann, Paralegal Cassandra Erickson and Secretary Denise Crocker; Assistant Director Robert B. Stafford, Jr., was excused from the meeting due to a prior commitment.

Chief Timothy Russell, Henniker Police Department; Chief Peter P. Morency, Berlin Police Department; Associate Justice Stephen H. Roberts, Dover District Court; Colonel Frederick H. Booth, NH State Police, and Attorney General Kelly A. Ayotte were excused from today's meeting due to prior commitments.

***Guests:*** Chief Kevin Cyr, Newmarket Police Department; Steve Caccia, Vice President Student Affairs, NHTI; Chief Mark Barton, Sanbornton Police Department; Corrections Officer Franklin Bergman; Corrections Officer Stephanie Howland; SEA Representative Thomas McCabe; Corrections Officer Donald Rose; Lieutenant Christopher Shaw; Corporal Charles Paz; and Corrections Personnel Tim Moquin.

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

Following a motion by Commissioner Wrenn, seconded by Sheriff Carr, the Council voted unanimously to accept the Minutes of the August 29, 2006 meeting as presented.

***Director's Report***

***Due to the amount business to be covered at this meeting the Director's Report was deferred to the October Meeting.***

***Old Business*****Tracy Trammell, Sanbornton Police Department**

The Director highlighted the reason this case was before the Council again this month. At the August meeting there was a request for extension for Tracy Trammell. The difficulty was that Officer Trammell was part-time certified and he would be nearing his time limit for certification. The Council, therefore, denied the extension request. The Director notified the Sanbornton Police Department and advised them of the Council's decision. Chief Barton then requested a meeting with the Council to request a motion for reconsideration based on circumstances at the Sanbornton PD and the Chief was at the meeting to address his concerns to the Council.

Chief Barton addressed the Council to explain the situation at Sanbornton PD. He stated that Officer Trammell has been with the department in a part-time capacity for over seven years. He became full-time in March of 2005. He stated that there has been a significant amount of turnover in staffing; and subsequently to maintain coverage, the Chief had requested two previous extensions for Officer Trammell. The Chief also indicated that there was a segment of the Town's population who would like to downsize the police department and the Budget Committee was very concerned about maintaining the budget, which was another reason the Chief had requested the extensions. The Chief was concerned that having more than one officer at the Academy at the same time would increase payroll costs. The most recent extension request resulted when a newly trained officer resigned suddenly to take a position in Rhode Island, which put the Chief in a staff shortage situation.

What the Chief was proposing is that on January 1, 2007, he would make Officer Trammell a part-time police officer and then upon graduation from the Academy would reinstate him to full-time status. The Chief indicated that by granting the requested extension through the end of the year, it would prevent the officer from exceeding the 1300-hours limit because as of right now if reduced to part-time status, he has exceeded the 1300 hours for this year. It also gives the Chief the opportunity to enroll the officer in the January Academy. The officer will take the PT test on December 17<sup>th</sup>, graduate from the Academy around March and receive his full-time certification and that will help the Chief maintain his staffing levels and eliminate any issues within the Town regarding staffing levels and budgetary constraints. The officer has not worked since the Chief received the letter from the Director. The Chief feels if the Council grants this extension he will be within the statutes and also be meeting the needs of his department.

Commissioner Wrenn indicated that if the Officer were going to resign from full-time and move to a part-time status and be rehired full time after completion of the Academy that would be agreeable to the Council. The Council's issue was that the officer would not have become certified during the allotted time period.

The Chief indicated that his issue is maintaining the officer's position so that he can remain employed up until that time in a full-time capacity and then effective 1/1/07, he would become part-time, complete the full-time Academy and the return to a full-time status. The Chief is concerned about creating a vacancy in his department from now through December.

Commissioner Wrenn stated that the intent of the Council's rules is to grant extensions to allow the officer enough time to get into the Academy and finish the Academy. It is not to grant extensions to serve as a full-time officer for series of months when the true intent is to convert to a part-time officer status. Chief Wrenn felt that the split from full-time to part-time should not be delayed.

The Chief supported his position outlining that fact that they are a small agency and provide 24-hour coverage and that he made the administrative decision to send another officer to training before Trammell because that officer required more training than Trammell. The Chief didn't expect that officer to leave shortly after he completed his training.

Chief Wrenn asked about the 1300 hours rule. The Director indicated the rule has been interpreted that the hours are determined by the officer's status at the end of the year. Therefore, if he were part-time at the end of the year, all hours worked would count toward the 1300 hours.

The Director reiterated the Chief's proposal. The Chief would like a extension granted through the end of this year which allows him to keep the position in his budget; Then change the position to part-time on January 1<sup>st</sup> and have Officer Trammell come to the Academy as a part-time officer and when he completes the full-time Academy, it is Chief Barton's intension to reinstate him as a full-time officer. The two-year limit ends on March 30, 2007. Officer Trammell would have to convert to part-time before that date and there would not be a violation of the two-year limit.

Chief Magnant asked for the Director's opinion on the matter. The Director stated that the Council has always interpreted the rules that the two-year limit applies separately to full-time and part-time so that this would not be counter to our interpretation of the rules. The Director believes it may be a creative interpretation of the rules but it is consistent to way the rules have been interpreted in the past.

Commissioner Wrenn was concerned that this was manipulating the rule. Commissioner Wrenn would consider it if the motion were very specifically worded. Judge Champagne noted that the Officer was in this situation because of administrative decisions by the department and it had nothing to do with the officer. Judge Champagne did have some concern with consistency of the application of the rule.

**On a motion Commissioner Wrenn, seconded by Chief Dodge, to reconsider the Council's original decision to deny the extension request for Officer Tracy Trammell, Sanbornton Police Department made at the August 29, 2006 Council Meeting, the Council voted unanimously to reconsider their decision based upon the information provided by Chief Barton.**

**On a motion by Judge Champagne, seconded by Commissioner Wrenn that based upon the representations and extenuating circumstances outlined by Chief Barton that Officer Trammell be granted the extension, provided that the officer passes the PT Test during the extension period, the Council voted unanimously to grant the extension to Officer Trammell, Sanbornton Police Department, through the December PT test, and if he passes the PT test the extension would be extended through the end of the year.**

**Christopher P. Cunningham, Manchester Police Department.**

The Director outlined the reason this case was before the Council for reconsideration. This case was reviewed by the Council last month as a PT&E request. The Council had denied the request for improperly prepared paperwork. The Council had also requested a letter from the Chief indicating that he had reviewed the background investigation and that Mr. Cunningham was, in fact, a suitable candidate. The Director noted that as far as he was aware Manchester has now met the requirements of the Council.

**On a motion by Commissioner Wrenn, seconded by Chief Magnant, to reconsider the Council's original decision to deny the PT&E request for Christopher P. Cunningham, Manchester Police Department at the August 29, 2006 Council Meeting, the Council voted unanimously to reconsider their decision based upon the information presented by the Director.**

**On a motion by Commissioner Wrenn, seconded by Chief Magnant, to accept the staff recommendation of Christopher Cunningham's request for an extension through the 142<sup>nd</sup> Academy and PT&E for full-time certification, the Council unanimously approved the extension request and PT&E for full-time certification upon successful completion of the medical, PT, NH Law Package at the Full-Time Academy and First Aid/CPR, if lapsed.**

**Part-Time School Curriculum Proposal.**

The Director reminded the Council that the original proposal was brought before the Council at the March Retreat and that was for a 182-hour Part-Time School. At that time the Council requested that a Committee be established to review and make recommendations for changes in the part-time program. The Committee consisted of a member of the Council, members of the Chief's Association, and school instructors. The committee met three times and the revised proposal was what was brought before the Council at this meeting. The new proposal consists of 133 classroom hours and 67 computer-based hours. In essence, the program is going from a 100-

to 200-hour program. The computer-based section, however, will probably only take about half the clock hours to complete.

Drill and Ceremony has been reduced to 4 hours. If the Council wants to further reduce the hours for that class that can easily be done. The other significant change was the group wanted part-time officers to have SFST and HGN. The only difficulty with that was this is it a NHTSA program and therefore it has to be 16 hours in length in order to be accepted by them.

The Director's intention is to try to implement this program next September if the Council approves the proposal. Time needs to be allotted to actually create the curriculum. The Director foresees that with this proposal there would still be three part-time schools per year. This program would add two additional weekends onto the current program schedule, bringing the total number of weekends to complete the program up to ten (10). The Director's overall rationale was to move as much to computer-based as possible so that classroom hours would not be as significantly impacted. The Director further noted that there have been no changes to this program in 15 years and that certain details will still need to be addressed. The Director indicated that further changes may have to be made in the computer-based training if it is found that students are not testing well in a specific content area, which might indicate that segment might have to be taught in a classroom setting.

Sheriff Prozzo stated the Council should realize that no matter what changes are made there would be departments that will not be pleased with the new program. Commissioner Wrenn and Judge Champagne felt that the Council should move forward on increasing the hours of the part-time school.

**On a motion by Chief Dodge, seconded by Judge Champagne, that the Director move forward on the revised part-time curriculum proposal, the Council voted unanimously to move ahead with the recommended changes for the part-time school and that the Director keep the Council updated with the progress.**

### **HR-218 Memo and Proposed Rulemaking**

The Director has drafted some rulemaking to implement the Law Enforcement Officers Safety Act of 2004. (1) There is now enabling legislation in place to allow PSTC to do this, (2) to ask people to pay for it and (3) to limit the liability of anyone who instructs in these programs. The Director advised the Council that they need to determine who they want to consider, what is actually going to be done, and how it's going to be implemented. Mental suitability was the issue that was brought up by both the House and the Senate when the Director testified and they questioned how that was going to be established.

The way the Director has currently written the rules is the individuals would have to present PSTC with their retired IDs from their agencies as we would not be issuing that; in essence PSTC would be putting the responsibility of mental suitability on their agencies. That is going to

be controversial when you have out-of-state officers living in New Hampshire who want to carry a gun and want us to qualify them. The second part of this issue is there are also retired federal officers who want to carry weapons and the U.S. Attorney General has already put out guidance telling federal agencies that they will give people retired ID's but then the individuals must go to the state in which they live because the Federal Agencies are not doing any qualifications for them. A final part of the same issue is that the firearms qualifications are required to be done annually; and there is no requirement in the Federal law that requires retired officers' ID's to be updated which brings us to the question of whether we are going to require the employer to provide us with a letter indicating that the retired officer's ID is still valid or whether we going to accept the original ID year after year.

The second issue is the firearms qualification itself. The Director believes that's fairly well settled. There is a standard in 404.03. The Director indicated we could simply apply that. In regard to the 4-hour Use of Force class that was previously discussed, since we have a specific statute that relates to law enforcement, we will have to teach those retired officers something different because they are not officers. The Director's intention is to develop a 4-hour Use of Force Class for Civilians. The Director would prefer to put this class on-line and those coming for the firearms qualification could print off their certificate and present it to us proving that they have completed the Use of Force class. If we wanted to do a class in house, we could do that as well; but that would be a requirement—successful completion of the 4-hour Use of Force class—prior to coming in to do the firearms qualification.

The Director asked if the Council were going to allow individual departments that want to certify their retired officers to do so as long as they have a Council Certified Firearms Instructor to do that. By the same token, the Director noted he has been approached by two entities (The New Hampshire Police Association and The Retired Troopers Association) that want to qualify people and he asked the Council if they were going to allow that. The Director's sense was if those Firearms trainers are Council certified firearms instructors (among the qualifications would be that they have to be working for a law enforcement agency as at least a part-time officer) that he doesn't have a problem with them doing that, but they would have to send the paperwork into PSTC and we would send the letter out that the individuals who had qualified.

In regard to mental suitability, the way this is handled for police officers now is there is a provision in 402.02 to decertify officers if they have a defined mental condition as defined in DSM 3 or 4. This has never been done; so as a practical matter this is not something that we have significant experience with. If the Council decides to limit qualification to previously NH certified officers it gives us a little bit better handle on it because we will know a little bit more about the officers' history. If the Council decides to qualify out-of-state officers it will be a much bigger and more difficult task to accomplish due to the difficulty in verifying information.

The Director asked the Council who are they planning to certify and who do they want to allow to do the qualifications. The actual credentials will have to be issued by PSTC because the Federal Law states it has to be issued by the state.

Chief Dodge asked the Director if there was a violation of HR218 if we limit who we certify. The Director noted that Assistant Attorney General Nancy Smith indicated that there is no obligation for us to do this at all.

Commissioner Wrenn suggested that the Council require that it can only be done by certified NH law enforcement firearms instructors associated with a police department and that they be given the rules that need to be followed and allow the departments to determine whether they wish to restrict it to their own people or open it to others. The Council decided that PSTC should not do any qualifications here at this location. The Director, however, noted that the state still has to issue the certification letter.

The question arose regarding which Corrections personnel met the guidelines for qualification. The Director indicated that in preliminary discussions with Nancy Smith of the AG's office, they determined that since PPO's have limited powers of arrest they probably do qualify; but Corrections Officers do not qualify because they have don't have powers of arrest.

The Council decided that it will allow any NH certified firearms instructor to do a qualification under HR218, send the paperwork to the Director and he will issue a letter stating that the individual has met the qualification standard required under HR 218; other than that the Council feels PSTC will not be in the business of qualifying retired officers to carry. The Director noted the only other caveat is if these Associations want to do qualifications it has to be done under the auspices of the departments for which the officers work.

**On a motion by Judge Champagne, seconded by Commissioner Wrenn to move forward on the rule-making process to implement HR218, the Council voted unanimously to have the Director work out the details and develop the wording which will permit NH certified firearms instructors employed in a police department to do qualifications under HR218, submit the paperwork to PSTC for issuance of a letter certifying the individual's qualification meets the Federal standard.**

#### **Amendment of Rule (Pol 301.05 (g) (8))**

This item was deferred to the October Meeting.

#### **NHTI Cafeteria Expansion MOA Proposal**

The Director outlined the questions the Council asked at the August Meeting regarding the Cafeteria Expansion project and the funding request by NHTI. NHTI is asking for a total contribution of \$400,000 on a \$1.9 million dollar expansion and the question the Council asked was how that number was arrived at. Vice President of Student Affairs Steve Caccia and Chartwell's provided the Director with information on space allocation used in the cafeteria and meal counts.

Currently when PSTC is there (and it is not the entire time the cafeteria is open), we use 32% of the space, which is 1150 sq. feet out of a total of 3550 sq. feet. The final plans have not been completed for the cafeteria but it is anticipated that the cafeteria space will increase to 6350 sq. feet of space expanding PSTC's space to 1650 sq. feet, which would be 25% of the total amount of the newly available space which, in turn, equates to 21% of the total amount of funding.

The second item that was reviewed was meal count. Reviewing the number of meals served to PSTC vs. the number of meals served to everyone else, PSTC takes about 30% of the total number of meals served in that cafeteria. That does not include the walk-ins but it does include the student meals, and special events.

The Director also drafted a memorandum of agreement for the Council's Review. He has met with Steve Caccia since the original drafting and had also sent a copy to Assistant Attorney General Nancy Smith for her review and there were some additional amendments. There was some discussion on the termination clause in this agreement and the minimum obligation required by PSTC.

The Director also put wording into the agreement for a separate "food delivery system." Payments would begin in FY09 at a rate of \$20,000 a year for a period of 20 years.

Commissioner Wrenn was concerned with some of the wording in the agreement that referred to serving "90 recruits." The Director indicated if we were to increase that number it would increase the space and probably increase the funding request. The rationale the Director used in reaching that figure was that this was the maximum number of recruits that could be housed at the Academy at this time. The Corrections Academy's lunch is staggered so that they are not in the cafeteria at the same time. Commissioner Wrenn would like to see wording in there that would accommodate those times when it might exceed 90. Commissioner Wrenn also asked about the furniture costs. The Director noted the PSTC provides the furniture. PSTC uses long tables which meets the needs of the organization. Steve Caccia indicated that NHTI was amenable to rectangular tables but would prefer something that would be more suitable to the whole décor.

Commissioner Annal questioned the minimum \$200,000 payment if the agreement were to be terminated. The Director noted that these figures were negotiable but felt it was important to have a clause in the agreement to address unforeseen events.

Judge Champagne felt that PSTC was becoming too intense in the developing of the MOA.

Commissioner Wrenn asked the Director with the financial situation that exists in the agency how was the agency going to commit to the 20-year financial commitment to NHTI. The Director responded that it was a catch 22. Projections still indicate that the agency will be in the "red" in FY 2013. The Director believes, however, the Legislature will take action before that to correct the situation. The Director noted that if PSTC doesn't go with this proposal, the reality is that the recruits still have to be fed and it will cost much more to find an alternative method.



Sheriff Prozzo indicated that he feels that it is a win/win situation and that he would prefer that it be paid in twenty increments at \$20,000 a year than in one lump sum.

Deputy Commissioner Annal suggested that the Council wait until the final version of the MOA is done before they reach any decision on the matter and that Melanie Kirby and President Kilchenstein be involved in the \$200,000 limit and in crafting some wording that will protect both sides as Deputy Commissioner Annal had some concerns about that. Commissioner Wrenn also had some concerns in this area and agreed with Deputy Commissioner Annal.

**On a motion by Judge Champagne, seconded by Associate Attorney General Ann Rice, the Council approved the concept of the NHTI Expansion Funding Plan and agreed to fund the plan in increments of \$20,000 a year for a maximum of 20 years for a total of \$400,000 with the intent that PSTC will have a separate server and entrance for the recruits with the rest of details still to be finalized.**

#### **Nonpublic Session - Deliberations - Robert E. Jordan – Petition for Rescission of Decertification**

The Council Members present for the deliberations were Sheriff Prozzo, Chief Dodge, Executive Major Hunter, Sheriff Carr, Deputy Commissioner Annal, Chief Magnant, Associate Justice Champagne, and Commissioner Wrenn.

Following a motion made by Chief Dodge, seconded by Chief Magnant, the Council voted unanimously on a roll-call vote to enter into a nonpublic session.

Following the deliberations, on a motion by Commissioner Wrenn, seconded by Chief Dodge, the Council voted unanimously to seal the minutes of the nonpublic session.

Judge Champagne then made a motion, seconded by Chief Dodge, which carried unanimously by the Council on a roll-call vote to exit the nonpublic session.

**Upon return to public session, on a motion by Judge Champagne, seconded by Commissioner Wrenn to deny Robert E. Jordan, Jr.'s request for petition for rescission of decertification, the Council voted to deny Mr. Jordan's request, with Associate Attorney General Ann Rice abstaining from the vote.**

Chief Kevin Cyr, Newmarket Police Department, was present for the vote.

#### ***New Business***

#### **Decertification/Suspensions/Revocations/Surrenders.**

**Donald L. Rose of the Department of Corrections** for violation of 402.02(a)(12) Simple Assault charge in Hooksett District Court.

Chairman Prozzo read and reviewed Council protocol with Corrections Officer Donald L. Rose. He advised Officer Rose that he could be represented by an attorney and asked if he wished the hearing to be heard in public or nonpublic session. SEA Representative, Thomas J. McCabe, Jr. was representing Officer Rose. Officer Rose requested the hearing be heard in nonpublic session.

Commissioner Wrenn recused himself from the hearing process.

Following a motion made by Chief Dodge, seconded by Associate Attorney General Ann Rice, the Council voted unanimously on a roll-call vote to enter into a nonpublic session at 10:23 a.m.

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

Sheriff Carr then made a motion, seconded by Chief Dodge, which carried unanimously by the Council on a roll-call vote to exit the nonpublic session at 11:40 a.m.

Upon return to public session, the Council had some questions regarding whether there had been other similar cases such as this. The Director noted that under 402.02 (a) (12) it states that “an officer has entered no plea or an innocent plea to a criminal charge and has agreed to participate in a diversion program in lieu of a trial.” Assistant Attorney General Nancy Smith has interpreted that to mean that if the officer has been affirmatively required to do something as terms of diversion (in this case, an anger management course) that would fall under the provisions of 402.02(a) (12). Judge Champagne asked if a case such as this has ever come before the Council. Cassie indicated that there have been situations that have fallen under this rule in the past but she would have to research the specific instances. **Based on Cassie’s response, a motion was made by Judge Champagne to take the Rose matter under advisement, seconded by Chief Magnant, and voted unanimously by the Council to take the case under advisement until Cassie could research the specific instances the Council has previously heard under this rule.**

**Franklin S. Bergman of the Department of Corrections** for violation of 402.02(a)(12) OUI charge in Newburyport District Court.

Chairman Prozzo read and reviewed Council protocol with Corrections Officer Franklin S. Bergman. He advised Officer Bergman that he could be represented by an attorney and asked if he wished the hearing to be heard in public or nonpublic session. SEA Representative, Thomas J. McCabe, Jr. was representing Officer Bergmann. Officer Bergman requested that the hearing be heard in public session.

Commissioner Wrenn recused himself from the hearing process.

The Director outlined the case against Franklin S. Bergman currently employed with the Department of Corrections. On March 27, 2006, Mr. Bergmann plead guilty to a Marked Lanes violation and an OUI Liquor charge and received an Alternative Disposition that has been continued without a finding until March 27, 2007 (one year). Mr. Bergmann has been ordered to attend an Alcohol/Substance Abuse Program; received 45 day loss of license in Massachusetts; \$65.00 MPF (?); \$250.00, Head Injury Assessment; \$50.00 Victims of Drunk Driving Assessment; \$50.00 Victim/Witness Assessment; \$150.00 to his attorney; (there may be another \$250.00 but the documents are unclear). His last drink was at the Tens Club in Salisbury, MA. Staff lists the following exhibits:

Exhibit A - Employee Status Notification Form A, dated October 15, 2004

Exhibit B - Corrections Officer's certification, dated December 17, 2004

Exhibit C - Copy of Salisbury, Massachusetts police reports

Exhibit D - Copy of documents put on file from Newburyport District Court

**Synopsis:** On February 28, 2006 a driver called in Mr. Bergmann's vehicle as a possible drunk driver. When Officer James Leavitt of the Salisbury, MA Police Department caught up to him, Mr. Bergmann's vehicle was straddling the line and traveling in both westbound lanes.

When Officer Leavitt asked for license and registration he notice Mr. Bergmann's eyes were blood-shot, his speech was slurred and there was an odor of alcohol coming from him. When asked, Mr. Bergmann admitted to having a few beers.

Mr. Bergmann agreed to field sobriety tests and as he walked to the rear of his vehicle he fell into the side of his truck and almost fell over.

During the instructional phase of the HGN test, Mr. Bergmann attempted three times to touch the tip of Officer Leavitt's pen. He believed he was using the wrong hand and failed to touch the pen. During the test Officer Leavitt found lack of smooth pursuit and distinct nystagmus at maximum deviation onset prior to 45 degrees.

During the ABC test Mr. Bergmann missed several letters, slurred several letters together and repeated Q,R,S,T twice.

Mr. Bergmann attempted the one-leg stand test twice and could not get past the count of two. He nearly fell over.

At the station he took a chemical test and the readings were .17/.15/.17.

Judge Champagne asked for clarification. Was there a conviction or was it placed on file? The Director noted there was no conviction.

Mr. McCabe, representing Franklin Bergman, noted that they were not contesting any of the facts except that case was continued without a finding and that it will be revisited in a year. Immediately upon the arrest, Mr. Bergmann went to his supervisors and advised them of what occurred. His supervisors suggested that he go to EAP and he immediately began alcohol first offender counseling. The EAP counselor also suggested that he take an anger management course. He completed the anger management course and is one week away from completing the alcohol first offender program. Since the arrest he has been attending AA and has not had a drink since his arrest. The arrest report noted he was cooperative. He lost his license for 45 days in Massachusetts and he has taken positive steps to turn his life around.

Sheriff Carr asked what anger management had to do with alcohol abuse. Mr. Bergmann stated that the EAP Counselor suggested that anger may be part of the drinking issue and its part of the program.

Mr. Bergmann's supervisor, Stephanie Howland, spoke on his behalf. She indicated that she was aware of the programs that he was taking part in. She indicated she saw no reason for the anger management program. She felt he is an asset to her department. She noted he reported the incident to her immediately; he was forthcoming and honest and has been working to turn things around since it happened. She indicated that he works in the psychiatric ward in a high stress environment and works exceptionally well with the clientele/inmates.

Chief Dodge asked for clarification on her statement "turned things around". She said his drinking had ceased.

Sheriff Carr asked Mr. Bergman to clarify the anger management program. He indicated that the EAP counselor thought it might be helpful although not connected to the incident. Sheriff Carr questioned Mr. Bergman on his current and past drinking habits. Mr. Bergman confirmed he was not drinking at all now. The night in question he indicated that he had been out socializing with a group of friends. He confirmed that looking back he would agree the he did have a drinking problem and he is currently a member of AA and confirmed that he had attended three meetings.

Sheriff Prozzo questioned Mr. Bergman on how much he had to drink on the evening in question and whether he drank prior to going out. Sheriff Prozzo asked Mr. Bergman to confirm the loss of his license in Massachusetts and asked whether there were any repercussions in New Hampshire. Mr. Bergman confirmed his license was suspended for 45 days in Massachusetts but nothing has happened in New Hampshire to date.

Executive Major Hunter asked if Mr. Bergman had any other infractions on his driving record. Mr. Bergman indicated he did not. Chairman Prozzo asked if he had any disciplinary issues on his record and Mr. Bergman indicated he did not.

Judge Champagne indicated that in New Hampshire a .17 would be an aggravated DWI and based on that Judge Champagne made a motion that Mr. Bergman's certification be suspended for a period of 6 months, seconded by Deputy Commissioner Annal, the Council opened up the

matter for discussion. Associate Attorney General Ann Rice questioned the fact that there was no finding in the case. The Director noted that there was one case in the past in which the Council has acted under 402.02 (a) (12). Sheriff Prozzo's position in this situation was that this incident did happen and Sheriff Prozzo couldn't understand why this case was placed on file and he wasn't prosecuted at a .17. Sheriff Prozzo felt this infraction was serious and he supported the motion on the table.

**At the conclusion of the discussion, the Council voted unanimously on Judge Champagne's motion seconded by Deputy Commissioner Annal, to suspend Mr. Bergman's license for six months effective upon official notification.**

**William McClellan, formally of the Conway Police Department** for violations of 402.02(a)(3) conviction of sexual assault in Carroll County Superior Court.

The case has been postponed to a later date at the request of Mr. McClellan to give him the opportunity to speak with his attorney.

### ***Prior Training and Experience Requests***

**Edwin D. Pitman, Alton Police Department.** In the matter of the PT&E request of Edwin D. Pitman, on a motion by Commissioner Wrenn, seconded by Deputy Commissioner Annal, that Edwin Pitman of the Alton Police Department be granted PT&E for full-time certification based upon staff recommendation, the Council voted unanimously to grant Edwin Pitman full-time certification upon successful completion of the medical, PT, NH Law Package at the Full-Time Academy and First Aid/CPR, if lapsed.

**Paul S. Gecse, Nottingham Police Department.** The request for PT&E for Paul S. Gecse was withdrawn from the agenda as Mr. Gecse resigned from the Nottingham Police Department.

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

#### **Full-Time**

#### **Joseph E. Priest, Littleton Police Department**

After the Director outlined the reason for the request for extension through the 142<sup>nd</sup> Academy, on a motion by Commissioner Wrenn, seconded by Chief Magnant, the Council voted unanimously to grant the extension through the 142<sup>nd</sup> Full-Time Academy to Officer Priest, Littleton Police Department, with the stipulation that the officer work under direct supervision of a full-time certified police officer.

### *Specialized Training Grants*

#### **Command Training**

**Portsmouth Police Department.** The Director outlined the request of the Portsmouth Police Department to send **Captain David Ferland** to the Massachusetts Police Leadership Institute in Lowell, Massachusetts from October 23 - November 3, 2006 at a cost of \$1,000. On a motion by Commissioner Wrenn seconded by Judge Champagne, with Chief Magnant abstaining from the vote, the Council unanimously approved the grant request of \$1,000 for the Portsmouth Police Department for Captain Ferland.

**Seabrook Police Department.** The Director outlined the request of the Seabrook Police Department to send **Lieutenant Lee Bitomske** to Roger Williams University's Command Training Series Mid-Management Course in Portsmouth, Rhode Island from October 23 – November 3, 2006 at a cost of \$1,000. On a motion by Commissioner Wrenn, seconded by Judge Champagne, the Council unanimously approved the grant request of the Seabrook Police Department to send Lieutenant Bitomske to Roger Williams Mid-Management Course.

#### **Other Training**

**Laconia Police Department.** The Director outlined the request of the Laconia Police Department to send **Detective Jeffrey F. Stiegler** to the Police Applicant Background Investigation Course at the Institute of Police Technology and Management at the University of Northern Florida in Jacksonville, Florida from November 13 -17, 2006 for \$1,016.25. On a motion by Commissioner Wrenn, seconded by Chief Dodge, the Council unanimously voted to grant Laconia's request for \$1,016.25 to send Detective Stiegler to the Police Applicant Background Investigation Course with the stipulation that a copy of all materials received at the class be sent to the Director.

### *Other Business*

#### **Hillsborough County Sheriff's Department Request to Exceed 1300-Hours Rule**

The Director outlined the request of the Hillsborough County Sheriff's Department that part-time **Deputy Sheriff Francis J. Winterer, Jr.** be granted a waiver of the 1300-hours rule and be permitted to work unlimited hours based upon his full-time certification. He was full-time certified on 8/19/88 and is currently working full-time with Exeter Police Department and has been since 1991. Chief Dodge confirmed that Officer Winterer will be retiring from the Exeter Police Department shortly. On a motion by Commissioner Wrenn, seconded by Chief Dodge, to grant the waiver of the 1300-hours rule to Deputy Sheriff Winterer, the Council voted unanimously to grant the waiver and permit Deputy Sheriff Winterer to work unlimited hours.

**Ronald S. Greenleaf, Jr., Langdon Police Department Request for Exemption of Hours from the 1300-Hours Rule**

The Director outlined the request of Ronald S. Greenleaf, Jr., Langdon Police Department for a declaratory judgment and/or clarification of a part-time officer involved in a prosecutorial role. He is seeking an exemption from the 1300-hours rule. Ronald Greenleaf is a part-time officer in Charlestown and he is also a Corporal in Langdon, being promoted in March of 2006. He asserts that he is strictly a prosecutor in Langdon and performs no law enforcement functions, does not carry, nor has he been issued a weapon. The Form A's that are on file do not indicate anything in either case other than the fact that he is a part-time officer. This matter becomes a bit more difficult due to the fact that he appears in Claremont District Court for both Langdon and Charlestown as a witness and as a prosecutor. The request before the Council is for prosecutors who perform no other duties but prosecutorial duties, who are not in uniform, etc.

In 1990 there was a declaratory ruling but it is different from what is being requested here. That ruling states that if a person wishes to be a prosecutor in District Court and is in essence a civilian and wishes to be sworn in for the sole purpose of being able to present those cases in District Court, the Council would not require the person to complete the part-time school and not be subject to the 1300-hours rule. What makes this case different is this individual is a sworn part-time officer in another district and wants the declaratory ruling to be expanded to include him for the other employer in which he is in essence a civilian and not exercising any law enforcement authority.

The Director advised the Council this is of concern to him. The Director felt that the distinction here was important in the fact that someone is a part-time officer and the hours for one department would be included and the hours for the other department would be exempt. The declaratory ruling from 1990 is necessary because if you are not sworn in as a police officer the District Courts won't let you prosecute at all. The Council in making that decision was probably considering the fact that the person was not functioning as a part-time officer anywhere and was, in fact, only going to be prosecuting cases.

The Director noted that one other thing struck him as a bit unusual in this situation. The Director questioned the promotion to Corporal in March of 2006 if Mr. Greenleaf is only prosecuting cases for the Langdon Police Department.

Chief Dodge asked if the Director had heard from the Police Chief from Langdon. Commissioner Wrenn asked if the Director knew how many hours he worked for Langdon. The Director indicated a bigger consideration to think about would be if the Council did decide to grant this request, then part-time officers who perform prosecutorial duties in the same departments would ask for waivers and this could result in part-time officers working full-time hours.

**Based on the discussions, Commissioner Wrenn made a motion to deny the request of Ronald S. Greenleaf, Jr., Langdon Police Department, for an exemption of prosecutorial**

**hours from the 1300-hours rule, which was seconded by Chief Dodge, with the Council unanimously voting to deny this request.**

### **Three(3) Year PT Testing**

The Director restated the requirement for the 3-year PT testing. Everyone hired after 2001 has to pass the PT Test once every three years. The first year that rule was actually applied was 2004. Also by statute, someone who fails the test can be put on probationary status for up to two years to complete the requirements or the statute says their certification shall be suspended until such time as they can meet the standard. There has already been one request on an ongoing and long standing basis from an officer who has a knee problem and has insisted that we allow her to take an alternative test to the mile and a half run, that being the Schwinn Aerodyne Bicycle test. The assertion is that this test is allowable under Cooper's standards and, therefore, should be permitted since we use their standards.

The Director asked Assistant Attorney General Nancy Smith for a determination. The Director's concern in this case is that we do differentiate between fitness testing and agility testing. Fitness testing is a general standard and agility testing is a specific job related standard. Since the general standard is used here, the Director wanted to be clear that it was within scope of the agency to require the officers to do the mile and a half run. The Director's interpretation of Assistant AG Nancy Smith's memo was that the Council can decide what will be used as a testing protocol and is under no obligation, simply because Cooper allows the Schwinn Aerodyne test, to offer the Schwinn Aerodyne test.

The other item, Assistant Attorney General Nancy Smith did not include this in her memo, is in 188 F 27 3 J which says "to the extent required to comply with federal or state law, the Council may grant a waiver with respect to employment at a specific agency to an officer who cannot meet the standards in paragraph 2d through 2g", which are the medical and PT standards. That was put into the standards to address the Americans with Disabilities Act. What Assistant AG Nancy Smith suggested to the Director was that the way that (j) was written with respect to a specific employer that if an officer had a condition that would qualify under the ADA, the employer could make a request to the Council to waive the PT test requirement if they chose to do so.

The Director advised the Council that on December 31, 2006, the first group of officers will run the risk of having their certifications suspended because they cannot meet the standard. Two situations that will be coming before the Council is an officer in Gilmanton who has had a knee replacement and will probably not be able to meet the mile and a half run standard and is hoping to be able to take the Schwinn Aerodyne test. The other is the female officer from Concord who has had an ongoing knee problem and she has been requesting to take the Schwinn Aerodyne test since 2004. The Director suggests that the Council needs to develop a policy and have a process in place to be prepared to handle these cases as they occur since these officers will become unemployed.



Commissioner Wrenn asked if PSTC had the capability of offering the Schwinn Aerodyne test. The Director advised the Council that PSTC does not own that piece of equipment but it probably could be purchased. The Director also noted that Cooper also had another test called the Run/Walk test which could possibly be offered to people. The Director feels there will be two sets of circumstances that will arise: those with legitimate ADA issues and the other group of officers who do not want to run for one reason or another.

The two issues that the Council needs to reach decisions on are: Does PSTC wish provide an alternative test for officers who do not have ADA conditions and who do not want to do the current PT test of sit-ups, push-ups, 1-1/2 mile run as a matter of policy? Does the Council want to require the employer to make the request for waiver of the PT testing for those officers who have an ADA condition?

Associate Attorney General Ann Rice asked the question whether the purpose of the run was an aerobic test to test general fitness. The Director confirmed that it was. Then she asked if the Schwinn Aerodyne test did the same function. The Director stated that according to Coopers, it did. Associate AG Ann Rice then asked if the Council was in disagreement as to whether the Schwinn Aerodyne test was a valid test. Commissioner Wrenn indicated that there was no disagreement on that issue. The issue is that a set of standards are currently being followed and the Council is now being asked to alter those standards and the Council needs to decide if it is appropriate to change its current policy.

Commissioner Wrenn and Sheriff Prozzo felt the requests should come from the employer and not the employee. The Director noted, that in the case of the Concord officer which has come before the Council three times now, the Concord officer was advised that because the two years had not run its course, she was not in a position to request an alternative test; she still had a medical waiver and there was no reason for her to ask and no reason for the Council to grant any kind of an alternative test. The Director's interpretation of what Assistant Attorney General Nancy Smith said was if somebody was going to make a claim under the ADA, the items to consider would be were whether we are going to take the individual's word on it or whether we are going to independently determine if there is an ADA qualifying condition; and secondly if they ask for a waiver, whether the waiver would be issued without any testing because of the ADA qualifying condition. Sheriff Prozzo questioned who would make that decision and who would pay for the cost of that being done.

Chief Magnant asked what would happen if officers started to come in and say they couldn't do push-ups or sit-ups for one reason or another. Would it then require PSTC to develop alternative tests for those requirements also? The Director indicated that if that were to happen it would require additional equipment which PSTC doesn't have.

Commissioner Wrenn felt that if there is a request for a waiver or an accommodation then these individuals shouldn't be functioning as full-fledged police officers.

Judge Champagne felt that maybe the Council should hear the cases that are going to come before the Council shortly before establishing new rules that may not be reflective of what is actually needed.

**The conclusions that were reached from the discussion on this matter were No Alternative Tests; and ADA claims and requests for waivers must come from the employer not the employee.**

### **Other Business**

#### **CALEA**

Chief Dodge addressed the Council updating the members regarding a concern about CALEA that was raised at the NH Chief's Association Executive Board meeting by Chief David Kurz, Chief Michael French and Chief Richard Gendron. The discussion evolved around why the Council had voted the way it did. Chief Dodge and Major Stafford summarized for the Chiefs the circumstances that brought the Council to their decision not to re-sign the Alliance Agreement. There was discussion at the Chief's meeting regarding the increased cost to the agencies to become CALEA Recognized and/or Accredited. Chief Dodge advised them if they had information they wished to present to the Council for reconsideration of the Council's decision they should do so. Chief Dodge indicated to the Council that if they didn't align with PSTC they would probably do so with NH Chiefs, LGC or some other organization.

Sheriff Prozzo indicated that he received a call from the President of NH Chief's Association asking to be heard. Sheriff Prozzo asked for Council input as to whether the Council wanted them to be added to the October Agenda. Commissioner Wrenn indicated that if they have something new to bring to the table then he felt they should come to present that information; however, if they chose to rehash the same information, he saw no purpose in taking up the Council's time.

The Director updated the Council, noting that there was a letter in their packages from Chief Nelson, Dunbarton Police Department on CALEA and another from Executive Director Daughtry from CALEA in response to Bob Stafford's letter regarding the status of agencies that were in the process and Director Daughtry indicated that anyone under contract on July 29, 2006 would be allowed to continue for up to two years and anyone who was not would not be allowed to continue. Another question that was asked was would CALEA assessors be allowed to participate in the State program and his answer was, yes. The Director also noted that he had received an e-mail from Sean Kelly from NEAPAC requesting the Director to address NEAPAC on how important CALEA Accreditation and CALEA Recognition were and how the Council was supportive and how we were going to work together.

The Director has a verbal opinion from legal counsel that indicates that we can do our own State program and as long as we simply refer to the CALEA Standards and not actually reprint them there would not be a copyright violation. The departments would have to buy the book but that would prepare those agencies for the future in the event that they did decide to seek CALEA

Recognition or Accreditation. Further, since CALEA has agreed to allow CALEA assessors to participate in the State program, agencies will see no significant difference in State recognition. The only difference will come when these agencies seek CALEA Recognition/Accreditation due to the increased cost.

The Director provided some statistical data to the Council. Currently there are three states that have Alliance Agreements with CALEA: Mississippi Police Standards and Training, New Jersey and Indiana Chiefs of Police Associations. There are six Departments in New Hampshire that are currently accredited: Nashua, Manchester, Dover, Goffstown, Durham and Hudson. New Hampshire departments that are CALEA Recognized are UNH, Lincoln and Dunbarton. The current State recognized departments are Newfield, Sutton, Lincoln and UNH. The Director feels that the issue here may be financially promoted.

Commissioner Wrenn said he had spoken with a Chief from a larger agency who was upset that the Council was not going to continue with the process and his issue was the financial impact on his department; and then on the other end of the spectrum Commissioner Wrenn spoke with another Chief who thanked the Council for looking out for the smaller agencies who would not be able to meet CALEA standards.

The Council requested the Director to send a letter to Chiefs Gendron, French, Kurz and the President of the Chief's Association advising them that if they have **NEW** information that has not been discussed at prior Council Meetings, the Council would be willing add them to the Agenda for October. The Chairman further requested that the statistical information that the Director presented to the Council be noted in this letter to the Chiefs.

In closing this discussion, the Director noted his message at the NEAPAC meeting would be to advise them of the contents of the letter from Sylvester Daughtry and invite them to work with PSTC in the development and implementation of our own State recognition program.

**The following Agenda items were deferred to the October Meeting:**

- a) Expenditures/Revenues – FY 08-09 Budget
- b) Academy De-Selection Procedures – Discussion from NHACOP Meeting
- c) Cooper PT Testing Process
- d) Procedure Established for Reconsidering of Council Decisions
- e) Madbury Compliance Case Update

***Other Business***

Sheriff Prozzo suggested that the Council plan to meet for an extended period of time every three months to accommodate the increasing volume of business that is coming before the Council.

Sheriff Prozzo and the Director noted items that would be on the October Agenda would include

1. Nonpublic - Medical Issue from Lee Police Department
2. Request by a Department to conduct its own Constitution Law Class
3. Nonpublic - Deliberations of the Rose Case

**Next Meeting Date/Adjournment**

After scheduling the next Council Meeting date for 9:00 a.m., Tuesday, October 24, 2006, in the John D. Morton Conference Room, the Council unanimously voted to adjourn the meeting at 2:15 p.m., on a motion by Judge Champagne and seconded by Chief Dodge.

---

Chairman Michael L. Prozzo, Jr.