

MINUTES

March 27, 2007

The 358th Meeting of the NH Police Standards and Training Council was called to order at 9:10 a.m. by Chairman Michael L. Prozzo, Jr., Sullivan County Sheriff's Department, in the PSTC designated conference room at the Christmas Farm Inn in Jackson, New Hampshire.

Members Present: Chief Gregory C. Dodge, Epping Police Department; Chief Peter P. Morency, Berlin Police Department; Chief Timothy Russell, Henniker Police Department; Chief Michael J. Magnant, Portsmouth Police Department; Sheriff Scott A. Carr, Carroll County Sheriff's Department, who arrived at 11:15 a.m.; Associate Justice Stephen H. Roberts, Dover District Court; Commissioner William L. Wrenn, Jr., Department of Corrections; and Attorney General Kelly A. Ayotte.

Staff Present: Director Donald L. Vittum, Assistant Director Robert B. Stafford, Jr., Paralegal Cassandra Erickson, Keith Lohmann, and Secretary Denise Crocker.

Associate Justice Norman E. Champagne, Manchester District Court; Deputy Commissioner Charles Annal, designee of Commissioner William G. Simonton of the NH Community Technical College System and Colonel Frederick H. Booth, NH State Police were excused from today's meeting due to prior commitments.

Approval of Minutes

Following a motion by Chief Russell, seconded by Chief Dodge, the Council voted unanimously to accept the Minutes of the February 27, 2007 meeting as presented.

Director's Report

The Director written report was accepted as submitted with nothing additional brought to the Council's attention on the meeting day.

Old Business

Raymond Pardy, III, Lee Police Department. In the matter of the PT&E request of Officer Raymond Pardy, III, on a motion by Commissioner Wrenn, seconded by Chief Magnant, that Officer Pardy of the Lee Police Department be granted PT&E for full-time certification based upon staff recommendation, the Council voted unanimously to grant Officer Pardy PT&E based upon successful completion of the medical, PT Test, NH Law Package at the Full-Time Academy and First Aid/CPR, if lapsed.

Scott A. Talbot, Surry Police Department.

In the discussion of the Talbot matter the Council decided to briefly enter into a nonpublic session to discuss a personnel issue.

On a motion by Commissioner Wrenn, seconded by Chief Dodge, the Council Members voted unanimously on a roll-call vote to enter into a nonpublic session at 9:20 a.m.

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

Chief Dodge then made a motion, seconded by Chief Morency, which carried unanimously by the Council members on a roll-call vote to exit the nonpublic session at 9:24 a.m.

Upon return to public session, in the matter of the PT&E request of Officer Scott A. Talbot, on a motion by Commissioner Wrenn, seconded by Chief Magnant, that Officer Talbot of the Surry Police Department be denied PT&E for full-time certification based upon staff recommendation, the Council voted unanimously to deny Officer Talbot PT&E and require Officer Talbot to attend the entire Part-Time School.

New Business

Decertification/Suspensions/Revocations/Surrenders/Certification Eligibility Hearings

None

*Prior Training and Experience Requests***Full-Time**

George Mallios, Manchester Police Department. In the matter of the PT&E request of Officer George Mallios, on a motion by Commissioner Wrenn, seconded by Chief Morency, that Officer Mallios of the Manchester Police Department be granted PT&E for full-time certification based upon staff recommendation, the Council voted unanimously to grant Officer George Mallios PT&E based upon successful completion of the medical, PT Test, NH Law Package at the Full-Time Academy and First Aid/CPR, if lapsed.

Brian P. Karoul, Manchester Police Department. In the matter of the PT&E request of Officer Brian Karoul, on a motion by Commissioner Wrenn, seconded by Chief Morency, that Officer Karoul of the Manchester Police Department be granted PT&E for full-time certification based upon staff recommendation, the Council voted unanimously to grant Officer Brian Karoul PT&E based upon successful completion of the medical, PT Test, NH Law Package at the Full-Time Academy and First Aid/CPR, if lapsed.

Scott T. Sullivan, Rye Police Department. In the matter of the PT&E request of Officer Scott Sullivan, on a motion by Commissioner Wrenn, seconded by Chief Morency, that Officer Sullivan of the Rye Police Department be granted PT&E for full-time certification based upon staff recommendation, the Council voted unanimously to grant Officer Scott Sullivan PT&E based upon successful completion of the medical, PT Test, NH Law Package at the Full-Time Academy and First Aid/CPR, if lapsed.

Jeffrey Cagle, New Hampton Police Department. In the matter of the PT&E request of Officer Jeffrey Cagle, on a motion by Commissioner Wrenn, seconded by Chief Russell, that Officer Cagle of the New Hampton Police Department be granted PT&E for full-time certification based upon staff recommendation, the Council voted unanimously to grant Officer Jeffrey Cagle PT&E based upon successful completion of the medical, PT Test, NH Law Package at the Full-Time Academy, Emergency Driving at the 143rd Academy and First Aid/CPR, if lapsed.

Kevin Stone, Troy Police Department. In the matter of the PT&E request of Officer Kevin Stone, on a motion by Commissioner Wrenn, seconded by Chief Magnant, that Officer Stone of the Troy Police Department be granted PT&E for full-time certification based upon staff recommendation, the Council voted unanimously to grant Officer Kevin Stone PT&E based upon successful completion of the medical, PT Test, NH Law Package at the Full-Time Academy and First Aid/CPR, if lapsed, with the stipulation that his background must be received and reviewed by the Director prior to the start of the Academy to determine that there are no issues that need to be brought before the Council. There was some concern by the Council Members that the background was not complete at the time of submission of this request which is the reason for the stipulation requirement in the motion.

Mark Jones, Thornton Police Department. In the matter of the PT&E request of Officer Mark Jones, on a motion by Commissioner Wrenn, seconded by Chief Morency, that Officer Jones of the Thornton Police Department be granted PT&E for full-time certification based upon staff recommendation, the Council voted unanimously to grant Officer Mark Jones PT&E based upon successful completion of the medical, PT Test, NH Law Package at the Full-Time Academy and First Aid/CPR, if lapsed.

James S. Ahern, Manchester Police Department. In the matter of the PT&E request of Officer James S. Ahern, on a motion by Commissioner Wrenn, seconded by Chief Morency, that Officer Ahern of the Manchester Police Department be granted PT&E for part-time certification based upon staff recommendation, the Council voted unanimously to grant Officer Ahern PT&E based upon successful completion of the NH Law Package at the 144th Full-Time Academy, First Aid/CPR, if lapsed, and 3-year fitness testing requirements.

Paul A. Famulari, NHSLC Bureau of Enforcement. In the matter of the PT&E request of Officer Paul Famulari, on a motion by Attorney General Ayotte, seconded by Commissioner Wrenn, with Chief Magnant abstaining from the vote, that Officer Famulari of the Manchester Police Department be granted PT&E for part-time certification, the Council voted unanimously to grant Officer Famulari PT&E based upon successful completion of the NH Law Package at the Part-Time School, CPR/First Aid, if lapsed, and 3-year fitness testing requirements.

Requests for Extensions

Full-Time

William R. Hardy, Jr., Newbury Police Department

No action was necessary in this matter as the officer resigned from the Newbury Police Department.

Specialized Training Grants

Command Training

None

Other Training

Claremont Police Department. The Director outlined the requests of the Claremont Police Department to send **Captain Colby D. Casey** to the 16th Annual Arnold Markle

Symposium on Serial Killers and Serial Crimes in West Haven, CT on April 9 & 10, 2007 for a maximum of \$216.66 and to also send him to the 29th Annual New England Arson Seminar at St. Anselm College from May 21-25th for a maximum of \$483.33. **On a motion by Commissioner Wrenn, seconded by Chief Dodge, the Council unanimously approved the two grant requests of the Claremont Police Department to send Captain Casey to the Markle Symposium in April and the Arson Seminar in May for maximum costs of \$216.66 and \$483.33, respectively.**

Department of Corrections/Probation & Parole. The Director outlined the two requests of the Department of Corrections to send **Jason T. Berry, PPO II**, to the Violence, Risk and Threat Assessment Workshop on May 10 and 11, 2007 for a maximum of \$212.67 and to the Sex Offenders and Victims: Current Issues, Assessment, Treatment and Special Populations Workshop on June 28 and 29, 2007 for a maximum of \$212.67. Both courses are sponsored by Specialized Training in Boston, MA. **On a motion by Chief Morency, seconded by Judge Roberts, with Commissioner Wrenn abstaining from the vote, the Council unanimously approved the two grant requests of the Department of Corrections to send Jason T. Berry to the above listed courses in May and June for a maximum total of each course of \$212.67.**

Barnstead Police Department. The Director outlined the request of the Barnstead Police Department to send **Chief Kenneth A. Borgia** to the 27th Annual International Association of Law Enforcement Firearms Instructors Training Conference from May 19-26, 2007 in San Antonio, TX for a maximum of \$496.40. **On a motion by Commissioner Wrenn, seconded by Chief Russell, the Council unanimously decided to table this grant request until the April Meeting to give the Council time to review its position on approving grant funds for conferences.**

Gilford Police Department. The Director outlined the request of the Gilford Police Department to send **Detective Douglas Wall** to the 27th Annual International Association of Law Enforcement Firearms Instructors Training Conference from May 19-26, 2007 in San Antonio, TX for a maximum of \$1,038.67. **On a motion by Commissioner Wrenn, seconded by Chief Russell, the Council unanimously decided to table this grant request until the April Meeting to give the Council time to review its position on approving grant funds for conferences.**

Sullivan County Sheriff's Office. The Director outlined the request of the Sullivan County Sheriff's Office to send **Deputy Sheriff Thomas Cummings** to the National Association of Extradition Officials 2007 Training Conference in Orlando, Florida from June 10-13, 2007 for a maximum of \$803.20. **On a motion by Commissioner Wrenn, seconded by Chief Russell, with Sheriff Prozzo abstaining from the vote, the Council unanimously decided to table this grant request until the April Meeting to give the Council time to review its position on approving grant funds for conferences.**

Other Business

HR218 Council Approval of Text for Pol 404.03. Paralegal Cassandra Erickson outlined the status of 404.03 which is the rule for retired police officers to carry concealed weapons and noted the Council needed to decide whether it wanted to change the wording of the rule based on the public hearing in which requests had been received to include wording to expand the caliber of weapons for qualification. If the Council should choose to change any wording it would have to be resubmitted. Cassie did note for Council's information that the rule, as originally written, had gone to the Administrative Rules and was approved for the Consent Calendar. After discussion by the members of the Council, the consensus was that the rule should not include wording to expand the caliber of weapons.

On a motion by Commissioner Wrenn, seconded by Chief Dodge, to approve the text of Pol 404.03 as originally written, the Council unanimously approved the wording for Pol 404.03. Then, on a motion by Commissioner Wrenn, seconded by Attorney General Ayotte to adopt the definitions under Pol 100, the Council unanimously adopted the definitions for Pol 404.03.

Request for Rule Change – POL 404.03 (6) (e) (f) (h) and (j) by Goffstown Police Department.

The Director requested that this item be tabled until the next meeting so that the Chief could appear before the Council to discuss the reasoning behind his request to alter the rule to allow an attorney to teach a portion of the use of force program. On a motion by Chief Dodge, seconded by Chief Morency to table this request until the next meeting, Chief Russell asked to open this matter up for discussion. Chief Magnant asked if there was an outline on how this course would be conducted. The Council was somewhat concerned with Goffstown's requests to continue to do their own training. Sr. Assistant Attorney General Nancy Smith advised the Council that PSTC rules required the Council to initiate rule making or deny the petition within 30 days. Based on this information Chief Dodge withdrew his motion to table Goffstown petition.

The Director brought up a concern that departments are beginning to develop innovative ways to developing their own programs to circumvent attending the Academy such as the request above, as well as another department he is currently working with. The Director felt if the Council continues to grant departments the approval to run their own programs PTSC will be traveling around the State monitoring these programs. The Attorney General thanked the Director for bringing these issues to the Council. The Attorney General felt that a centralized, uniform training program needed to be maintained at the State level. Commissioner Wrenn noted that this decentralization was a movement that was occurring in a number of states. Keith Lohmann noted that New Hampshire was one of three states that still maintained a centralized unified Academy. He noted most agencies today do not do any training of their own; they simply monitor other programs. Keith Lohmann advised the Council that he felt that a single unified program is what has the greatest impact on the quality of programming.

Concluding discussion on the matter, on a motion by Commission Wrenn, seconded by Judge Roberts to deny the petition based on the facts that the requested amendment to Pol 404.03 (h) is overly broad and the topics to be taught under Pol 404.03 (f) are more appropriately presented by a certified firearms instructor as opposed to an attorney, the Council unanimously denied Goffstown's petition to amend Pol 404.03 (6) (e) (f) (h) and (j).

3-Year PT Testing – Show Cause Orders

Cassie Erickson advised the Council that originally there were 51 officers who had not completed the fitness testing requirements for 2006. However, since the mailing of the agenda packages she had received 27 more responses. As of Friday, March 23rd, twenty-four officers had not contacted her nor sent in the required paperwork. Cassie asked the Council whether they wanted her to set up show cause hearings for noncompliance.

On a motion by Commissioner Wrenn, seconded by Chief Dodge, that show cause hearing notifications be sent to the officers who were in noncompliance as of this meeting to determine whether their certifications should be suspended, the Council opened the motion for discussion. It was determined that during the discussion that these individuals should now have to come before the Council even if they submit their paperwork and that the Council will have all those in noncompliance appear at the April Meeting. The Council discussed reviewing these cases with a subcommittee and then bringing their conclusions before the full Committee for a decision. Sr. Assistant Attorney General Nancy Smith indicated that there was nothing specific in the law stating that a subcommittee could be assigned to review cases but neither was there anything in the law that specifically indicated that it couldn't. The Attorney General felt that Nancy Smith would need time to review this matter and present a legal opinion on whether a subcommittee could be assigned the task of preliminarily reviewing Council business.

Once again, on a motion by Commissioner Wrenn, seconded by Chief Dodge, that show cause hearing notifications be sent to the officers who are in noncompliance as of this meeting to determine whether their certifications should be suspended, the Council voted unanimously that all officers who were not in compliance by this meeting would be required to appear before the Council to explain their noncompliance.

The Council adjourned at 11:15 to return to the Planning Session portion of the Retreat for a presentation by Director Stephen Moore from the Department of Corrections. At 11:50 a.m. the Council resumed its regular meeting.

PT Testing Waivers

Sr. Assistant Attorney General Nancy Smith noted that she understood that the Council wanted to discuss a policy decision on ongoing physical fitness testing where an officer has exhausted all the extensions available under 188:F27 and there was now a request for a waiver under 188:F27 III: that statute says “to the extent required to comply with Federal or State law, the Council may grant a waiver for a respective complainant at a specific agency for an officer who cannot meet the standards in paragraphs 3(d) through 3(g),” which means that they haven’t gotten the medical clearance to take the fitness test and they haven’t been able to pass it.

Nancy noted that she had issued a memo to the Council earlier on this issue. One of the options she had suggested in that memo was that the Council could require their own medical exam. Another option would be if a waiver was requested that the department satisfy the Council that the officer was disabled and reasonable accommodation was being made to qualify for the waiver. Another possibility would be to grant a conditional waiver. Sr. Assistant Attorney General Nancy Smith considered that this matter was a policy decision and that the Council should develop a set of standards on how it will determine the outcomes of such cases. She felt that the Council does have the authority to use all of the options above and a decision could be made on a case by case basis.

Sheriff Prozzo asked if the option selected for the officer would be for the specific department and would not carry forward with him/her if the officer moved on to another department. Nancy Smith indicated that would be correct.

The Attorney General asked Sr. Assistant Attorney General Nancy Smith if the Council could issue waivers without a certified ADA claim. Nancy Smith’s response was that ADA says “is disabled or perceived disabled.” Therefore, her opinion was the even if the officer hadn’t made a formal ADA claim his/her department could perceive him/her to be disabled. Nancy Smith felt there was no legal prohibition from doing that.

Judge Roberts thought maybe that it could be addressed under 3(f) where it states that every three years they have to complete a PT test under the protocols that the Council adopts, which is different than the performance standards for the initial Academy. Maybe there could be protocols addressing that with a doctor’s certification indicating that the officer can’t do the run with very specific circumstances then PSTC would accept the Schwinn Aerodyne as an alternative test to meet the requirements. Does the Council want to limit a police officer to a specific department or do we want to allow an officer who is capable of performing his duties as a police officer but cannot perform a specific PT test to be permitted to take an alternative test and pass without restricting the officer to a specific department?

Commissioner Wrenn thought Nancy Smith’s proposal was the approach the Council should take and requested that she, the Director and Cassie work together and possibly have a draft policy prepared for the next Council Meeting for the members to review.

One advantage the Attorney General saw in Judge Roberts proposal was that it removes it from potential ADA claims that might not otherwise be filed. Commissioner Wrenn felt that the Judge's proposal would give individuals the feeling that it was an option and would not hold the same weight as requiring a waiver. The Attorney General and Judge Roberts felt that could be clarified in the wording of the protocol. An earlier memo sent out by former Director Keith Lohmann outlined the criteria to apply for a waiver would require an ADA claim be presented to be considered for such waiver, while Judge Roberts' suggestion would be that it wouldn't even get to that point if protocols were developed to permit an exception to the standard.

Judge Roberts noted that by having the protocols in place it doesn't eliminate the waiver process. The Attorney General felt that Judge Roberts proposal may be a better way to go. After the discussion, Commissioner Wrenn felt maybe Judge Roberts approach may be the better way to go but still requested that policy/protocols be drafted for Council review. Sheriff Prozzo indicated that this matter needed top priority due to the fact that the Council promised answers to the two officers who have already requested waivers. The Chairman requested that this be brought back before the Council at the April meeting with the intent that the Council adopt a policy on the PT waivers.

Meeting adjourned for lunch at 12:15 p.m. Returned at 1:15 p.m. and entered into a Planning Meeting session. Returned to the Regular Council Meeting at 1:45 p.m.

Academy Driving Program/Instructor Revision. After the presentation by Lt. Mark Varney and much discussion during the Planning Session on Monday, March 26, 2007, the Council referred the matter to its regular Council meeting for a decision. The Council discussed whether they wanted to make the changes in the Driving Instructor qualifications a policy change or a rule change. The consensus was to make this a policy change. There was some concern on the wording rewrite of the driving instructor qualifications in the area which noted specific school training programs.

Commissioner Wrenn was concerned with the fact as the number of instructors grow would PSTC be able to insure that there were enough openings for instructors to assist at an Academy to meet the requirements of the proposed policy and that maybe the wording should be altered. The Attorney General was not comfortable altering the policy without conferring with Lt. Varney again. Judge Roberts noted that by establishing it as a policy if the criteria in the future changed, the policy could be altered to reflect the changing needs. Chief Magnant felt that the criteria for certification was reasonable. Commissioner Wrenn indicated that he still had some concerns with the number of requirements needed to maintain certification.

On a motion by Judge Roberts to adopt the Driving Instructor Certification Qualifications as outlined in Lt. Mark Varney's memo, dated Monday, March 12,

2007, with the deletion of paragraph (b) items (2) and (3), seconded by Chief Magnant, the Council unanimously voted to adopt the policy as stated above.

Also in this area under the Driving Program revision, Lt. Varney was requesting that Council allot a maximum of 5 additional practice runs for the Defensive Driving class and if the recruit failed after this remedial training, he/she be required to return for the entire Defensive Driving Course including the 4 hours of classroom training at the next Academy session.

On a motion by Judge Roberts to accept Lt. Varney's recommendation as outlined in his document entitled PSTC Defensive Driving Standards for Successful Completion seconded by Chief Russell, the Council voted unanimously to adopt this document as policy for Defensive Driving effective April 1, 2007.

Chief Morency asked if there were automatic review dates on PSTC policies. The response was that there were not.

OC Instructor Certification Revision. The Council discussed whether they wanted to make the changes in the OC Instructor qualifications a policy change or a rule change. The consensus was to make this a policy change also.

The OC Instructor Certification is currently being done but it was been determined that for clarification purposes it should be formalized. **On a motion by Judge Roberts, seconded by Chief Morency to adopt the Pepper Spray certification qualifications as outlined in the memo from Captain Jeffrey Noyes, Retired, the Council voted unanimously to adopt this policy as outlined in Capt. Noyes' memo.**

Entrance Fitness Procedure

30 Day vs 14 Day submission of Medical Forms

The Director felt the 30-day requirement for departments to get their medical forms into PSTC was just not working and he is recommending that a 14 day requirement be imposed. Chief Russell was concerned with reducing the time to 14 days based on the discussion with the DOC nurse during Monday's Planning Session on whether that was really enough time if there was an issue on the form. This would be a policy not a rule change. The Director indicated he is trying to balance the needs of the departments with the needs of PSTC and he feels confident this is a doable compromise.

On a motion by Chief Dodge, seconded by Attorney General Ayotte to amend the Entrance Fitness Policy to reduce the 30-day requirement for submission of the Medical History Form to 14 calendar days with strict adherence to this new guideline, the Council unanimously voted to make this change in policy effective

with the August, 2007 Academy.

Miscellaneous Fitness Items

The Director asked for guidance as to whether the Council wanted the recruits running on the roads. He also asked the Council for guidance in regard to who should be taking Blood Pressure readings.

- The Council felt that blood pressure should be taken by qualified medical personnel to be left up to the Director's discretion as to whether it should be a nurse, EMT, paramedic, etc., subject to who is available. Council felt it should NOT be PSTC staff even if they are certified first responders, EMTs, or paramedics. Chief Russell felt the more qualified personnel that could be gotten the better.
- The Council took a bit of time to address the issue of the recruits running on the roads. Assistant Director Stafford noted that when running on the roads with 40 recruits and two monitors if a recruit goes down one of the staff members must remain with the injured recruit leaving only one staff member to continue running with the rest of the recruits. This is a difficult situation to monitor along with difficulty in treating the injury away from the site. The Attorney General felt that the recruits should stay on the property, running on the track in inclement weather and running around the facility during the good weather. It was asked about the possibility of running on NHTI's campus. The Director will speak with the College about running around the campus grounds. Chief Russell felt it would be better to keep them on the facility's grounds.
- The Council asked staff to try to provide the additional information requested on the Fitness Program so that they can review the entire package and reach a decision regarding accepting the proposed policy at the April Meeting.
- Council noted that the PT testing for Corrections would fall in line with the Police Academy. Commissioner Wrenn stated that that couldn't be accomplished until everything else fell in line with the Corrections Program.

General Discussion

PT Testing for Part-Time School. Chief Russell put this topic up for discussion. He felt that the recruits entering the part-time school should be required to take part in the PT testing since they will be required to meet the 3-year physical testing requirement after they have been employed.

Next Meeting Date/Adjournment

After scheduling the next Council Meeting date for 9:00 a.m., Tuesday, April 17, 2007, in the John D. Morton Conference Room, the Council unanimously voted to adjourn the meeting at 2:35 p.m., on a motion by Commissioner Wrenn and seconded by Chief Morency.

Chairman Michael L. Prozzo, Jr.