

## *Minutes*

*February 19, 2008*

The 369th meeting of the New Hampshire Police Standards and Training Council was called to order at 9:10 a.m. by Chairman Michael L. Prozzo Jr., Sheriff of Sullivan County, in the John D. Morton conference room at the Arthur D. Kehas Law Enforcement Training Facility and Campus in Concord, New Hampshire.

***Members Present:*** Commissioner William L. Wrenn, Jr., New Hampshire Department of Corrections; Associate Justice Norman E. Champagne, Manchester District Court; Major Susan Forey, designee of Colonel Frederick H. Booth, New Hampshire State Police; Chief Michael J. Magnant, Portsmouth Police Department; Chief Peter Morency, Berlin Police Department; Chief Timothy Russell, Henniker Police Department; and, Deputy Attorney General Bud Fitch, designee of Attorney General Kelly Ayotte.

***Members Absent:*** Associate Justice Stephen H. Roberts, Chief Gregory Dodge, and Sheriff Scott Carr were excused.

***Staff Present:*** Director Donald L. Vittum, Assistant Director Robert B. Stafford, Jr., Mr. Keith H. Lohmann, and Council Secretary Kathryn Day.

***Guests Present:*** Attorney William E. Christie of Concord; Mr. Keith J. Demers of West Roxbury, Massachusetts; and, Mr. Michael C. Fenton with Chief Kenneth G. Fifield of the Wakefield Police Department.

### ***Call to Order***

Chairman Prozzo called the meeting to order at 9:10 a.m.

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

The Council unanimously approved by a voice vote the Minutes of January 22, 2008, following a motion made by Chief Morency and seconded by Chief Russell.

### ***Director's Report***

The Director's written report, mailed under separate cover, was accepted as submitted. The Director commented that the Part-Time Academy, recently expanded from 100 hours to 200 hours, is currently experiencing a dropout rate of about 10 percent. Although the demerit system has not been instituted in the Part-Time Academy, written communication with chiefs about their recruits' performance is ongoing.

Chief Magnant inquired about the progress of negotiations with NHTI on accommodating the recruits at the cafeteria on the Concord campus. The Director stated that the new agreement has been finalized that provides a separate dining room and serving line for the recruits and this is working out very well.

The Director thanked Chief Magnant for his time and efforts advocating on behalf of Police Standards and Training to reach an agreement with the new President of the NHTI campus at Pease Tradeport. Police Standards and Training's satellite location there has been relocated to new space with a separate entrance that also includes a small office space. A new rental agreement is being finalized.

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

#### **Status Report on the 145<sup>th</sup> Session of the Full-Time Academy**

The size of the class remains at 65 recruits and they are doing well as of Week #7.

### ***New Business***

**NONPUBLIC SESSION(S): Request for Rescission – Keith Demers, formerly of NH Marine Patrol** Mr. Demers appeared before the Council with his attorney, William E. Christie. Attorney Christie acknowledged receiving and reviewing the hearing protocol. Chairman Prozzo explained the procedures for public and nonpublic sessions and asked Mr. Demers if he had determined his preference. Mr. Demers stated that he wanted his matter to be heard in a nonpublic session.

Upon a motion by Commissioner Wrenn, seconded by Judge Champagne, and affirmed by a unanimous roll call vote of the Council, a nonpublic hearing commenced at 9:16 a.m.

Chief Morency seconded a motion by Commissioner Wrenn to seal the minutes of the nonpublic session. The Council agreed in a unanimous voice vote.

Commissioner Wrenn moved to exit the nonpublic session. The motion, seconded by Chief Morency, passed on a roll call vote without opposition. The nonpublic session concluded at 9:53 a.m.

The discussion turned to the rules cited in the case, Pol 402.02 vs. Pol 301.05. Commissioner Wrenn pointed out that Mr. Demers is not currently seeking employment in law enforcement in New Hampshire and has no current status; he questioned whether there was really an issue that the Council could vote on. Deputy Attorney General Fitch argued against granting the rescission, stating that the language in 301.05 does not allow the Council to take such action on the petition. Justice Champagne felt that, even though a provision under Pol 402.02 would allow the Council to suspend and then find the individual eligible to be hired, some of the reasons included under Pol 301.05 are prohibitive.

Commissioner Wrenn stressed that, were the Council to take no action, Mr. Demers' future employment out of state will still be adversely impacted because he will still be questioned about the incident in a background investigation and will still be required to disclose what happened. Commissioner Wrenn asserted that the petition before the Council asks for a determination that Mr. Demers would be employable in New Hampshire law enforcement in the future and the rules clearly bar the Council from reaching that conclusion.

Attorney Christie was given an opportunity to comment. The petition for rescission was brought under 402.02; Attorney Christie disagreed that Pol 301.05 precludes this Council acting under 402.02 to rescind the prior suspension and preclude a person from working in law enforcement in the future. Attorney Christie noted 402.02 (a) (6): "The officer has, after being hired as a police, corrections, or probation/parole officer ...used marijuana ..." and the Council can suspend someone who has committed that offense; however, under 402.02 (e) the Council has the discretion *not* to order the suspension or revocation based upon the conduct at issue under 402.02 (a) (6), if just cause exists. Attorney Christie argued that since Mr. Demers is already certified and the case is going forward under 402.02, the Council has that discretion to move forward on that basis and rescind the suspension.

Deputy Attorney General Fitch felt that it was not inconsistent to have a standard that says (the following circumstances) bar you from ever getting in the door and then to have a rule which allows for some degree of discretion with regard to certified officers. For example, an undercover drug officer who may have violated the rules as part of an investigation would not be comparable to an officer going to a party and choosing to smoke marijuana. The rule seems clear that the latter circumstance makes the officer ineligible for hire.

The Chairman cautioned the Council that they were still in public session and inquired whether they wanted to continue the discussion or enter into deliberations in nonpublic session. Commissioner Wrenn moved that the Council, for purposes of deliberations, enter into a nonpublic session. Chief Morency seconded the motion. The Council voted in favor of the motion in a roll call vote without exception. The nonpublic session resumed at 10:07 a.m.

Deputy Attorney General Fitch seconded a motion by Commissioner Wrenn to seal the minutes of the nonpublic session. The Council agreed in a unanimous voice vote.

Commissioner Wrenn moved to exit the nonpublic session. The motion, seconded by Chief Morency, passed on a roll call vote without opposition. The nonpublic session concluded at 10:14 a.m.

Back on the record, Deputy Attorney General Fitch put forth a motion for the Council to deny the petition for rescission. The motion was seconded by Commissioner Wrenn. Without further discussion and without exception, the motion carried on a voice vote.

## **Decertification Hearing**

**Paul D. DeCoste, formerly of Sandown Police Department**, pursuant to Pol 402.02 (a) (2) and (4). Mr. DeCoste was not present for the hearing.

Mr. Lohmann recited the details of the case in which a resignation was negotiated in lieu of dismissal, following a conviction handed down in Rockingham County Superior Court on two counts: one count of felony wreckless conduct and one count of misdemeanor DWI. Mr. Lohmann noted that two Form "Bs" were received, one dated April 23, 2007, and a resignation in lieu of dismissal dated December 28, 2006 – but, the latter one was not signed.

*Synopsis:* Paul D. DeCoste was convicted in Rockingham Superior Court on one count of felony wreckless conduct and one count of misdemeanor DWI, sentenced to 12 months at the House of Corrections, electronic bracelet monitoring, one year of probation/counseling, two-year license revocation, and a \$500 fine. On December 23, 2006, at approximately 1 a.m. Paul D. DeCoste, an officer with the Sandown Police Department, while off duty, was driving a 1996 Ford Bronco on Route 111A, Main Street, in Danville with his fiancé, Janelle Bean. He was involved in a one-vehicle rollover crash, causing injury to both himself and Ms. Bean. He was originally charged with aggravated DWI based upon a blood alcohol content greater than 0.16 and wreckless conduct and aggravated DWI with a personal injury based upon the injury to his passenger. He was arrested by Trooper First Class Christopher Vetter of State Police Troop A at Parkland Hospital in Derry.

In answer to a question from Commissioner Wrenn, Mr. Lohmann indicated that there was not a voluntary surrender in this case.

A motion to revoke the certification of Paul D. DeCoste, formerly of the Sandown Police Department, by Commissioner Wrenn, was seconded by Judge Champagne. A voice vote of the Council was unanimous in support, with the exception of Major Forey, who abstained.

## **CONSENT CALENDAR**

The following **Requests for Extension** were submitted for consideration:

### **Full-Time Police Officer**

Extensions for these full-time officers were granted until fitness testing for the requested Academy and, if testing is successful, through the end of the requested Academy. The Session dates are: 146<sup>th</sup> Academy 04/07/08-06/27/08 (fitness test 3/18/08); 147<sup>th</sup> Academy 08/25/08–11/14/08 (fitness test 08/11/08).

**Officer Abraham J. Gilman, Northfield Police Department** requests extension to the 146<sup>th</sup> Academy.

**Officer John Melia, Swanzey Police Department** requests extension to the 146<sup>th</sup> Academy.

**Officer Adam Trayner, Waterville Valley Dept. of Public Safety** requests extension to the 146<sup>th</sup> Academy.

The Council supported the staff recommendations to approve these **Training Grant Requests for Other Training:**

**Alton Police Department** request to send Chief Philip A. Smith Jr. to FBI-Law Enforcement Executive Development Association sponsored course on current issues for law enforcement executives in Mashantucket, Connecticut, March 16-31, 2008. Staff recommends granting the request. Amount: \$699.20

**Gilford Police Department** request to send two officers, Det./SRO Douglas Wall and SRO Holly Harris, to the Basic SRO course offered by the National Association of School Resource Officers, in Lincoln, Rhode Island, February 25-29, 2008. Staff recommends granting these requests. Amount for two officers: \$1,877.06

**Milford Police Department** request to send Sergeant Raymond Jackson to a free three-day seminar, Managing Criminal Investigations and Investigators, at Fox Valley Technical College, Appleton, Wisconsin, April 22-24, 2008. Staff recommends granting this request. Amount (for itemized expenditures): \$682.39

**Rochester Police Department** request to send Sergeant Gary Boudreau to the FBI-Law Enforcement Executive Development Association sponsored Supervisor Leadership Institute at the Everett Police Department, in Everett, Massachusetts, March 31 through April 4, 2008. Staff recommends granting the request. Amount: \$763.33

**Windham Police Department** request to send Detective Sergeant Mike Caron or Detective Sergeant Dan Clark to the Sirchie Evidence Collection Training Program at Sirchie Headquarters, Youngsville, North Carolina. Staff recommends granting the request. Amount: \$800.00

Deputy Attorney General Fitch moved that the Council approve the items on the Consent Calendar. The motion, seconded by Chief Magnant, carried without opposition on a voice vote.

### **Ongoing 3-Year Fitness Testing**

Mr. Lohmann stated that approximately 160 officers last month had not yet met this requirement. After discussions with the Director, letters were sent to each individual notifying them they would be subject to a hearing. Of the eight individuals listed on the agenda, only the following have failed to respond: Chief Stephen Cass of Colebrook, Officer Peter Crowell of Goshen, Officer Charles Coolidge of Pittsfield, and Deputy Jolene Castle of the Hillsborough County Sheriff's Office.

Judge Champagne moved that show cause orders be issued to these officers. Deputy Attorney General Fitch seconded the motion. The Director commented that Chief Stephen Cass is operating his department alone right now; one of his officers left to join Highway Patrol and his only other officer is currently attending the Academy. The Director asked for special consideration for this case, as the Chief is currently working 16 hours a day to cover the agency on his own. The Council was not inclined to grant this exception and the Chairman asked for a vote on the pending motion. Upon a unanimous voice vote, the Council supported issuing the four show cause orders, with the

understanding that if testing is successfully completed before the next Council meeting they will be withdrawn.

### ***General***

#### **Annual Compliance Issues**

Several departments are currently out of compliance concerning submitting paperwork for annual training by the December 31, 2007, deadline. About sixty departments received telephone calls from the Director in January to give them a new opportunity to submit their paperwork. Some individuals had not completed their eight annual in-service training hours because of military service; others were out of work because of injuries. One newly appointed chief was able to complete only six of the eight hours. At this time, the Council is being asked for direction on how to address the ten departments that remain out of compliance.

In past years, a grace period of 30 days was extended to those needing more time to satisfy the previous year's requirements. The question: Is there anything in the Council rules that allow this practice?

The departments who do not submit their paperwork by the deadline receive a phone call from the Director and the reasons for their noncompliance are discussed. Two of the ten departments at issue this year are without chiefs of police and are being administered by a Board of Selectmen, for example.

Other times, the departments are forthright in communicating shortly following the deadline that the previous year's requirements have not been completed. They are encouraged to complete the training as quickly as possible. What should be done if a 30-day grace period is not enough time?

Chairman Prozzo was not supportive of allowing even longer grace periods and encouraged the Council to take a firmer stance beginning with the current year. Commissioner Wrenn asked whether the responsibility falls on the individual officer or is the department and the chief of police liable for making sure that the eight hours of training is completed each year? Do we hold the officer responsible or do we hold the chief of the department responsible?

The Chairman felt it was the chief's responsibility, with some obligation on the part of the officer to make an individual effort to stay on top of these requirements. Consideration needs to be given to officers who are out on injury leave or military service; nevertheless, chiefs/departments should plan to complete training earlier in the year so other instances of noncompliance could potentially be avoided.

Chief Morency agreed with the view that it is the chief's responsibility if the department is out of compliance. What action should be taken when this occurs? Chief Russell felt that compelling the chiefs to appear before the Council would be more effective than a

letter from the Director. Deputy Attorney General Fitch interpreted 403.01 (a) to mean that it is the officer's duty to complete the training and (b) makes it the responsibility of the department/chief to submit the paperwork. He suggested creating a condensed, on-line training program about the Academy Rules that could be required as a consequence for noncompliance and then requiring an appearance before the Council for repeat violations. Commissioner Wrenn considered that some departments may be impeded by pay issues; where is the officer going to receive training if the chief does not bring training into the department or agree to pay for outside training?

Chief Morency recommended notifying the Town or City about noncompliance would bring to light issues with inadequate funding. Chairman Prozzo felt that when chiefs are required to submit a budget to their town indicating an amount needed for training, it would be entirely appropriate for them to indicate that the Police Standards and Training Council requires each officer to complete eight hours of training each year and include the amount needed to compensate their officers for the time spent in training, too.

Chief Russell recommended the Director take the same type of approach that he has taken with behavior issues at the Academy, that is, sending a memorandum stating what the policy will be going forward, regardless of more relaxed past practices. There needs to be some way to prepare the departments to respond as they will be expected to do.

Commissioner Wrenn felt that any officer who did not complete last year's eight hours should be required to complete them in the current year, in addition to the eight hours required for the current year. Chief Russell recommended setting a date for completing the prior year's requirement and he proposed March 31, 2008; it is also important to communicate that this will be the last year that this opportunity will be extended. Those departments who are still not in compliance by the extended deadline for 2007 will be compelled to appear before the Council and show cause.

With regard to officers on active military duty, there is no allowance made in the current rules to accommodate them; the same goes for those on injury leave. In these cases, the Council agreed that it would be fair to excuse the noncompliance for a time until the officer has returned to duty and has the opportunity to comply.

### ***Other Business***

#### **NONPUBLIC SESSION: Wakefield Police Department**

The Director introduced the Wakefield Chief of Police and requested the Council to enter into a nonpublic session to discuss a personnel matter. Pursuant to RSA 91-A:3 II, Commissioner Wrenn moved for the Council to enter into a nonpublic session to discuss personnel issues. The motion was seconded by Chief Morency. A roll call vote of the Council was unanimous and the nonpublic session commenced at 10:16 a.m.

Deputy Attorney General Fitch seconded Commissioner Wrenn's motion to seal the minutes of the nonpublic session. A voice vote of the Council was in unanimous support.

Commissioner Wrenn put forth a motion, seconded by Chief Morency to exit the nonpublic session. The Council, without exception, voiced their approval in a roll call vote. The nonpublic session concluded at 10:38 a.m.

**Review public comments and fully consider and approve text of final proposal of Police Standards and Training Council Rules readoption**

Mr. Lohmann withdrew the item and explained that the Legislative Rulemaking Committee has indicated that they require additional time for review and comment. He recommended that the Council should grant him the authority to file interim rules (with the existing rules) so that they do not expire. The Council agreed to this request.

**Expression of Thanks**

Chief Russell expressed appreciation to the Council and staff on behalf of the family of Kier Slater, an officer with the Belmont Police Department, for accommodating a large audience at the Tactical Center that assembled for the officer's memorial service on Wednesday, February 13. Over 500 guests attended the service and reception. All arrangements were finalized in just a few days by the Director and Assistant Director to provide a dignified and memorable ceremony and to comfort and support the family and the Belmont PD in their time of need.

**Looking Beyond the Traffic Ticket 2008**

Chairman Prozzo asked for a member of the Council to volunteer to serve on the selection committee for this year's event to be held on Wednesday, May 21. Chief Morency felt that his position in the Chiefs Association would present a conflict of interest and the Council agreed. Chairman Prozzo announced that due to planned travel he would not be available as usual. Chief Magnant recommended Chief Dodge (who was not present at the meeting) and the Council was pleased to support his appointment.

**Performance Evaluation for Director Vittum**

Based on the accomplishments of the Director in 2007 and the goals met by the Academy that have been presented for consideration by the Council, Chief Morency put forth a motion that the Council recommend approving a salary increase for the Director in 2008. Commissioner Wrenn seconded this motion. The Council heartily approved by voicing their unanimous consent.

The Director noted early progress on the goals set for this year. The opening on staff for an Investigative Paralegal has been filled, as well as the vacant position of Building Services Worker III.

**Customer Satisfaction Survey**



All law enforcement agencies are receiving a written request from Chairman Prozzo to respond to a customer satisfaction survey that will help generate topics of discussion on planning for the future at the Council retreat on April 14 and 15.

***Next Meeting Date/Adjournment***

The next meeting of the New Hampshire Police Standards and Training Council will be held on Tuesday, March 25, at nine o'clock in the morning.

Upon a motion by Commissioner Wrenn, seconded by Chief Morency, the Council voted unanimously to adjourn the meeting at 11:21 a.m.

Respectfully submitted,

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Chairman Michael L. Prozzo, Jr.