

MINUTES

November 23, 2004

The 331st meeting of the NH Police Standards and Training Council was called to order at 9:09 a.m. by Vice-Chairman William L. Wrenn, Jr., in the John D. Morton conference room at the Police Standards and Training Facility in Concord, New Hampshire.

Members Present: Chief John P. Curran, Meredith Police Department; Sheriff Scott A. Carr, Carroll County Sheriff's Department; Justice Norman E. Champagne, Manchester District Court; Associate Justice Stephen H. Roberts, Dover District Court; Attorney General Kelly Ayotte; Major Craig H. Wiggin designee of Colonel Frederick H. Booth, NH State Police; Stephen J. Curry, Commissioner of the Department of Corrections; and Charles Annal, Deputy Commissioner designee of Commissioner William G. Simonton of the NH Community Technical College System

Chief Michael J. Magnant, Portsmouth Police Department and Chairman Michael L. Prozzo were excused due to prior commitments.

Staff Present: Director Keith H. Lohmann, Paralegal Cassandra Erickson, and Account-Technician Helen Robinson.

Guests Present: Correctional Officer Jessica Millette, John J. Kovacs, Unit Manager of the Department of Corrections, character witnesses Kevin Westgate and Kristen Ernst, and Thomas McCabe of the State Employees Association representing CO Millette; Correctional Officer Mark Johnson and character witness Lt. Marilyn Whitten from the Department of Corrections

Approval of Minutes

Following a motion by Chief Curran that was seconded by Commissioner Curry, the Council voted unanimously to accept the minutes of September 28, 2004, as presented.

The Council also voted unanimously to accept the minutes of October 26, 2004 as presented, following a motion by Chief Curran that was seconded by Commissioner Curry.

Director's Report

The Director introduced Major Robert Stafford, Jr., as the new Assistant Director of the Police Standards and Training Council.

The graduation ceremony for the 135th Police Academy was held November 19, 2004, with 72 recruits graduating.

Currently we have lost one Correctional Officer in the 78th Corrections Academy. The individual wished to pursue another profession.

The Director noted the last 4 of 24 recruits that had originally failed firearms have now passed their qualifications.

Officer Amie L. Prescott-Colbeth of the Northumberland Police Department who was granted an extension at the last Council meeting to qualify with her firearm by the end of the 135th Police Academy, passed firearms and low-light qualifications with 2 consecutive scores of 28 (27 is required to pass).

Chief Gendron of the Hudson Police Department is requesting funds (\$4,995.00) paid for his officer who served as cadre for the 135th Police Academy, be applied against training grant requests rather than reimbursing his department. These monies go back to the Town's general fund rather than the police departments budget. Typically, a contract is issued with departments to partially reimburse for the officers salary while serving as a cadre.

Director Lohmann informed Chief Gendron he would consult with Council members and if approved, could submit training grant requests and fund at 100% up to the amount of the original contract.

Chief Wrenn expressed concern this may set a precedent. He indicated if approved for one department, other departments may want to follow suit. The Director stated he was having difficulty contracting cadres for the Police Academies. If offered as an option in the future, more departments might be willing to participate.

Attorney General Ayotte and Chief Wrenn felt this would be circumventing the Municipal Budget Act .

The Director suggested, in the future, this could be offered as an option to reimburse municipalities or earmark the money for out-of-state training.

Associate Justice Roberts felt the town should be offered the option as opposed to the Chief getting involved.

The Director indicated he could write a letter to the Town of Hudson offering them the option and suggested offering it to other departments. This may help to enlist cadre's to assist with the Academy.

After a brief discussion, following a motion by Associate Justice Roberts, seconded by Commissioner Curry, the Council voted unanimously to allow payment for the Hudson Police Department officer, who performed cadre services for the 135th Police Academy, be granted to offer the municipality providing the option of receiving payment or funds to be held on account towards specialized training grant requests to be used within a 12-month period from the end of the academy in which that cadre served.

SWAT II checks will be sent out shortly to departments for those officers who participated in this class. A letter of explanation will be sent out with the check.

Lecture Hall #2 renovations will start December 1st. There are 104 recruits signed up for the January 2005 Police Academy with 63 actual names. The construction will take 6-8 weeks, therefore, the first 4 weeks of the 136th Police Academy may have to be held in Lecture Hall #1. This could be the first time that we may have to decline officers who pass the physical agility test.

There is a question of criteria to be used in choosing which officers will attend. Some ideas would be based upon the date of filing paperwork with PSTC. Some departments designate slots then names are given the last day. Departments don't want to hire officers until the last minute to save money. Another suggestion could be to draw names. Those not drawn would have to wait until April 2005.

Vice-Chairman Wrenn suggested a modified lottery holding out the part-time certified officers.

Commissioner Curry asked if there would be any departments who may delay personnel until April because of timing issues within the department. The Director indicated this as a possibility.

Judge Champagne noted officers given extensions should be the first to include. Vice-Chairman Wrenn concluded those with extensions and without training should be given priority. Part-time certified not given extensions could be put into a lottery or maybe some departments could withdraw until the next academy.

Director Lohmann advised members he will immediately inform departments, in writing, of the situation.

Sheriff Carr asked if the officers who passed the PT test and are not allowed to attend the 136th Police Academy, would they be required to take another entry PT test? In answer to Sheriff Carr's question, the Director indicated they should be required to retake the test. If the officers do not continue physical training and then enter the academy, they may be unable to participate in the program. Sheriff Carr inquired what the circumstances would be if they pass PT testing in December, are unable to enter the January academy and then fail PT in April?

Vice-Chairman Wrenn stated this should be done before the PT test and if anyone fails, the second PT test could be run and backfill that way. Commissioner Curry said if the department knows the officer is borderline the test should be given later. Vice-Chairman Wrenn agreed, indicating a test should not be given in December then subject the officer to another test in April.

Attorney General Ayotte suggested once departments are notified of the situation, in advance, it should cover the situation.

The Director informed members he recently addressed the Northern New England Police Accreditation Commission (NNEPAC) indicating there exists a subcommittee on reserve officers that may become an issue. CALEA has a regulation that states officers must receive training commensurate with their duties and responsibilities. This is a problem for departments with part-time officers gaining CALEA accreditation. The Director was approached 8 months ago by Chief Jeff Nelson of the Dunbarton Police Department and who is also Chair of the committee. He presented a matrix whereby, a part-time officer who had received additional training and worked a certain number of years be granted full-time certification to get CALEA accredited. The Director indicated to Chief Nelson he wasn't enthusiastic about the idea because he sees this as a utility in attending the full-time academy.

Major Robert Stafford, Assistant Director, who is well versed in CALEA matters, will be attending committee meetings. Director Lohmann advised Council members the committee will possibly be making a presentation to the Council, in the near future, proposing that officers gain full-time certification without attending the academy.

The Director has met with Governor-Elect John Lynch and hopes to provide him with a tour of the facility soon. Chief Savage of the Plaistow Police Department, who is also President of the NH Police Chief's Association, asked the Director to schedule a meeting with the Governor. To date, a meeting has not been scheduled.

The Director is scheduled to make a budget presentation to Governor-Elect Lynch at 1:30 p.m. today. State agencies have been requested to resubmit their budget using a zero-based budgeting model. PSTC's budget is an average increase of 4.5% per year for the two-year biennial budget; the FY06 budget request is \$3,524,000 and FY07 is \$3,669,000.

The Wireless Grant, renovations, and training funds have been approved by Governor and Council, but the earmarked funding for the video-conference sites didn't make it onto the agenda. The Director will resubmit the items in January 2005 once the new Governor is on board.

Further discussion ensued reference CALEA with Chief Curran commenting the Council should not be in favor of anything but full-time academy attendance, meeting the matrix, and not set new standards even though CALEA feels it's important.

The Director reiterated in 1992 Goffstown PD applied for a waiver for part-time officers granted by the Council. Goffstown restricted the responsibilities of part-time officers to have training commensurate with their duties. The agreement with them specifically indicated that, if the part-time officers wanted to become full-time certified, regardless of whatever training they had, it was mandatory they attend the full-time academy. Since Dunbarton has a full-time Chief and two part-time officers, the Chief cannot limit the part-time officers' duties so he has to come up with a way to get them full-time certified. If departments wish to limit the duties of part-time officers and come up with a training matrix, the Director is in favor of it. This will give part-time officers more training. If they wish to come up with a job description for part-time officers, with limited duties, the Director is in favor of drawing up a training matrix and provide it to them.

Major Wiggin stated a system has been developed to incorporate education, experience, training etc. which Chief Nelson will ask the Council to allow as a certification level.

The Director also indicated NNEPAC wanted departments to submit position descriptions and have customized training which he denied. He asked the committee to come up with two to four position descriptions.

New Business

Decertifications/Suspensions/Revocations/Surrenders

Suspension – Jessica Millette, Department of Corrections

Vice-Chairman Wrenn explained the hearing procedures, which she previously reviewed, to Correctional Officer Jessica Millette. After the Vice-Chairman explained procedures for a public and non-public hearing, Correctional Officer Millette chose to have a public hearing.

Vice-Chairman Wrenn swore in Director Lohmann who indicated that CO Millette pled nolo and was found guilty of DWI in Concord District Court on June 8, 2004, subjected to a 9 month license suspension, \$1,000 fine with \$500 suspended upon good behavior. This is actionable under Pol 402.02 (a) (4) c. The following is entered into evidence:

Exhibit A: Form "A" dated July 13, 2001.

Exhibit B: Corrections certification dated September 28, 2001

Exhibit C. Form "G" dated March 14, 2004

Exhibit D: Conviction from Concord District Court

Exhibit E.: Police Report from the Concord Police Department

Synopsis: On March 14, 2004 at 4:20 a.m., Sgt. Brian Phelps of the Concord Police Department observed CO Millette operating between two other vehicles on Fisherville Road. She crossed over the fog line several times, applied her brakes abruptly swerving left to right. The vehicle behind her had to take evasive measures to avoid a collision. When she crossed the line again the officer pulled her over. He smelled an odor of alcohol on her. She fumbled with her registration stating she worked at the NH State Prison, and had had a couple of beers a few of hours ago. She swayed when exiting her vehicle; speech and eyes were blood shot and glassy. The officer indicated she appeared to have more than a couple of beers and admitted to drinking four beers. She was transported to the Concord Police Department where Officer William Brouillet administered the Intox and she blew a .16

The Departments of Corrections issued her a letter of warning. The Warden indicated CO Millette is a good employee and wishes her to remain employed at the Department of Corrections.

After being sworn in, Thomas McCabe from the State Employees Association, representing CO Millette, spoke on her behalf stating she has completed the academic program required by the court; she is currently receiving counseling through Concord Hospital; she has one speeding ticket from six years ago; and since then, has an unblemished record and is a valuable employee to the Department of Corrections. He indicated she admits her mistake and takes full responsibility for the arrest.

CO Millette was sworn in by Vice-Chairmen Wrenn and apologized to Council members for her actions on March 14th. She stated she learned her lesson and said it will not happen again.

After being sworn in by Vice-Chairman Wrenn, John Kovacs, Department of Corrections Unit Manager stated when CO Millette was arrested she notified him immediately after being released. She talked at great length about the incident and has taken full responsibility. Even with the embarrassment and loss of license, she has reported to work each day. She hasn't consumed any alcohol since her arrest. He was present when she was given a letter of warning by the Warden, taking full responsibility and listening very intently to the Warden's reprimand.

In answer to a question regarding alcohol counseling by Vice-Chairman Wrenn, CO Millette indicated she participated and completed a court mandated 20-hour alcohol program through CAP.

Because her BAC level was .16 or higher, she was also mandated to complete an 8-10 week counseling program which she is currently attending at Concord Hospital.

Vice-Chairman Wrenn asked CO Millette what led to such a high intoxication level. She stated she had one piece of pizza before leaving work that night. It was 11:30 p.m. when she met some friends at Szechuan Garden Restaurant, had a couple of beers, went back to a friends house to play cards, drank a shot of liquor and had a couple more beers. She then proceeded to go home thinking she was sober enough to drive. As she was driving home, her friend who was behind her, called her on her cell phone. She pulled over when her friend indicated there was someone behind her and then she swerved back into the road, was stopped and arrested.

Major Wiggin felt the letter of warning was light discipline for personnel action and inquired if this was because of her work performance. Unit Manager Kovacs said it was due to her work performance. She was denied a lateral position to first shift due to the conviction.

On a motion by Chief Curran, seconded by Judge Champagne, the Council voted unanimously to suspend the certification of Correctional Officer Jessica Millette for 90 days upon the receipt of paperwork at the Department of Corrections under Council rule Pol 402.02 (a) (4)(c) as a result of conviction in Concord District Court for Driving While Intoxicated. Commissioner Curry recused himself from the vote.

Decertification – Dustin S. Adams, Lebanon Police Department

Director Lohmann presented the history of this case indicating Dustin S. Adams, formerly of the Lebanon Police Department, was terminated from the department after an internal investigation which determined while employed as a police officer, he was in the presence of his girlfriend on more than one occasion when she was in possession of marijuana, he failed to take any action, and lied about it in the internal investigation. This is actionable under Council rule Pol 402.02 (a) (5) which he read to Council members.

The following was entered into evidence:

Exhibit A: Form "A" dated May 19, 2003.

Exhibit B: Certification dated November 14, 2003.

Exhibit C: Form "B" from the Lebanon Police Department dated April 2, 2004.

Exhibit D: Internal Investigation Report from the Lebanon Police Department.

Synopsis: Dustin Adams was making statements to fellow officers about his girlfriend's drug use, they then reported the information to the Chief, and an internal investigation ensued. The investigation found he was not truthful during the internal investigation. He initially stated his girlfriend's drug use was in the past and later admitted he knew she kept the marijuana in the car and had seen the container in the prior month. He left the marijuana in the glove compartment while they drove to Massachusetts. He told her to get rid of it and has known of her drug use since the summer of 2003. He also went to a family party knowing that drugs would probably be present and was asked by the family to leave the party because drugs were, in fact, present and he took no

action. He has since moved to North Carolina, the Return Receipt Requested Notice was signed and returned,. Therefore, he was aware of the hearing and failed to appear.

Chief Curran made a motion to follow Director's recommendation to revoke the certification of Dustin S. Adams. He, therefore, would not be able to ask for reinstatement of his certification until 2 years from date of revocation. The motion was seconded by Deputy Commissioner Annal and passed unanimously.

Suspension – Mark W. Johnson, NH Department of Corrections

Mark W. Johnson appeared before the Council as a result of his conviction of Driving While Intoxicated in Concord District Court on July 28, 2004.

After being read the hearing procedures, Correctional Officer Johnson chose to have a public hearing and was sworn in by Vice-Chairman Wrenn.

The Director read the arrest report to Council members, stating CO Johnson plead guilty and was convicted of DWI on July 28, 2004, in Concord District Court. He received a 9-month license suspension and a \$750.00 fine. This is actionable under Council rule Pol 402.02 (a) (4) c. which the Director read to Council members. The following was entered into evidence:

Exhibit A: Corrections certification dated January 1, 1994. (NOTE: There is no Form "A" because he was grandfathered).

Exhibit B: Form "G" dated November 29, 2003.

Exhibit C: Conviction from Concord District Court.

Exhibit D: Police reports from the Concord Police Department.

Synopsis: On November 29, 2003 at 4:10 p.m., Officer Kathleen Moreira of the Concord Police Department was dispatched to Route 106 and Pembroke Road where the subject was slumped over the steering wheel of his truck. While en route, she was advised the subject was arguing with bystanders who found him. The officer then spoke with Craig Emery who stated he found CO Johnson stopped in the middle of the intersection and passed out at the steering wheel. Mr. Emery then proceeded to call "911". CO Johnson then woke up, got out of his truck and almost fell on top of Mr.Emery. Mr. Emery indicated he could smell alcohol on CO Johnson.

Another witness, Robert Brown, informed Officer Moreira he pulled alongside CO Johnson and found him with his head down in the middle of the intersection. Mr. Brown knocked on CO Johnson's window to wake him up and open the door so he could check for a pulse when CO Johnson began to wake up. Mr. Brown also smelled alcohol and noticed slurred speech, then proceeded to engage the truck in park and remove the keys from the vehicle. Mr. Brown then drove the truck out of the intersection. CO Johnson stated he was a diabetic and felt his blood sugar level was low. When evaluated by Tri-Town Ambulance, his insulin was found to be normal.

Officer Moreira then spoke with CO Johnson observing his eyes to be red and glassy, had slurred speech, an odor of alcohol and a fixed gaze. He indicated he had two beers. Officer Moreira then asked him to submit to a Field Sobriety Test, HGN, Walk and Turn. He missed heel-to-toe every time, walked with his hands in his pockets. When performing the one-legged stand, he swayed, hopped and put his foot down. He admitted to being intoxicated, lied about being a diabetic, and refused the Intoxilizer Test.

CO Mark Johnson, after being sworn in, addressed Council members apologizing stating he takes full responsibility for his actions.

Deputy Commissioner Annal inquired about the circumstances which led to his actions. CO Johnson said he was at a friend's home fixing his roof and drinking beer. He works the 4:00 a.m. until noon shift in the kitchen at the NH State Prison, was tired and basically fell asleep at the stop sign. He is tested yearly for diabetes, takes high-blood pressure medication, failed to eat that day and shouldn't have consumed alcohol in that situation.

Attorney General Ayotte inquired if there had been any disciplinary action taken as a result of the conviction. CO Johnson indicated the Warden gave him a letter of warning with a copy placed in his personnel file.

Chief Curran asked what he has done to rectify the situation. CO Johnson said he successfully completed the CAP Program, did not need aftercare, and has not had a drink since his arrest. He indicated he normally drinks socially.

In answer to a question by Vice-Chairman Wrenn regarding his court-mandated counseling, CO Johnson stated he didn't need to have additional counseling.

Lt. Marilyn Whitten, Operations Lieutenant at the NH State Prison for Men, appeared to speak on behalf of CO Johnson. She stated the reason Director Lohmann didn't have the original document of hire was because he was a "rehire". He started work after graduating from high school, had four years of employment at the prison, left to work with his father, then returned to work at the Department of Corrections and has been employed there for over 11 years. For 10 of the 11 years, he has been a role employee working in the kitchen, a very tense location of the prison. He has been married for over 25 years which was unexpectedly dissolved. His divorce played a major factor with his drinking and DWI conviction. The department gave him personal time off to resolve his issues. He stands responsible for his actions, plans on staying employed with the department, and they are very pleased with his work performance.

In response to a question by Chief Curran regarding lesson learned, CO Johnson replied he would definitely never drink and drive again, it was a huge mistake, he took it for granted, it was very dangerous and could have hurt someone.

Chief Curran made a motion, indicating with the openness and honesty of CO Johnson, that his Corrections Officer certification be suspended for a minimum of 90-days effective on the date paperwork is received by the Department of Corrections under Council rule Pol 402.02 (a) (4) (c) as

a result of conviction in Concord District Court for Driving While Intoxicated. The motion was seconded by Judge Roberts and carried unanimously. Commissioner Curry recused himself from the vote.

Prior Training & Experience Requests

Full-Time

The Director outlined the request of John E. Sims, Jr. of the Sutton Police Department for prior training and experience. The Council then voted unanimously, on a motion by Chief Curran, seconded by Commissioner Curry, to accept staff recommendation and grant full-time certification on prior training and experience to Officer Sims upon completion of the medical exam, PT test, NH Law Package at the Full-Time Academy, and First Aid/CPR, if lapsed.

Part-Time

On a motion by Chief Curran, seconded by Deputy Commissioner Annal, the Council voted unanimously to grant extensions on Director's recommendation to Part-Time Officers Robert L. Thorp, Jr. of the New London Police Department and Robert W. Knight of the Bartlett Police Department upon successful completion of the NH Law Package at the Part-Time Officers' School.

Requests For Extensions

Full-Time

After the Director outlined the reasons for the extension requests, following a motion by Chief Curran, seconded by Major Wiggin, the Council voted unanimously to follow staff recommendation and grant extensions to Full-Time Officers Robert M. Kelly, Jr., UNH Police Department, and Benjamin Z. Selleck, Hooksett Police Department through the 136th Police Academy with the stipulation that Officer Selleck work under the strict supervision of a full-time certified police officer.

Part-Time

On a motion by Commissioner Curry, seconded by Chief Curran, the Council voted unanimously to grant an extension through the 243rd Part-Time Officers' School to Part-Time Officer William Jolly of the Groton Police Department with the stipulation he work under strict supervision of a certified full-time police officer.

Specialized Training Grant Requests

After amending a grant request from Berlin PD from \$600 to \$1,000, Chief Curran made a motion to grant requests to Rochester PD for 1 Sergeant, Conway PD for 2 Corporals and Berlin PD for 1 Corporal to attend the Roger Williams University in Portsmouth, Rhode Island.

Vice-Chairman Wrenn questioned why Conway PD was also requesting to send an Officer to the Roger Williams University, but felt it would be beneficial to send the 3 Corporals, as requested, as they were possibly frontline supervisors and may be looking to improve supervision in the department.

Following discussion, Chief Curran amended his motion to grant \$1,000 to Rochester Police Department to send 1 Sergeant to Roger Williams University for the January 2005 session; \$3,000 to the Conway Police Department to send 2 Corporals to the January 2005 session and 1 Corporal to the April 2005 session, and \$1,000 to the Berlin Police Department to send 1 Corporal to the April 2005 session to the respective school.

The Council asked the Director to obtain more information from the Conway Police Department pertaining to their request for \$1,000 to send an Officer to the Roger Williams University. The motion was seconded by Sheriff Carr and carried unanimously.

Other Business

Grantham Police Department – 1300-hour waiver

Chief Russell Lary of the Grantham Police Department appeared before the Council to request a waiver of the 1300-hour rule for Captain Michael Szelangowski. He explained his department had 3 full-time officers, his Deputy Chief of 27 years passed away of cancer in August, another full-time officer moved to North Carolina, therefore, him being the only full-time officer and he has been called to active duty. He currently had one officer graduate from the 135th Police Academy who still needs to complete the FTO course, and hopefully, has two officers scheduled for the 136th Police Academy to begin January 2005. He would like to utilize Captain Szelangowski, a former full-time certified Captain with the Lebanon Police Department who has been working for Grantham Police Department over a year on a part-time basis and requests a waiver for him to work unlimited hours for six months or less.

In answer to a question by Vice-Chairman Wrenn regarding a break in service, the Director indicated Captain Szelangowski retired from Lebanon PD in 2000, then was employed by Grantham PD on August 26, 2002. There was never a request in the past for a waiver of the 1300-hour rule.

Chief Curran made a motion, seconded by Judge Champagne to waive the 1300-hour rule to allow Captain Michael Szelangowski to work ***unlimited hours*** to expire July 1, 2005.

Vice-Chairman Wrenn stated the 1300-hour rule is a yearly requirement. He felt the Council should grant a waiver of the rule this year and next year grant another waiver based on the circumstances. Whereas he is a full-time certified officer who has had a short break in service, then employed part-time, does the Council wish to grant him unlimited hours.

Chief Curran amended his motion to grant Captain Szelangowski to work ***unlimited hours*** for calendar year 2005. The motion was seconded by Attorney General Ayotte and carried unanimously.

New Ipswich Police Department - 1300-hour waiver

The Director stated that the New Ipswich Police Department was requesting an exception of the 1300-hour rule for a part-time officer who is working as a prosecutor for that department. In order to be a civilian prosecutor in District Court, the person must be a police officer. New Ipswich states the person would be in plain clothes and not exercise law enforcement authority during this time.

Director Lohmann indicated there has previously been declaratory rulings stating time spent in court for purposes of testimony by an officer is not included towards the 1300-hour limit.

After brief discussion, on a motion by Chief Curran, seconded by Deputy Commissioner Annal, the Council voted unanimously to deny the request of the New Ipswich Police Department.

Administrative Discretion

Last month the Council had a discussion of a potential decertification case involving a Chief of Police and staff determined there was insufficient evidence to bring before the Council. A letter was drafted for the ex-Chief of Police's attorney notifying him the investigation was complete and there was no action contemplated. The draft letter was forward to our legal counsel, Senior Assistant Attorney General Nancy Smith at the Attorney General's Office, for her review. She advised the Director, that according to our rules, the staff had no authority to make probable cause determinations in decertification cases. It was the Council's authority. The Director pointed out that ***RSA 188-F:26, XIV-a states, "the Council may delegate to the Director of the Police Standards and Training Council any powers and duties enumerated in this subdivision"***. She stated if the Council passes a motion to delegate the responsibility to make probable determinations in decertification cases to Director Lohmann, he could continue to act as he has in the past.

Chief Curran asked if the responsibility to investigate could be delegated to the Assistant Director. rather than the Director. The Director would then present evidence to the Council and prosecute. Director Lohmann said another discussion with Senior Assistant Attorney General Smith concerned whether or not he should be prosecuting cases at all. He suggested that maybe it should be delegated to the Assistant Director to prosecute the cases; however, he would want to be informed and make decisions about the cases. Previously, under this model, the Director was available during Council deliberations should they have questions, and Senior Assistant Attorney General Smith indicated this was a conflict of interest. She also stated should the Director have any part in the decision-making process as to whether or not cases go forward, he could not sit in on deliberations or offer advice. Therefore, he decided he will continue to prosecute the cases and make decisions as to whether or not he physically investigates or re-delegates it to a member of the staff. As additional background, if a report of a dismissal or resignation in lieu of dismissal is received, the staff sends a letter to the department asking if Council rule Pol 402.02 is implicated. If so, the Director asks for the internal report and a case is brought forward. This case was unusual, because the investigation was so botched by the hiring authority, a factual determination could not be made due to an issue of truthfulness. Under the rules, according to the Attorney General's Office, the Director does not have the authority to make a probable cause determination.

Following a motion by Attorney General Ayotte, seconded by Chief Curran, the Council unanimously voted to delegate the authority to make the probable cause findings in these matters to the Director of the Police Standards and Training Council.

General Discussion

Proposed Legislation

An attachment to the agenda was discussed regarding RSA 188-F:31, proposed legislation which includes amended language suggested at last month's Council meeting. The deadline for filing

LSR's is December 8, 2004. In checking with our legal counsel, Senior Assistant Attorney General Smith, she felt the proposed legislation would be legal and defensible.

Associate Justice Roberts moved to go forward with the new language as amended to RSA 188-F:31 Penalty Assessment; Waiver of Penalty. The motion was seconded by Deputy Commissioner Annal, and carried unanimously.

Barnstead Police Department

The Director called members attention to a handout from the Barnstead Police Department regarding Richard W. Bray, Sr. Previously, the department requested that Mr. Bray be part-time certified. At that time, the Council determined he would have to attend the full part-time academy in order to be recertified. Now, Barnstead is requesting he attend the Law Package only. Mr. Bray is on disability retirement and there is some question as to whether or not he'll be able to participate in Searching and Handcuffing. The question of the "Americans with Disabilities Act" was raised. The Director recommended he participate in Searching and Handcuffing to the extent that he is capable. Three years from now there may be an issue due to his being subject to the three-year testing provision; however, in 2007 his medical condition could change.

A document from the Barnstead Police Department regarding the administrative duties of Mr. Bray was read by the Director to members. Job description of the duty officer was to prepare and perform records check through State Police (Belknap County); prepare pistol handgun permits; prepare court documents; prepare and maintain court files; prepare subpoenas; prepare discovery files; set up court files; request criminal/motor vehicle records; maintain and update court schedule; file court process of notice; maintain evidence room; transfer and track evidence; and log chain of custody.

Vice-Chairman Wrenn felt the duties didn't require the position of a certified police officer, but could be performed by a clerk, dispatcher, etc.

Deputy Commissioner Annal questioned where the liability lays should Mr. Bray be certified as a police officer with the Council knowing he is unable to do the job.

A concern expressed by Major Wiggin was that the situation may present a legal issue for Mr. Bray by putting his retirement disability in jeopardy and also liability for the Barnstead Police Department should he be certified.

The issue before the Council is whether or not to reconsider a previous motion to require Mr. Bray to attend the full part-time school in order to be certified as a part-time officer.

Attorney General Ayotte suggested the Director get in touch with Chief Borgia for him to see if he has considered the impact this may have on Mr. Bray's retirement.

Following discussion, it was the consensus of the Council to table the request of the Barnstead Police Department until the Director has been in touch with Chief Borgia regarding the situation.

Council Retreat

The annual Council Retreat has tentatively been scheduled for March 2005. The consensus of the Council was to hold the retreat at the Christmas Farm Inn in Jackson, New Hampshire.

Retirement

Vice-Chairman Wrenn and Council members thanked Chief Curran for his dedicated service to the Council, his 38 years in law enforcement and wished him the best in his retirement.

Letter from Officer Joseph R. Hoebeke

Director Lohmann shared a handout, an extraordinary letter of appreciation from Officer Hoebeke, who served as cadre member for the 135th Police Academy.

Adjournment

After scheduling the next meeting of the Council for 9:00 a.m. on January 25, 2005 in the John D. Morton conference room, the Council unanimously voted to adjourn the meeting at 11:36 a.m., on a motion by Deputy Commissioner Annal that was seconded by Chief Curran.

Vice-Chairman William L. Wrenn, Jr.