

MINUTES

December 12, 2005

The 343rd Meeting of the NH Police Standards and Training Council was called to order at 9:03 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 William L. Wrenn, Jr., Hampton Police Department; Sheriff Scott A. Carr, Carroll County Sheriff's Department; Chief Gregory C. Dodge, Epping Police Department; Chief Peter P. Morency, Berlin Police Department; Chief Michael J. Magnant, Portsmouth Police Department; Associate Justice Stephen H. Roberts, Dover District Court; Associate Justice Norman E. Champagne, Manchester District Court; Charles Annal, Deputy Commissioner and designee of Commissioner William G. Simonton of the NH Community Technical College System; Colonel Frederick H. Booth, NH State Police; and Attorney General Kelly A. Ayotte.

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

Approval of Minutes

Following a motion by Chief Dodge, seconded by Chief Morency, the Council voted unanimously to accept the Minutes of November 22, 2005, as presented.

Director's Report

139th Police Academy. The Director announced at the Chiefs' Meeting in Laconia that there were 120 people who would be taking the PT test for the winter Academy. If all of them pass the test it will not be possible to enroll the full 120 recruits into this Academy and the Chiefs were informed that a memo with the criteria for acceptance would be forthcoming. The Director advised the Council that the maximum number of recruits that could be accepted was between 70-80 which is dependent upon the ratio of men to women and further contingent upon the limitation of space in the lecture hall and the number of beds in the facility. The PT test will be conducted on Monday, December 19th, selections would be made on Tuesday, December 20th and departments notified on Wednesday, December 21st if need be. The criteria that would be used for selection would be part-time officers who are electing to take the full-time

Academy but would remain part-time would be held out; next would be certified part-time officers who would be moving into full-time positions; the next group would be those full-time officers that have just been hired and lastly would be anyone who is full-time, not certified and reaching the two-year mark. It would be done by lottery for each of the groups.

The Council discussed that anyone who is “bumped” from the Academy due to lack of available space should be given an automatic extension until the next Academy. A motion was made by Chief Dodge, seconded by Judge Champagne to grant automatic extensions to anyone who is denied access to the Academy due to lack of available space. After further discussion by the Council regarding this motion, the Council decided to wait to see the numbers who passed the fitness testing before voting on such a motion; therefore Chief Dodge removed his motion from the table.

In-Service Computer Classes. The Director also advised the Chiefs at their meeting in Laconia that there were two more In-Service Computer Classes going to be available by the end of the week. One is ***Law Enforcement Response to Weapons of Mass Destruction***. This class was originally done by Louisiana State University and PSTC was given permission to put this class on-line as a computer-based class. The second class is the ***Avian Flu*** class.

Chief Wrenn commented on one of the courses that his officers attended recently. His officers attended a 3-5 day program that was team instructed by two people which his officers indicated contained a lot of repetitive information and a good deal of unnecessary extraneous discussion. The officers also indicated that they did not feel as if they were a part of this class. The Director noted that this was the FTO program which was a five-day program done by IPTM out of Florida and that it was a video-conference class. On video-conferencing classes done by outside instructors they are not as well versed with drawing students out from the remote sites. The Director will check on the officers’ complaints regarding this class.

Previous and/or Unfinished Business

Colin K.Wentworth Deliberations

Council Members present for the Colin K. Wentworth Deliberations were: Michael L. Prozzo, Jr., of the Sullivan County Sheriff's Department; Chief William L.Wrenn, Jr., Hampton Police Department; Sheriff Scott A. Carr, Carroll County Sheriff's Department; Chief Gregory C. Dodge, Epping Police Department; Chief Michael J. Magnant, Portsmouth Police Department; Associate Justice Stephen H. Roberts, Dover District Court; Associate Justice Norman E. Champagne, Manchester District Court; Charles Annal, Deputy Commissioner and designee of Commissioner William G. Simonton of the NH Community Technical College System; and Attorney General Kelly A. Ayotte;

The subcommittee, consisting of Judge Roberts, Chief Dodge, and Chief Magnant met last week and reviewed the Requests for Findings of Fact and Rulings of Law for both sides and they reached a decision on each one and presented their review to the full Council.

The Council found that the following requests for Findings of Fact and Rulings of Law

submitted by Mr. Wentworth were granted: 1, 3, 4, 8, 10, with the exception of the “voluntary resignation”), 14; and the following were denied: 2, 5, 6, 7, 9, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22. (There was a question on #20 on whether or not the Town did comply with the provisions 301.05(g) in completing the background check. The subcommittee did conclude that Mr. Wentworth did, in fact, have multiple convictions for violations that indicated a pattern of disregard for the law. However, the Council had access to the annulled convictions and the Town of Stark did not. It was noted that in the background investigation sent to the Town on April 18th there was a notation stating none of the convictions have been pardoned but all three have been annulled in the Berlin District Court.) **The Council decided to grant #20, with a notation that the Town of Stark did not appear to have given consideration to the annulled convictions. On #2 the Council decided to grant the first clause “that his certification was never suspended or revoked while he was on active duty with Milan and Gorham” and deny the balance.**

The Council found that the following Requests for Findings of Fact submitted by the Director were Granted: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24a, b, c, d, e, f, g, h, I, j, l, m; Request 24k was neither granted nor denied because of the lack of clarity of the statement, leaving question to the meaning of the statement.

The following Requests for Conclusions of Law submitted by the Director were granted: 1, 2, 3, 4 (last sentence only); 5, (first two sentences and last two sentences only); 6 (last sentence only); 7, 8, 9, 11, 12 (with the exception of the term “dereliction of duty”); the remaining requests were neither granted nor denied.

On a motion by Attorney General Ayotte, seconded by Chief Wrenn to adopt the proposed order in the Wentworth case and the findings of fact and conclusions of law with the changes being incorporated, the Council voted unanimously on a roll call vote to accept the order as presented.

Judge Roberts will incorporate the changes on the draft order and forward the final order to Cassandra Erickson who will have copies sent to the Respondent and the Town of Stark.

Declaratory Ruling

The Director summarized the request of Director David Barrett, Division of Safety Services, regarding exemption of the 1300-hour rule for Marine Patrol Officers teaching classes and the Council’s decision at the last meeting to develop a declaratory ruling to provide consistency for all part-time officers teaching classes.

The Council discussed the draft of the Declaratory Ruling created by Paralegal Cassandra Erickson. Judge Roberts requested a change to be made in the wording in paragraph 2 regarding the words “auditable records” to be more specific. Chief Wrenn requested the wording in paragraph 2 “in a classroom” be edited to read: *instructing subjects related to their job function (not to include FTO training)*. Following the Council’s discussions and editing of the draft, Cassandra typed the final document for Council Approval which appears below.

THE STATE OF NEW HAMPSHIRE
POLICE STANDARDS AND TRAINING COUNCIL

IN THE MATTER OF THE PETITION OF
DIRECTOR DAVID BARRETT, DIVISION OF SAFETY SERVICES

FOR A DECLARATORY RULING

Pursuant to RSA 541-A:1, V and Pol 203.02, Director David Barrett petitioned the Police Standards and Training Council with respect to whether part-time Marine Patrol Officers should be required to count their time spent instructing boating education classes toward the 1300 hours requirement in Council rule Pol 302.12(a).

At its meeting on December 12, 2005, the NH Police Standards and Training Council ruled that hours spent by part-time officers instructing subjects related to their job function (not to include FTO training) shall not count toward the 1300 hours requirement outlined in Council rule Pol 302.12 (a), provided that such hours are documented and auditable records, such as time sheets and class rosters, are kept by their Department. If this documentation is missing in any instance, the hours will not be exempted.

Sheriff Michael L. Prozzo, Jr., Chairman
NH Police Standards and Training Council

On a motion by Sheriff Carr, seconded by Chief Morency, the Council voted unanimously to accept the declaratory ruling in the matter of the petition of Director David Barrett as written.

New Business

Requests for Extensions

Full-Time

Gina M. Williams, Gilmanton Police Department

After the Director outlined the reason for the request, on a motion by Chief Wrenn, seconded by Chief Magnant the Council voted unanimously to grant the extension through the 139th Full-Time Academy to Officer Gina Williams of the Gilmanton Police Department.

Part-Time

Ryan Nolan, Sanbornton Police Department

After the Director outlined the reason for the request, on a motion by Chief Wrenn, seconded by Chief Magnant the Council voted unanimously to grant the extension through the 246th Part-Time School to Officer Ryan Nolan of the Sanbornton Police Department.

General Business**Rule Changes Discussion**

The Director handed out a package which included Police Standards & Training Council Rules, with proposed changes and additions for Council Review. The rules need to be readopted in 2008. After the Council makes its changes, it is required to go to the Rules Making Staff for review and it will probably return to the Council for major edits. Three people have reviewed the document that has been handed out to the Council. The blue reflects the Director's changes, the red is Cassie Erickson's and the bolded red is Assistant Attorney General Nancy Smith's changes. One of the significant questions the Council needs to consider is whether the Council wants to extend the scope of its authority to consider decertification cases. Also, currently there is no clear guidance in PSTC rules to hear eligibility cases, therefore, staff is suggesting adding language to clarify this matter.

“Pol 102.02 Absence of a Rule – These rules are not a limitation on the Council's statutory duties or powers. The absence of a rule does not limit the Council's power to act pursuant to its statutory authorization.” **The Council discussed adding this generic rule. The Council felt it might be more appropriate to add specific rules to cover the specific areas.**

Pol 201.01 Adjudicatory Proceedings – Purpose and Scope- Nancy Smith had originally placed a version of this statement under Pol 205.01 and it's Cassie's suggestion to add it to the original Pol 201.01. Also, to increase the Council's scope to subpoena witnesses. **This would also require a statutory change as currently the Council can only subpoena for disciplinary hearings.**

Under Pol 202 DEFINITIONS

The Director feels it is important that the wording is changed to include the words Adjudicative/Administrative hearings as the Council has heard cases that fall into these descriptions.

Pol 202.01 Judge Roberts noted that under Pol 202.01 Adjudicative/Administrative hearings, the words “required by law or rule” should be removed because it limits the Council's flexibility. (Page 9 of the handout).

Pol 205 (Page 13 of the handout) Council members may want to consider how they want to define hearings.

205.01 and 205.02 (a) (b) Council needs to determine the clarification of the wording for bringing cases before them for final determination.

Pol 205.02 (e) This simply cites that the mere knowledge of the parties does not necessarily constitute recusing oneself from the case (JUS 803.02).

Pol. 205.03 Informal Conferences – This change from director to presiding officer was implemented by the wishes of the Council that the director not conduct informal conferences (JUS 807.05).

Pol 206 Conduct of Hearings - (Page 17 of the handout) – This is restatement of an earlier section and a questioning of location of where the section belongs. An area the Council needs to consider.

Pol 206.01 (8) (9) – (Page 18 of the handout) Cassie Erickson added these lines to be consistent with the Department of Justice rules (JUS 807.03).

Pol. 206.06 (k) This involves subpoena power. **It will require a statute change.** This has been added at the recommendation of Assistant Attorney General Nancy Smith (JUS 803.01 (4)).

Pol. 206.09 Motions. This clarifies the process governing motions and the time limits. **Judge Roberts indicated that clarification needs to be made on what constitutes a day.**

Pol 206.12 Testimony: Order of Proceeding – Cassie Erickson incorporated this section to insure the information is contained in the rules regarding the Order of Proceeding since the parties involved usually ask these questions (JUS 812.05).

Pol. 206.13. Subpoenas. Cassie Erickson indicated that this is general language used by other agencies outlining individual's rights.

Pol 206.16. Waiver of Hearing Rules. This is to bring the agency into line with the Department of Justice Rules (JUS 803.03).

Pol. 206.17 Computation of Time. – This is to bring the agency into line with the Department of Justice Rules. (JUS 805.01)

Pol. 206.18 Voluntary Production of Information – This is to bring the agency into line with Department of Justice Rules (JUS 811.01).

Pol 206.19 Motions to Compel – This is to bring the agency into line with Department of Justice Rules (JUS 811.02).

Pol. 206.20 Mandatory Pre-Hearing Disclosure of Witnesses and Exhibits – This is to bring the agency into line with Department of Justice Rules (JUS 811.03).

Pol. 206.21 – Proposed Findings of Fact and Conclusions of Law - Clarifies the procedure. The is Assistant Attorney General Nancy Smith’s recommendation (JUS 812.05).

Pol. 301.05 – Hiring Rules – The Council needs to consider whether they wish to include a “Just Cause exemption” from the Council in this section. Do we want to add something in this section that allows the Council to be a decision-maker or joint decision maker in the hiring process. Does the Council want to insert themselves into 301.05; and if we do, to what extent do we want to insert ourselves into this policy.

Pol. 301.06 (15) (16) (17) These items are specifically on Form A and are being added to be consistent.

Pol 302.07 Correction made to reflect the change to whom the Gaming Enforcement Officers report. This may change again per Council members.

Pol. 302.08 Correction made to reflect the change to whom the New Hampshire Hospital Security report.

Pol. 302.10 Correction made to reflect a change in the statute.

Pol 302.12 (j) regarding part-time officers time spent in court not counting toward the 1300-hour rule. This is already in a declaratory ruling and is being added to the rules. **Judge Roberts indicated that wording must be added to note that the hours must be documented in order to qualify under this policy. Council members all agreed.**

Pol. 402.02 Revocation or Suspension – The Director posed the question: “Do we want to expand the purview of our decertification rules to include circumstances not currently covered under our policies.” This is a discussion that needs to be held at the March Retreat.

The Council discussed the possibility of hiring a Compliance Officer to answer questions and to investigate issues that occur in departments. The Chairman suggested that this be a topic of discussion at the March Retreat. He believes this is the time to consider this option if the Council is considering expanding its role.

Pol 402.02 (l) (m) These two sections provide specific clarification on undertaking disciplinary actions.

Pol 404.07 (e) On-Going Physical Fitness Testing – Provides clarification on requirements for three-year testing

Pol 602.02 (b) Agency Files – Regarding suspensions – Does the Council want the staff to continue to send out letters requesting a report regarding the suspension of an officer?

At the latest, the Council would want to present a draft of our Rules to the Rule Making Board by June 2007. If the rules expire, the Council has no authority to act and the Council will need time to edit the changes the Rule Making Board suggests.

The Council will review the rules before the next meeting and at that time they will decide if they want to act on any rules immediately or defer the process to the March Retreat for further discussion.

March Retreat Dates

The Council scheduled the March Retreat for Monday, March 27 and Tuesday, March 28, 2006, and would not be averse to returning to the Christmas Farm Inn in North Conway, New Hampshire as a possible location when the requisition goes out to bid.

Next Meeting Date/Adjournment

After scheduling the next Council Meeting date for 9:00 a.m., Tuesday, January 24, 2006, in the John Morton Conference Room, the Council unanimously voted to adjourn the meeting at 11:45 a.m., on a motion by Colonel Booth and seconded by Chief Wrenn.

Chairman Michael L. Prozzo, Jr.