

MINUTES

March 22, 2005

The 334th meeting of the NH Police Standards and Training Council was called to order at 9:07 a.m. by Chairman Michael L. Prozzo of the Sullivan County Sheriff's Department in the Police Standards and Training conference room at the Christmas Farm Inn in Jackson, NH.

Members Present: Vice-Chairman William L. Wrenn, Jr., Hampton Police Department; Chief Michael J. Magnant, Portsmouth Police Department; Chief Gregory Dodge, Epping Police Department; Sheriff Scott A. Carr, Carroll County Sheriff's Department; Associate Justice Norman E. Champagne, Manchester District Court; Associate Justice Stephen H. Roberts, Dover District Court; Attorney General Kelly A. Ayotte; Colonel Frederick H. Booth, NH State Police; Stephen J. Curry, Commissioner of the Department of Corrections; and new member of the Council Chief Peter Morency, Berlin Police Department.

Charles Annal, Deputy Commissioner, designee of Commissioner William G. Simonton of the NH Community Technical College System was unable to attend this meeting due to prior commitments.

Staff Present: Director Keith H. Lohmann, Assistant Director Robert B. Stafford, Jr., Council's Legal Counsel Nancy J. Smith, Sr. Assistant Attorney General, Paralegal Cassandra Erickson, and Council Secretary Denise Crocker.

Guests Present: Chief Steven I. Marshall, Washington Police Department and Aaron W. Warkentien.

Approval of Minutes

Following a motion by Chief Wrenn, seconded by Colonel Booth, the Council voted unanimously to accept the Minutes of February 22, 2005, as presented.

Director's Report

The Police Academy lost one more recruit two weeks ago. Apparently, the recruit was not entirely truthful in his background investigation information; and when his department discovered this, he was removed from the Academy, which brings the number of recruits down to 56. These recruits will be graduating this Friday, March 25, at 7 p.m. The Governor indicated he would be attending the ceremony and he was scheduled to be the featured speaker.

The Corrections Academy began with 39 recruits a week ago Monday, March 14; and to date, the Academy has lost one recruit due to personal reasons.

Those members who have been directly appointed by the Governor (Chiefs, Judges, & Sheriffs) have received a handout from the State of New Hampshire which is a financial disclosure form which needs to be filled out pursuant to RSA 21-G:5-a. Ex-officio members (Attorney General, Commissioner of Corrections, Commissioner of Community Technical Colleges and Colonel of the State Police) need to fill out an alternative form. If members have any questions regarding these forms, the questions should be directed to Sr. Assistant Attorney General Nancy Smith. When the forms have been completed they should be sent to the Secretary of State.

At the last meeting there was one officer who had not complied with the PT testing requirement. That officer was from the Hanover Police Department. After the Council advised the Director to send a letter suspending the officer's police certification, the Director called Chief Giaconne to inform him of the Council's decision and to advise him the suspension would begin upon the department's receipt of the letter. However, before the letter arrived in Hanover, the officer not only had completed his medical, but also passed his PT test. Therefore, no one was actually suspended for noncompliance of the PT testing rule.

The Director acknowledged that he had had some inquiries from Council members about the situation in Stewartstown. The Director's research resulted in the following: In brief, Stewartstown had an Officer in Charge, because the Part-Time Chief Brendon McKeage was deployed to Iraq. While he was still in Iraq, he received a letter from the Board of Selectmen in Stewartstown informing him that they had, in fact, converted the Chief of Police, (Officer in Charge), position to full time and had hired some one else in his place. The Board of Selectmen advised him that when he returned from Iraq, if he wanted to remain a part-time officer in Stewartstown, they would allow him to do so; and he would remain at his same rate of pay. The concern of the Council members was that what Stewartstown had done was within the confines of the Council rules. The Director advised the Council that it was. As far as the Council is concerned everything that Stewartstown had done was properly administered. Although, it had become a political issue within the Town and the outcome of the Selectmen's action will more than likely be resolved politically.

Sheriff Carr made a request as to what the Council's position is on Tasers™. The Director indicated that the Council has not taken a position. The Director further indicated to the Council that personally he felt that the jury is still out on this issue.

Tasers™ are an effective tool but the Director is not convinced that there is enough information available to know all the ins and outs of it yet. There has been lots of press both positive and negative on Taser™ use. The Director views Tasers™ as being something analogous to OC. Issues have surfaced akin to positional asphyxia with OC, and although positional asphyxia is not something that is directly related to the use of OC, it is certainly something that is indirectly related to it. There also have been some deaths associated with Tasers™; none have been directly related to Taser™ use, however, but a specific cause of death was not determined in some incidents relating to Taser™ use. Therefore, the Director has not taken a position one way or another and has not put out a model policy. The Director did receive an article submitted to him by the State Police on the Taser™ to put in our *Articulate Suspicion*. The State Police is using them extensively. That article will be in the next issue of the Police Standards & Training's *Articulate Suspicion*. It basically lays out the case pro and con. We have included a disclaimer at the bottom of the article stating that the article is the opinion of the author and not that of the Police Standards & Training Council. The IACP does have a position on paper and a generic model policy on Tasers™ which they call electronic control weapons because Taser™ is a brand name. Copies are available if Council members would like a copy. The Council typically does not take positions on items such as this and the Director did not see why it should on this particular issue.

Chief Magnant asked the question of whether the Council has a position of where the Taser™ falls on the use of force continuum. The Chief believes there is a feeling in the law enforcement community that the Council should be setting that standard.

The Director addressed this question stating that according to Taser™ it is before OC, as an intermediate weapon and according to IACP it is on par with OC. The Director's personal opinion is that he would put it on the other side of OC only because it does puncture the body but there are valid arguments for each of those positions.

The Council agreed that some research should be done on Taser™ use, as the clientele does look to the Council for an opinion and guidance. Discussion of the issue noted that Taser™ use has a mental impact -- as soon as the person sees the officer has a Taser™, resistance decreases. Tasers™ do not contaminate the area as OC does. Tasers™ come in 17 to 21 foot cartridges and with two pins that penetrate. Tasers™ can be used dry and the unit can make direct contact with the individual's body. Tasers™ immobilize the muscles and recovery is after five seconds with no permanent damage.

Chief Wrenn felt the Council should not take a position any stronger than IACP.

Colonel Booth made a motion to take no action but to continue to monitor Taser™ use. There was no second to this motion.

On a motion by Chief Magnant, seconded by Chief Wrenn, the Council asked the Director to research the Taser™ with the intent of developing a model policy or advisory bulletin to be put out to the law enforcement community. A short discussion ensued following a question about whether Taser™ instruction was taught at the Academy. The Director responded that it is not. He stated that it is an intermediate weapon and that Council rules state that as an intermediate weapon officers are required to be trained on

its use but that would be done at the department level. The Council then unanimously approved the motion.

Several months ago, the Council had requested the Director to approach the Chiefs Association and put together a training program for them. Last fall, the Director spoke with Chief Savage, President of the Chiefs Association. At that time, it was decided to schedule the training for the April Chiefs Association's Meeting. The Director received an e-mail a few weeks ago from Chief Savage indicating there was a conflict and that the training would have to be postponed. The next opportunity to do the training would be the Tuesday morning of the August meeting. The other possibility would be to develop a computer-based training module for the Chiefs. Chief Dodge suggested that maybe the Director should wait until the new President is appointed and select a training date with him. Chief Wrenn felt that was a good idea but also thought the computer based training CD would be appropriate since all chiefs do not attend the meetings.

Previous and/or Unfinished Business

Bradford Police Department

The Director outlined Part-Time Officer Warren Foote's request to be granted unlimited part-time hours which had been denied without prejudice at the February 22, 2005, meeting due to the lack of receipt of correspondence from his department. Chief Valiquet's letter has since been received and as outlined would be in keeping with past practice. On a motion by Chief Wrenn, seconded by Chief Dodge, to grant Officer Warren Foote unlimited part-time hours, the Council unanimously approved Bradford Police Department's Request.

Strafford County Sheriff's Department

The Director outlined the Sheriff's Department request for part-time Deputy Andrew Benaris to exceed the 1300-hour rule for 2004. The Council had deferred action on this request at the February 22, 2005 Council meeting to acquire more information from Sheriff Estes on the breakdown of hours. Sheriff Estes corresponded with the Director that he was having some difficulty accumulating payroll figures and asked that his case be postponed to the April meeting. Based on the Director's suggestion, the Council agreed to defer this issue to the April 26th Council Meeting.

Reconsideration of PT&E Request for Daniel O'Neill, II

The Council reviewed the criteria for PT&E during their executive session on Monday, March 21, 2005, including application to cases such as this in this particular situation. Council reviewed the letter from Chief Juris from Gilford and Daniel O'Neill's letter supporting the reasons why each felt Officer O'Neill should be granted consideration for PT&E.

Chief Wrenn continued to voice the same concern from the February 22, 2005 meeting that this individual has no police experience whatsoever. If the Council is looking at

prior training and experience, then they need to look at the totality of it. Chief Wrenn posed the question of whether the Council was willing to forego the experience component of it. Chief Wrenn had not seen any new information that presented itself for reconsideration of this matter.

Chief Dodge asked to review the transcript of Daniel O'Neill's grades/courses. After the Council reviewed the transcript, they were still not convinced it was comparable with the police academy program.

Chief Magnant asked what has been done in the past in situations of this nature. Other Council Members could not recall any other situation similar to this one that had come before the Council in which the individual had had no previous experience as a police officer.

After much discussion of this matter, no motion was made by Council members to reconsider the request of PT&E for Daniel O'Neill, II. Thereby, the Council's decision of February 22, 2005 stands.

New Business

PT&E Requests

Full-Time

The Director outlined the PT&E request for Shawn R. McCluskey, Farmington Police Department. Of note to the Council on this request is that Mr. McCluskey did attend the Massachusetts Full-Time Academy. He, however, has been only employed as a part-time officer in Massachusetts. He also volunteered at Billerica Emergency Management and indicated on his Form E that he had been charged with assault and battery with a deadly weapon but he was never convicted. The Director's recommendation in light of the O'Neill decision is that Mr. McCluskey did attend a police academy and he does have some experience as a police officer. In the past these have been allowed to go forward. On a motion by Judge Roberts to accept staff recommendation seconded by Chief Dodge for discussion, the Council voiced concern about departments hiring officers with questionable issues in their backgrounds. Questions arose about what Mr. McCluskey did at the Billerica Emergency Management group. Chief Magnant indicated that there are a number of issues that bother him with the background of this individual. Chief Prozzo reiterated that the role and focus of the Council in this matter is to consider prior training and experience.

On the motion made by Judge Roberts, that was seconded by Chief Dodge to accept staff recommendation and grant full time certification upon successful completion of medical exam, PT Test, NH Law Package at the Full-Time Academy and First Aid/CPR, if lapsed, the Council voted by a show of hands with 7 in favor and 4 opposed; the motion carried.

The Director next outlined the request of Elbert R. Parrot, Jr., Raymond Police Department, for prior training and experience. The Council voted unanimously, on a motion by Chief Dodge seconded by Sheriff Carr to accept staff recommendation and grant full time certification upon successful completion of medical exam, PT Test, NH Law Package at the Full-Time Academy and First Aid/CPR, if lapsed.

Part-Time

The Director outlined the request of John E. Granfield, Belknap County Sheriff's Department for prior training and experience. The Council voted unanimously, on a motion by Sheriff Carr seconded by Chief Morency to accept staff recommendation and grant part-time certification to Officer Granfield upon successful completion of the NH Law Package at the Part-Time School.

Requests for Extensions

Full-Time

After the Director outlined the reasons for the extension request, following a motion by Colonel Booth, seconded by Judge Champagne, the Council voted unanimously to follow staff recommendation and grant the extension through the 138th Academy to full-time Officer Kevin Wyman, Boscawen Police Department.

Part-Time

After the Director outlined the reasons for the extension request, following a motion by Chief Wrenn, seconded by Commissioner Curry, the Council voted unanimously to follow staff recommendation and grant the extension through the 244th Part-Time School to part-time Officer Christopher D. Salomon, NH Marine Patrol.

Other Business

Bow Police Department

The Director highlighted the Bow Police Department's request for Part-Time Lieutenant Ron Welliver to exceed the 1300-hour rule. He was previously full-time, retired from Nashua; then went to work at UNH for a couple of years. Clearly he meets the criteria for a waiver of the 1300 hours which would be consistent with what's been done in the past. On a motion by Chief Wrenn, seconded by Judge Champagne, the Council unanimously voted to accept staff recommendation and approved the waiving of the 1300 rule for Lieutenant Welliver of the Bow Police Department granting him unlimited part-time hours.

Resolution of the 3-Year PT Testing

On a motion by Colonel Booth, seconded by Judge Roberts, all police officers who move from part-time to full-time, full-time to part-time and any change from agency to agency will be required to abide by the PT testing. Council discussion of the motion ensued.

Chief Wrenn felt that this goes beyond the original intent of the law. Chief Wrenn felt the law grandfathered everyone hired prior to January 1, 2001.

The Council broke from the meeting at 10:15 a.m. to meet with legal counsel and resumed the regular Council meeting at 10:45 a.m.

Upon return to the Council Meeting, Colonel Booth withdrew his motion to require all police officers who move from part-time to full-time, full-time to part-time and any change from agency to agency to abide by the PT testing. Judge Roberts seconded the withdrawal of this motion.

The new motion made by Judge Roberts was the requirements of ongoing physical fitness testing be made applicable to those officers who are seeking a position that is a different certification (i.e., part-time to full-time or corrections to police or vice versa; in other words if the type of certification is going to be changed then they would have to comply with the physical fitness rule.) This motion was seconded by Colonel Booth. Chief Wrenn disagrees with the motion based on the fact that going full-time to part-time even without a break in service, the officer would be required to go through PT testing. Chief Wrenn believes that the term 'grandfathered' should include everybody that was certified before January 1st 2001. Everybody who has been newly certified on or after the January 1, 2001, date should have to comply.

The way Staff has been applying the rule is if an officer went from part time to full time, police to corrections, corrections to police, it is considered a change. However, if an officer went from full time to part time he/she would not be subject to the three year testing because the accountabilities and responsibilities of the part-time position are less than the full time position, therefore, we are not adding an additional requirement. The staff also follows the provisions of 404.07.

The Director asked the question: Does the motion on the table as it stands include the provision of Pol 404.07?

Sheriff Prozzo's interpretation of the law is that if you are hired as a police officer as of or after January 1, 2001, you are required to do this testing every three years. If you were hired prior to January 1, 2001 the law is not applicable to you.

Chief Wrenn suggested that the Council take a vote that it is the policy of the Council to interpret the word "hired" to mean hired in the State of New Hampshire as a law enforcement officer. Chief Wrenn felt that this would clarify the whole issue. If you are hired as a law enforcement officer prior to January 1, 2001, you are grandfathered whatever the position. If you are hired on or after January 1, 2001, you are required to meet the fitness requirements every three years.

Cassie Erickson stated staff's interpretation uses the criteria that if you have to attend an academy to obtain your certification and sign the RSA 188 form; you are subject to the on-going physical testing.

On the motion by made by Colonel Booth and seconded by Judge Roberts that any change in certification be subject to PT testing, the Chairman called for a Council vote with Colonel Booth and Judge Roberts (2) in favor; 8 against; Chief Magnant abstaining. Motion did not carry.

On a motion by Chief Wrenn, seconded by Chief Dodge, the Council will continue with the same policy the staff has used in the past that any time there is a change which requires an academy the three-year fitness rule will then apply. Attorney General Ayotte understands the staff's position; however, her understanding of the legal interpretation is that a change in certification is what warrants the actual triggering of the rule so this means the Council is interpreting the change of certification in one direction. The Council is looking at the plain language and that's something that needs to be considered. Staff's interpretation is a combination of hiring and certification. On a show of hands the Council voted to accept the motion with 7 in favor, 3 opposed (Attorney General Ayotte, Colonel Booth and Judge Roberts) with Chief Magnant abstaining. The motion carried.

Request Reinstatement of Certification

Aaron W. Warkentien was a part-time officer in Sunapee from 1991 -1992. He was a full-time officer from 1992 until November 8, 1999, when he resigned in lieu of dismissal. There was a Council decertification case stemming from an internal investigation concerning Officer Warkentien's lack of truthfulness regarding his operation of an uninspected vehicle. Officer Warkentien failed to appear for the hearing and his certification was revoked on March 28, 2000. Subsequently, a request for reinstatement was denied on April 22, 2003 pending an offer of employment because of a Laurie issue.

Judge Roberts questioned what happened to the Laurie Issue.

Chief Wrenn was concerned that Chief Marshall had not completed all the testing before coming to the Council. He felt that the polygraph, background check and Form A needed to be completed before the Council could review this case. No action was taken on this matter today.

Chairman Prozzo advised the Chief to get all the paperwork in order and return to the Council when everything ready for Council review.

Next Meeting Date/Adjournment

After scheduling the next meeting of the Council for 9:00 a.m. on April 26, 2005 in the John Morton Conference room, the Council unanimously voted to adjourn the meeting at 11:45 a.m. on a motion by Chief Dodge and seconded by Chief Wrenn.

Chairman Michael L. Prozzo