

## *Minutes*

*January 22, 2008*

The 368th meeting of the New Hampshire Police Standards and Training Council was called to order at 9:01 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:*** Chief Gregory C. Dodge, Epping Police Department; 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; Vice Chancellor Charles Annal, New Hampshire Community College System; and, Attorney General Kelly Ayotte.

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

***Staff Present:*** Director Donald L. Vittum, Assistant Director Robert B. Stafford, Jr., Investigative Paralegal Cassandra A. Erickson, Mr. Keith H. Lohmann, Captain Benjamin Jean, and Council Secretary Kathryn Day.

***Guests Present:*** Mr. Carl Lombard; Captain Russell Timmons, Somersworth Police Department; Chief Frank Hinkle, Alexandria Police Department; Goffstown Chief of Police Michael French; William Pease, Accreditation Manager, State of NH Voluntary Accreditation Program; Laconia Police Commissioner Armand Maheux; Chief Michael Moyer and Captain William Clary, Laconia Police Department.

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

Chairman Prozzo called the meeting to order at 9:01 a.m. Commissioner William Wrenn arrived at 9:03 a.m. and Justice Norman Champagne arrived at 9:08 a.m.

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

The Council unanimously approved by a voice vote the Minutes of December 18, 2007, following a motion made by Chief Dodge and seconded by Chief Russell.

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

The Director's written report, mailed under separate cover, was accepted as submitted. There were no questions or comments from the Council on the Director's report. The Director had no remarks.

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

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

The size of the class currently stands at 65 recruits, a very manageable number.

#### **Council Retreat 2008**

The confirmed dates for the retreat are April 14 and 15, 2008. The location will be determined after a bidding process to determine the most cost-effective proposal. It is expected that the fee for an outside facilitator will be prohibitive, so Police Standards and Training staff will plan to use our own resources.

#### **PUBLIC HEARING**

The Chairman opened the public hearing on proposed rule changes to the Administrative Rules at 9:09 a.m. Mr. Lohmann outlined the proposed changes/additions/deletions. At the December 18 Council meeting, the Council determined that Pol 403.01 could be more succinct if the word "conducted" were changed to "sanctioned."

Chief Dodge moved to include the requirement for an entrance physical fitness test for admittance to the Part-Time Officer Academy in the proposed rule changes. This change has the full support of the Association of Chiefs of Police. The motion was seconded by Chief Morency and carried with the unanimous consent of the Council.

There were no comments or questions and there were no public members present. Written comments may be submitted through February 1, 2008 and will be reviewed at the February 19 Council meeting. The public hearing was closed at 9:11 a.m.

#### **Final Adoption of Pol 101.14 and Pol 301.06 (a), effective January 25, 2008**

Upon a motion by Commissioner Wrenn, seconded by Chief Russell, the Council voted unanimously to approve the final adoption of Pol 101.14 and Pol 301.06, effective January 25, 2008, as presented.

### ***New Business***

#### **Request for Rescission – Keith Demers, formerly of NH Marine Patrol**

Mr. Lohmann stated that Mr. Demers has retained counsel and they have requested a continuance to the February 19 meeting.

**Voluntary Surrender of Certification under Pol 402.02(a)(5) - Glenna Heath-Roberts** Commissioner Wrenn moved for the Council to accept the voluntary surrender of Glenna Heath-Roberts' certification as a full-time police officer. Chief Magnant seconded this motion and it carried on a voice vote without exception.

### **CONSENT CALENDAR**

Chief Russell moved to approve the Consent Calendar with the exception of a Request for Extension for Chief Frank Hinkle, Alexandria Police Department. This motion was seconded by Chief Magnant and was affirmed by the Council on a voice vote.

The Council approved the following **PT&E Requests**:

#### **Full-Time**

**Officer Ralph C. Hale, Franklin Police Department** – On December 17, 2007 Officer Hale successfully passed the entrance fitness test for the 145<sup>th</sup> Academy and will be granted certification based on prior training and experience once he has completed the law package of the 145<sup>th</sup> Police Academy.

**Officer Gary O'Brien, Somersworth Police Department** – Captain Timmons appeared before the Council to thank them for their consideration and to update them on Officer O'Brien's efforts to qualify for full-time certification based on prior training and experience and completing the 138<sup>th</sup> Full-Time Police Academy. Officer O'Brien successfully passed the entrance fitness test on January 10, 2008, and will now be granted full-time certification.

#### **Part-Time**

**Kevin Martin, Pelham Police Department**

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

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

**Officer Robert Dolinak, Lyndeborough Police Department, extension to the 146<sup>th</sup> Academy**

**Officer Michael A. Gobbi, Stratham Police Department, extension to the 146<sup>th</sup> Academy**

**Officer Warren P. Breau, Winchester Police Department, extension to the 146<sup>th</sup> Academy**

**Officer Glenn B. Huff, Wilton Police Department, extension to the 147<sup>th</sup> Academy**

**Conservation Officer Trainee Glen C. Lucas, NH Fish & Game Department, extension to the 146<sup>th</sup> Academy**

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).

**Part-Time Police Officer**

**Herbert Stephens Jr., Nelson Police Department, extension to the 252<sup>nd</sup> Part-Time Officer Academy (01/12/08–04/2/08)**

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

**Moultonborough Police Department** for Corporal Joseph T. Canfield.  
Amount: \$1,000.00

**Center Harbor Police Department** for Chief Mark C. Chase.  
Amount: \$1,000.00

**Lebanon Police Department** for Sergeant David A. Young.  
Amount: \$1,000.00

**Alton Police Department** for Sergeant Todd M. Macdougall.  
Amount: \$1,000.00

**Sandwich Police Department** for Sergeant Douglas F. Wyman, Jr.  
Amount: \$1,000.00

**Londonderry Police Department** for Officer Joseph Bellino.  
Amount: \$730.00

**(END OF APPROVED CONSENT CALENDAR)**

These requests concerning **Ongoing 3-Year Fitness Testing** were considered and approved:

**Officer Rayford Greene, Brookline Police Department**

On this request for Fitness Testing Extension due to medical reasons, Mr. Lohmann advised the Council that Officer Greene failed the fitness test in 2006 and Brookline Police Department has now stated that Officer Greene is cleared medically to begin training. Mr. Lohmann recommended the Council grant an additional extension because Officer Greene's two-year probationary status will expire in December 2008.

Commissioner Wrenn inquired whether Mr. Lohmann was satisfied with the explanation that has been provided. Mr. Lohmann stated that Officer Greene has experienced multiple medical issues since 2006 and that he judges the case made by the Department to be legitimate.

Upon a motion by Commissioner Wrenn, seconded by Justice Champagne, the Council was asked to approve the extension of the three-year physical fitness test to Officer Rayford Greene, Brookline Police Department, due to his medical conditions. There was no further discussion and the Council supported the motion without exception on a voice vote.

**Officer Shane Wells, Northwood Police Department**, due to deployment to Iraq with US Army National Guard, is unable to comply with Pol 402.02 (a) (10) and the Department is requesting a waiver of Annual Compliance for In-Service and Firearms Training.

Mr. Lohmann detailed the circumstances that have prevented Officer Wells from complying with the annual training and firearms requirements. Staff recommends granting an exemption based on just cause as provided for in Pol 402.02 (e). Mr. Lohmann advised the Council to make a determination, either individually or generally, that in these cases (military service obligations) certification will not be suspended and the officer will be allowed to update their training once their deployment is over.

Commissioner Wrenn moved that the Council grant the extension requested by Officer Wells and look with favor on future requests whenever a New Hampshire law enforcement officer is deployed with the military and is unable to comply with this annual requirement. Attorney General Ayotte seconded this motion. Hearing no opposition, the Chairman announced the passage of the motion on a voice vote.

**Requests for Suspension** pursuant to RSA 188-F:27, III-d through III-g, were presented by Mr. Lohmann. All of these officers failed the fitness test in 2005. Each of the four officers named below was given a two-year probationary period to successfully pass the test; to date, only one of these officers has accomplished the requirement.

**C.O. Jeremy Shosa, NH Department of Corrections**

Officer Shosa successfully passed the test on January 16, 2008, and the request for suspension is hereby withdrawn.

**Officer Corey Adams, Hampton Police Department**

After corresponding in writing and email with Officer Adams, it was determined that he is unable to pass the test at this point due to a medical condition. It was clarified for Officer Adams that his certification would be suspended until such time as he could pass the test, and he expressed his intention to take the test once his medical condition has resolved. Officer Adams was advised that he would need to appear before the Council once he passed the test to have his certification reinstated.

**Officer Nicholas Metcalf, Hampton Police Department**

Officer Metcalf received a Certified letter but no response has been received from Officer Metcalf.

A motion to suspend the certifications of Officer Corey Adams and Officer Nicholas Metcalf by Justice Champagne was seconded by Chief Magnant. A voice vote of the Council was unanimous in support of the motion.

**Officer Carl Lombard, NH State Hospital Campus Police, Div. of State Police**

Officer Lombard appeared before the Council to present his remarks and requested to do so in non-public session.

Chairman Prozzo informed Officer Lombard of the Council protocol and the officer acknowledged he was informed and understood the procedure. Commissioner Wrenn moved for the Council to enter into nonpublic session and the motion was seconded by Chief Dodge. Major Forey recused herself from the nonpublic session, and a roll call vote of the other Council members was unanimous.

The nonpublic session commenced at 10:04 a.m. At the conclusion, Chief Dodge moved to seal the minutes of the nonpublic session. Upon a second by Commissioner Wrenn, the Council (with the exception of Major Forey) vocalized their unanimous support. The motion to exit the nonpublic session, moved by Chief Dodge and seconded by Chief Russell, carried on a roll call vote without opposition and the Council returned to public session at 10:16 a.m.

With Major Forey abstaining, a voice vote on the motion proposed by Chief Dodge and seconded by Chief Magnant to suspend the certification of Officer Carl Lombard based on the fact that the statutory requirement has lapsed was unanimous.

Mr. Lombard was informed that after six months he would be given another opportunity to come before the Council to ask for reconsideration, providing he was able to successfully complete the fitness testing in the meantime.

#### ***Other New Business***

#### **Chief Frank A. Hinkle: Petition for Declaratory Ruling and Request for Extension**

Chief Hinkle appeared before the Council and expressed his appreciation for their patience with the circumstances that have prevented him from successfully passing the physical fitness test. The Chief provided details on the specific condition he is challenged with when attempting to complete the 1.5 mile run in the required time. His doctor has stated that, in order for him to complete the run successfully, invasive surgery will be required to correct the problem with his calf muscle(s) and recovery and the subsequent rehabilitation would extend beyond the two years allotted for an officer to be employed in an extended probationary status. Chief Hinkle's probationary status will expire in October 2008.

Chief Hinkle's request is for the Council to allow an alternative test in place of the 1.5 mile run, the final obstacle to his receiving full-time certification based on prior training and experience. His proposal is to substitute a test using the Schwinn Aerodyne bicycle in place of the run; this will allow him to demonstrate the level of fitness and aerobic level required with success.

Commissioner Wrenn moved that the Council allow Chief Hinkle the opportunity to use the alternative of the Schwinn Aerodyne bicycle to satisfy the requirements of the run; the Commissioner felt this was reasonable considering the medical documentation provided and the sincere efforts thus far on the part of Chief Hinkle. Attorney General Ayotte seconded the motion to grant the petition.

Chief Magnant recounted that this alternative to the 1.5 mile run had been considered and approved by the Council in the past. Director Vittum clarified that this exception had been made for an officer that had already been certified and was based on documentation from a doctor that was produced after the request for certification had been approved.

The Director cautioned that making further exceptions would open the door to other requests for entry level police officers to use the Schwinn Aerodyne bicycle in place of the run. The Director was particularly concerned with requests from out-of-state officers. In Chief Hinkle's case, the Director considered certification based on prior training and experience a distinguishing factor and a decision to accept the substitute test one that is made on a case-by-case basis. Of paramount concern to the Director was that the Council take a consistent approach to allowing alternative tests and that the integrity of the training program for entry level recruits be maintained and the time and resources of the agency be preserved.

In answer to specific questions, Chief Hinkle stated that his condition was problematic only during running (after about one mile) and that it quickly dissipates in the cool-down period following the running. His doctor has assured him that although surgery is required to correct the problem, he does not anticipate that it will worsen over time if left untreated. The Chief is inclined to avoid the unnecessary surgery if at all possible and will be able to do so if the Council grants his request for the alternative test.

Commissioner Wrenn countered that the Council has already approved the substitute test for ongoing three-year fitness testing and determined that it is equivalent to the 1.5 mile run for these purposes. Essentially, the 1.5 mile run is considered the optimal test but, with supporting medical documentation, the use of the Schwinn Aerodyne is an acceptable alternative for three-year fitness testing. As long as the request for exception is presented with medical documentation and in good faith, as Chief Hinkle has done, and considering that Chief Hinkle will be required to complete only the law package of the Full-Time Academy to receive certification, the Commissioner felt that granting the request was appropriate and reasonable.

Attorney General Ayotte pointed out that one of the compelling reasons for allowing the alternative test for compliance with ongoing three-year fitness testing requirement is the value of prior experience and there is certainly a similar distinguishing factor when considering certification based on prior training and experience of an individual who has already attended an academy, even in another state.

In the case of an individual who has had no prior training or experience, the experience of participating fully in the Academy is a critical threshold to becoming completely prepared to perform as a police officer in this state. Although there is still a possibility that these individuals might seek approval for an alternative test, AG Ayotte felt that the Council had a reasonable basis for denying such requests, having made a distinction based on prior training and experience, as in the case of Chief Hinkle's request.

Chief Magnant was unwilling to support the motion until he had the opportunity to review the materials provided previously that supported allowing the alternative test.

Chief Russell inquired whether or not the Council has the authority to request a second medical opinion. The Chairman and the Director confirmed that the Council has the prerogative and the authority to do so.

In a voice vote, the pending motion carried, with Chief Magnant and Major Forey opposed.

Commissioner Wrenn moved that the Council grant the requested extension for Chief Hinkle to complete the NH law package in the 146<sup>th</sup> Academy, upon successful completion of the alternative entrance fitness test. Chief Morency seconded the motion, and the Council voiced their unanimous approval.

### ***General***

#### **Brass Recycling Program**

Captain Benjamin Jean provided an overview of what is currently being done to recycle brass collected from spent munitions. In the past, brass was routinely collected from the firing range and recycled for its monetary value, with the funds being deposited into penalty assessment. Over time this material has become more valuable and questions have been raised about whether to continue this practice or should police departments be asked if they desire to retrieve the brass at the time of shooting. Most departments do not collect the brass; their officers shoot and leave the brass behind for Police Standards and Training Council to sort and recycle it and receive the value from it.

In FY 07 approximately \$5,000 was generated through the recycling of brass collected from the firing range. So far in FY 08, \$1,800 of recycled brass was collected. The question for the Council is should Police Standards and Training notify each department that sends officers to use the firing range that they have the option to collect their spent brass casings or should the current practice be formalized (i.e., if the brass is left behind, Police Standards and Training receives the value of the recycled material).

Captain Jean proposed that having individual officers sorting their brass from the collection of casings being expended when firearms training is ongoing is going to be time-consuming and cumbersome to accomplish. Attorney General Ayotte inquired whether any departments or officers had asked to collect their brass and Captain Jean replied that he had received no direct requests, although some officers took the initiative to collect their brass and this was permitted.

Director Vittum related discussions with police chiefs who had inquired about what is done about collecting brass. The Director did not recommend changing current practices and felt that allowing individual officers to collect the brass unsupervised was not desirable. The potential hazard from handling the materials could be problematic for the agency if this were allowed. The Director also considered that funds generated by recycling the brass would offset wear and tear on the firing range that is available for the departments to use at no charge.

Justice Champagne moved that the current practice whereby Police Standards and Training staff collect and retain the brass for recycling be made permanent. The motion was seconded by Commissioner Wrenn.



Chief Morency suggested a discount on ammunition might be offered for turning the brass over to an ammunitions dealer. The Chief asked if this option might be preferable to directing the recycled value into the penalty assessment fund. The Director was not comfortable with the agency being involved with these kinds of transactions and advised that it would be more appropriate to continue the current practice.

The Chairman called for a voice vote and the pending motion passed without opposition.

### ***Other Business***

### **NONPUBLIC SESSION**

Pursuant to RSA 91-A:3 II, Chief Russell moved for the Council to enter into a nonpublic session to discuss personnel issues. Chief Dodge seconded the motion and a roll call vote of the Council was unanimous in favor. The nonpublic session commenced at 10:25 a.m.

A motion by Commissioner Wrenn to seal the minutes of the nonpublic session was seconded by Justice Champagne and the Council voiced their approval without exception. The matter was concluded at 10:35 a.m. and a motion to exit the nonpublic session was put forth by Commissioner Wrenn and seconded by Chief Russell. A roll call vote of the Council was affirmative and unanimous.

### **Laconia Police Department Voluntary State Accreditation Assessment**

Goffstown Chief of Police Michael T. French, Assessment Team Leader, appeared before the Council to present the report of the State of New Hampshire Voluntary Accreditation Assessment conducted December 6, 2007, at the Laconia Police Department.

Major Stafford introduced Commissioner Maheux, Chief Moyer, Captain Clary, and Mr. William Pease.

Chief French, the Team Leader, offered the following comments in addition to the written report. The team of very experienced assessors put the Laconia Police Department through a rigorous inspection and was pleased to note that the Department fully demonstrated compliance with all 109 applicable standards. In particular, because of the way the files were organized and the careful preparation for this event on the part of the Department, the Team was afforded enough time to participate in a ride-along and interviews with communication personnel. The agency met the applicable standards without “changing the personality” of their agency and without varying their normal operations. The unanimous recommendation of the Team is for the Council to support the accreditation sought by the Laconia Police Department.

Commissioner Wrenn congratulated the Laconia Chief and his staff, as well as the Assessment Team, on their performance and noted the longstanding excellent reputation earned by the Laconia Police Department. This elevates the high regard already established for this agency in the law enforcement community. Appreciation was extended for the Assessment Team’s conduct in making sure the Department is in compliance. The Commissioner moved that the Council grant accreditation status to the

Laconia Police Department and commend the Department and the Team on an excellent job performance during the Assessment. Attorney General Ayotte seconded the motion and the unanimous voice vote of the Council carried the motion.

***Next Meeting Date/Adjournment***

The next meeting of the New Hampshire Police Standards and Training Council will be held on Tuesday, February 19, at nine o'clock in the morning.

Upon a motion by Chief Morency, seconded by Chief Dodge, the Council voted unanimously to adjourn the meeting at 10:45 a.m.

Respectfully submitted,

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Chairman Michael L. Prozzo, Jr.