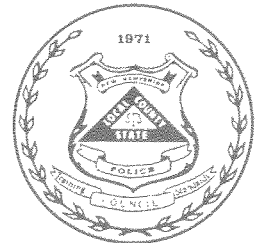




Sheriff Michael L. Prozzo, Jr.
Chairman

State of New Hampshire
POLICE STANDARDS & TRAINING COUNCIL
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Donald L. Vittum
Director

Minutes

November 25, 2008

The 378th meeting of the New Hampshire Police Standards and Training Council was called to order at 9:06 a.m. by Vice Chairman William L. Wrenn, Jr., Commissioner of the New Hampshire Department of Corrections, 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; Associate Justice Norman E. Champagne, Manchester District Court; 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, Deputy Attorney General Bud Fitch, designee of Attorney General Kelly Ayotte; and, Associate Justice Stephen H. Roberts, Dover District Court

Members Absent: Sheriff Michael L. Prozzo, Jr.; Sheriff Richard A. Foote; and, Colonel Frederick H. Booth.

Staff Present: Director Donald L. Vittum, Major Robert Stafford, Captain Ben Jean, (ret.) Chief Timothy Merrill, Lieutenant Paul Moller, Mr. Keith Lohmann, Investigative Paralegal Anne Paquin, and Council Secretary Kathryn Day.

Guests Present: Mr. Stephen Beal of Nottingham, New Hampshire.

Call to Order

Chairman Wrenn called the meeting to order at 9:06 a.m. Berlin Chief of Police Peter Morency arrived at 9:12 a.m.

Approval of Minutes

Deputy Attorney General Fitch moved to approve the minutes of October 28, 2008, as presented. After a second by Chief Russell, the Council voiced their unanimous consent.

Director's Report

The Director had no remarks to add. Chief Russell wanted to know what "hot topics" were raised by members of law enforcement at monthly meetings attended by the Director and Director Vittum cited ongoing physical fitness testing and concerns about the funding of Police Standards and Training. Coos County chiefs have expressed particular concern about losing funding for our regional training sites.

Previous and/or Unfinished Business

Response to RFP for SWAT/SOU Study

Four bids have been received and these sealed bids were distributed to the subcommittee of four Council members for their evaluation. The subcommittee agreed to meet prior to the December 16 Council meeting to discuss their individual evaluations and form a recommendation for the full Council to consider before a request is submitted for Governor and Executive Council approval.

New Business

Decertification Hearing

James Gaudet (formerly of Litchfield Police Department)

Pursuant to RSA 188-F:26, IV; Pol 402.02 (a) (3) and (4); Pol 402.02 (b)

Mr. Gaudet was not present for this hearing. Mr. Keith Lohmann presented a detailed synopsis of the grounds for decertification and accompanying Exhibits.

In summary, James Gaudet was hired by Hillsborough County Sheriff's Department on May 24, 1983, as a part-time officer. Mr. Gaudet was certified part time by PSTC on November 10, 1983. Mr. Gaudet was hired full time by HCSD on November 30, 1983, and was certified full time by PSTC on March 23, 1984. On October 12, 1984, Mr. Gaudet resigned from his position at HCSD and was hired full time by Amherst Police Department on October 15, 1984. On May 30, 1993, Mr. Gaudet resigned from Amherst Police Department and was hired full time by Litchfield Police Department.

On December 26, 2006, Police Standards and Training Council received a Form G from Manchester PD which notified staff that Mr. Gaudet had been arrested for Simple Assault and Cruelty to Animals on December 25, 2006.

At the jury trial on January 9, 2008, James Gaudet was found not guilty of the charge RSA 644:8 Class A Misdemeanor cruelty to animals; and guilty of the charge of RSA 631:2-a Class A Misdemeanor Simple Assault.

On February 25, 2008 James Gaudet was sentenced to six months in the house of corrections, suspended with good behavior and compliance with all terms, and probation for one year. The addendum to the sentence states

1. Anger management evaluation with Tim Lowry within 45 days of sentencing and follow all recommendations
2. No contact with 153 Roysan Street until completion of all counseling with Tim Lowry and approval by Tim Lowry and his Probation Parole Officer
3. James Gaudet shall sign all waivers for probation may monitor his counseling
4. Continue his counseling and medication programs as directed by Manchester Mental Health

Police Standards and Training Council received a letter from James Gaudet dated April 17, 2008, after staff had sent him a notice of hearing letter. Mr. Gaudet's letter stated that he was appealing the guilty verdict to the New Hampshire Supreme Court. The staff at PSTC verified this statement, but received notice from the New Hampshire Supreme Court on September 26, 2008, that Mr. Gaudet had failed to file a brief by September 4, 2008, and his appeal had been dismissed.

The Council had no questions for Mr. Lohmann. Commissioner Wrenn inquired as to the pleasure of the Council in the matter of James Gaudet. Chief Russell moved that the Council revoke the certification of James Gaudet. Vice Chancellor Annal seconded the motion and the voice vote of the Council was unanimous in favor, 8-0, with Chief Morency abstaining.

Eligibility Hearing

Lisa Censabella, Deering Police Department

Pursuant to RSA 188-F:27, Pol 301.05 (g) (15), and Pol 402.02 (a) (5)

Ms. Censabella was not required to be present for this hearing and did not attend. Mr. Lohmann advised the Council that, subsequent to her appearance on October 28, Ms. Censabella provided additional information regarding her involvement in an alcohol abuse program. Deering Police Department has submitted a current Form A for the Director's approval.

Hearing no questions, the Chairman asked if the Council was prepared to act on this matter and Deputy Attorney General Fitch put forth the following motion: That the Council approve the Form A submitted by Deering Police Department and reinstate Lisa Censabella's eligibility for employment as a part-time certified police officer with unlimited hours. After a second by Judge Champagne, the Council voiced their unanimous approval.

Petition for Rescission

Stephen Beal (formerly of Lee Police Department)

Pursuant to Pol 402.02 (h)

Mr. Beal appeared before the Council to appeal the revocation of his part-time police certification. Acting Chairman Wrenn informed Mr. Beal of his right to determine whether the matter be heard in public or nonpublic session, and Mr. Beal elected to be heard in public session.

Mr. Keith Lohmann presented a brief synopsis:

Stephen Beal was hired by Madbury Police Department on December 2, 2002, as a part-time officer. Mr. Beal was certified as a part-time officer in the 233rd Academy on February 22, 2003. Mr. Beal resigned from Madbury Police Department on February 6, 2004, and was hired for a full-time position at the Lee Police Department on February 9,

2004. Mr. Beal resigned from Lee Police Department before he attended a full-time academy.

Stephen Beal was arrested for DWI on June 19, 2005, and was found guilty of DWI First Offense on December 30, 2005.

On February 17, 2006, staff at Police Standards and Training Council sent a Notice of Hearing letter, certified return receipt mailed (signed for on February 22, 2006) to Stephen Beal. Mr. Beal's hearing was scheduled for March 28, 2006.

Mr. Beal failed to appear at the March 28, 2006, Council meeting. Police Standards and Training Council revoked Stephen Beal's part-time police certification by letter dated March 31, 2006; the revocation was due to Pol 402.02 (a)(4) his conviction for DWI, and Pol 206.03, his failure to appear for the March 28, 2006, hearing.

On October 21, 2008, staff at Police Standards and Training Council received a letter from Stephen Beal referencing his suspension of certification in March 2006, and requesting reinstatement of his certification.

Mr. Lohmann confirmed with Mr. Beal that he has received a conditional offer of employment from the Madbury Police Department and noted that no Form A has been submitted yet.

Mr. Beal gave the following testimony:

- Mr. Beal feels great remorse for his actions and stated that he considers the violation "one of the greatest mistakes of my life."
- All programs/counseling recommended were completed within the recommended time frame or sooner than required. After counseling, there was no indication of a need for further evaluation or treatment.
- It has been more than two years since the revocation, during which time Mr. Beal feels he has matured and is now in a stable marriage.
- Madbury Police Department made a conditional offer of employment to Mr. Beal two months ago. Mr. Beal is now asking for guidance from the Council on what he must do to be able to complete the Part-Time Academy for the second time.

In response to a question of Commissioner Wrenn, Mr. Beal detailed the incident that led to the revocation. In response to a series of questions from Deputy Attorney General Fitch, Mr. Beal made the following statements:

Question: Did you take a breath test when you were arrested?

Mr. Beal: No, sir.

Question: Did you refuse?

Mr. Beal: Yes, sir.

Question: When was the last time you had an alcoholic drink?

Mr. Beal: About a week ago.

Question: How many drinks did you have at that time?

Mr. Beal: One, with dinner.

Question: When was the last time you had three drinks in any one sitting or day?

Mr. Beal: Like, a month ago.

Question: How often in the last year have you had more than three drinks in one sitting?

Mr. Beal: Maybe a dozen.

Question: When was the last time you got behind the wheel of a car after drinking in the prior six hours?

Mr. Beal: Once.

Mr. Fitch: Tell us about that.

Mr. Beal: I was out with some friends playing some darts. I had a beer at 7 p.m. and drove home about 11:30 p.m.

Commissioner Wrenn asked Mr. Beal to elaborate on any programs or counseling he had completed. Mr. Beal described a short-term program at the Amethyst House in Epping, followed by recommended counseling sessions. Commissioner Wrenn asked Mr. Beal if he had received a "final report" once he had completed counseling documenting any issues or problems with alcohol. Mr. Beal replied no, he was not diagnosed and he was told he was cleared. Commissioner Wrenn asked if there were any documentation that he could provide to the Council, and Mr. Beal stated that he could provide only certificates stating that he completed the programs.

Chief Magnant asked Mr. Beal if the opinion of the counselors was that he had no issues or problems with alcohol, and Mr. Beal replied yes. Chief Magnant asked Mr. Beal if he agreed with that opinion, and Mr. Beal replied that he did agree.

Deputy Attorney General Fitch put forth the following motion, seconded by Chief Magnant: That the Council require Mr. Beal to undergo a current LADAC evaluation and provide a report on that evaluation to the Council, before reinstating Mr. Beal's eligibility to regain his certification. The approval of the Council was unanimous.

Chief Magnant asked if it would be appropriate to ask Mr. Beal to sign a waiver that would allow the LADAC evaluation to be shared with a member of the Council or Police Standards and Training Council staff, so that there would be an opportunity to address

questions directly to that evaluator. Commissioner Wrenn requested Mr. Beal arrange for this with his LADAC person at the time of his evaluation and he agreed to do so.

Deputy Attorney General Fitch suggested that “not all LADACs are created equal” and that the Lawyer Assistance Program may be able to recommend to the Director and the Council a number of reputable counselors to work with in the future. Justice Roberts agreed that there are definitely some LADACs that are more objective than others. Mr. Fitch further suggested that the Council could in fact require that their selection of a LADAC be utilized as a condition of recertification.

CONSENT CALENDAR

The Council considered the following **PT&E Request**:

Full-Time

Deputy Kelvin J. Macie, Cheshire County Sheriff's Department

(DOH: 06/30/08) Full-time certification based on prior training and experience will be granted upon successful completion of the NH Law Package of the Full-Time Academy, medical exam, entrance fitness test, and First Aid/CPR certification, if lapsed.

The following **Requests for Extension** were approved:

Full-Time Police Officer

Note: Extensions granted until fitness testing for requested Academy and, if testing is successful, through the end of the requested Academy.

148th Academy 01/05/09 – 04/10/09 (fitness test 12/15/08)

149th Academy 04/27/09 – 07/31/09 (fitness test – TBA)

Officer Phillip L. Landsteiner, Merrimack Police Department

(DOH: 07/08/08 **Part-time certified**) extension through the end of the 148th Academy.

Officer James M. Locke, Pelham Police Department

(DOH: 08/03/08 **Part-time certified**) extension through the end of the 148th Academy.

Corrections Officer/Probation-Parole Officer

Note: Extensions granted until fitness testing for requested Academy and, if testing is successful, through the end of the requested Academy.

90th Academy 01/26/09 – 03/27/09 (fitness test 01/14/09)

91st Academy 04/20/09 – 06/19/09 (fitness test 04/08/09)

Corrections Officer Christopher A. Barnum, NH Dept. of Corrections

(DOH: 08/15/08) extension through the end of the 90th Corrections Academy.

Corrections Officer Nathaniel S. Cary, NH Dept. of Corrections

(DOH: 03/14/08) extension through the end of the 90th Corrections Academy.

Corrections Officer Rodney R. Durand, NH Dept. of Corrections

(DOH: 08/27/08) extension through the end of the 90th Corrections Academy.

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

Grantham Police Department's request for funds to send Sergeant John W. Parsons to the Command Training Series, First-Line Supervisor course at Roger Williams University in Portsmouth, Rhode Island, for two weeks beginning January 26, 2009.
Amount: \$1,000

Belmont Police Department's request for funds for Chief Vincent Baiocchetti to attend the FBI New England Law Enforcement Executive Development Seminar (NE LEEDS) in Uncasville, Connecticut, from February 2 through February 6, 2009.
Amount: \$823.33

Requests for Fitness Testing Extension

The staff recommended granting fitness testing extensions for 12 officers for medical reasons for six months beyond the date for compliance through July 1, 2009.

(END OF APPROVED CONSENT CALENDAR)

Upon a motion by Deputy Attorney General Fitch, seconded by Chief Morency, the Council voiced their unanimous support of the staff recommendations to approve all items on the Consent Calendar.

General

Defensive Tactics Program: Lt. Paul Moller

The Council was provided with copies of the MEB Basic & Advanced Lesson Plan and Curriculum Handbook. Lieutenant Paul Moller gave a brief overview of the changes to the Full-Time Academy that are needed to incorporate additional hours of defensive tactics, namely, training in techniques utilizing the Monadnock Expandable Baton. Director Vittum suggested that this MEB training could be added to the Part-Time Academy curriculum, as well.

Chief Morency put forth the following motion: That the Council support the changes recommended by Lieutenant Moller for incorporating the MEB Basic & Advanced Curriculum into the Full-Time and Part-Time Academy. Judge Roberts seconded the motion and a voice vote of the Council was without opposition.

Corrections Academy Curriculum -- TABLED

Chief Dodge moved that discussion on a Trauma Training curriculum recommended by the DOC for inclusion in the Corrections Academy be tabled until a future meeting. Deputy Attorney General Fitch seconded the motion and a voice vote of the Council was unanimous in favor.

NONPUBLIC SESSION: Performance Review of Director Vittum

Deputy Attorney General Fitch moved that the Council enter into a nonpublic session for the purposes of discussing the Director's annual performance review, pursuant to RSA 91-A:3, II (c). Judge Champagne seconded the motion and a roll call vote of the Council was in favor, 9-0. The nonpublic session commenced at 9:55 a.m.

Chief Dodge moved to seal the minutes of the nonpublic session. Following a second by Chief Morency, the motion carried on a unanimous voice vote, excluding Judge Roberts who left the meeting at 9:58 a.m.

Chief Dodge, seconded by Chief Morency, moved that the Council exit the nonpublic session. A roll call vote of the Council supported the motion, 8-0, with Judge Roberts absented. The nonpublic session concluded at 9:59 a.m.

Judge Champagne moved that the Council approve the performance evaluation of Director Vittum for 2008 as presented. The motion, seconded by Chief Morency, received the unanimous support of the Council, Judge Roberts absented.

FY 10/11 Budget

Council members received a written copy of the Director's testimony prepared for the Governor's budget hearing on November 25, 2008. The Director is currently preparing five recommendations to the Governor and the Jt. Legislative Fiscal Committee for increasing revenues to the penalty assessment fund; one of these proposals is a \$5 assessment on driver licenses. The Director stated that it was important for the Council to be aware that further cuts in the budget will have a detrimental impact on Police Standards and Training's ability to continue to produce in-service training programs and may necessitate the closure of our regional training sites, as well.

With regard to the current budget, Police Standards and Training has implemented all of the recommendations in the Governor's Executive Order 2008-11. The agency has reduced the number of cell phones in use by 50 percent and land lines by 12 percent. All subscriptions have been canceled. One exception is the use of a State owned vehicle for the Director's use.

Governor Lynch's Executive Order directs agencies to ensure that all state vehicles are parked overnight at state offices, unless absolutely necessary for a state employee to carry out their job responsibilities. Director Vittum asked the Council to approve his current use of his vehicle on a 24-hour basis, so that he can continue his practice of visiting agencies and attending meetings monthly throughout the state. In many cases, it is not practical or cost-effective for the Director to travel to Concord from his home in Rochester to use a State vehicle. Having access to the vehicle on a 24-hour basis will actually save money, because there would be no claim for mileage reimbursement, for one. Commissioner Wrenn felt that it would be appropriate for Director Vittum, as the head of the agency, to make this determination on his own behalf. Director Vittum requested that the Council give their formal approval, as well.

Chief Magnant moved that the Council support that the Director continue to use his State vehicle for travel to various police departments and meetings from his home in Rochester. Chief Morency voice his strong support for the Director's outreach; his attendance at meetings was particularly important to keeping the lines of communication between the Council and the law enforcement community open and free of "scuttlebutt" and unanswered questions. After a second by Judge Champagne, a voice vote of the Council was unanimous in favor.

Update: Ongoing Physical Fitness Testing

The number of responses pending from officers required to complete the requirement in 2008 has been reduced to approximately 200. Director Vittum anticipates that this number will be further reduced by another 50 percent before the deadline. The Director asked the Council for their preference on how these outstanding cases would be addressed – should the chief also be compelled to appear if their officer has not responded or complied on time?

As an aside, police chiefs have raised the issue of allowing an alternative test. The Director has recommended that they bring such a request before the Council. He noted that, when put to a vote of the Executive Board of the NHCOPA, the concept of an ongoing physical fitness requirement was strongly supported and their response to the proposed legislation to repeal the statute was not favorable.

Chief Russell was hesitant to open the door to considering an alternative test to the 1.5 mile run, other than the Aerodyne bike test. Judge Champagne agreed that it may not be advisable for the Council to solicit suggested alternatives; however, if there were a request made to present a compelling argument to the Council, it would be appropriate for that argument to be heard. Director Vittum described one suggested alternative method as a "run/walk" test; it is not clear how this might align with the Cooper standards. Commissioner Wrenn felt that allowing the options described above would necessarily change the overall character of the test, especially the aerobic aspect of the 1.5 mile run. Although he agreed that the Council should keep an open mind to hearing such requests, only a strongly compelling argument should cause them to consider allowing an alternative test.

Commissioner Wrenn recommended that the staff explore the standards for and the practicability of a run/walk test and reasons why it may or may not be an appropriate alternative, and the same for the Aerodyne bicycle option. He suggested that the staff contact the Cooper organization for their expert opinion and to find out if they have updated or modified their standards to include alternative tests. Chief Russell recommended that the Director advise any chiefs considering presenting an alternative to the Council that they must verify that it will fall within the parameters of the Cooper standards, which is the guideline that has been used to develop the requirement that is in the statute.

Legislative Subcommittee


Chairman Prozzo previously appointed a subcommittee to review and prepare testimony on relevant legislation being considered in the 2009 Legislative Session. The members of the subcommittee are Chief Russell, Chief Dodge, Chief Morency, and Sheriff Prozzo. Chief Russell asked Director Vittum to make available any proposed legislation that the subcommittee needs to be informed on, and he agreed to do so.

Next Meeting Date/Adjournment

The next meeting of the New Hampshire Police Standards and Training Council will be held on Tuesday, December 16, at nine o'clock in the morning.

Upon a motion by Chief Dodge, seconded by Chief Morency, the Council (Judge Roberts absented) voted unanimously to adjourn the meeting at 10:25 a.m.

Respectfully submitted,


Vice Chairman William L. Wrenn, Jr.