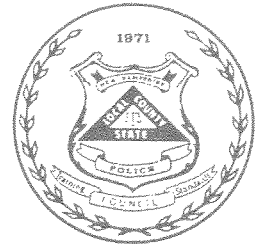




Sheriff Michael L. Prozzo, Jr.
Chairman

State of New Hampshire
POLICE STANDARDS & TRAINING COUNCIL
ARTHUR D. KEHAS
LAW ENFORCEMENT TRAINING FACILITY & CAMPUS
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Minutes



Donald L. Vittum
Director

June 30, 2009

Call to Order: The 385th meeting of the New Hampshire Police Standards and Training Council was called to order at 9:07 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 James B. Sullivan, Hampton Police Department; Cheshire County Sheriff Richard A. Foote; and, Attorney General Kelly Ayotte.

Members Absent: Vice Chancellor Charles Annal, New Hampshire Community College System; Associate Justice Stephen H. Roberts, Dover District Court; and, Chief Peter Morency, Berlin Police Department.

Staff Present: Director Donald L. Vittum, Major Robert B. Stafford, Jr., Chief (ret.) Timothy Merrill, Captain Benjamin Jean, Captain Mark Varney, Lieutenant Thomas McCabe, Investigative Paralegal Anne Paquin, and Council Secretary Kathryn Day.

Guests Present: Assistant Attorney General Nancy Smith; Mr. Randolph DiFruscio and Attorney Earl Wingate, III; Lieutenant Ron Gagliardi and Corrections Officer Marc Theriault, New Hampshire Department of Corrections and several others from the New Hampshire Department of Corrections; Mr. Bradley Naples, The Response Network; and, Chief (ret.) Michael French, Interim Administrative Police Advisor for the Town of Lyndeborough.

Approval of Minutes

Chief Magnant moved to approve the minutes of May 26, 2009, as presented. Following a second by Commissioner Wrenn, the voice vote of the Council was 7-0, with Chief Dodge abstaining. NOTE: Sheriff Foote was not present for this motion.

Director's Report

Director Vittum thanked the members of the Council who met with Governor Lynch prior to the Legislature's adoption of the Committee of Conference Reports on HB 1 and HB2 (namely, Attorney General Ayotte, Chairman Prozzo, and Commissioner Wrenn) to determine what revenue sources were under consideration for Police Standards and Training. Ultimately, \$1.5 million was restored to the penalty assessment fund for the Fiscal Years 2010 and 2011, and the Director recognized the efforts of Governor Lynch and Senator Larsen on behalf of Police Standards and Training.

Attorney General Ayotte said that during their meeting with Governor Lynch, the Council members raised the issue of sources for funding PSTC over the long term. The Governor seemed open to hearing the recommendations of a group that could meet over the next few months and

possibly generate a proposal by the time the Legislators begin to file their bill requests in the fall. Director Vittum stated that this idea was already being implemented, with the cooperation of Commissioner John Barthelmes, Assistant Commissioner Sweeney, and the Governor's Legal Counsel, Mike Delaney. Governor Lynch is aware of this activity, as well.

Previous and/or Unfinished Business

No issues or items were presented.

New Business

Decertification Hearings (2)

Randolph DiFruscio, Errol Police Department,

Chief DiFruscio's certification is subject to revocation pursuant to Pol 402.02 (a) (4). This hearing was continued from April 28, 2009, to allow additional time for Chief DiFruscio and his legal counsel, Attorney Earl Wingate III, to prepare for the hearing.

Chief DiFruscio stated that he wished for the matter to be heard in public session. Attorney Wingate confirmed that he represented Chief DiFruscio in this matter. Chairman Prozzo reviewed the protocol for the hearing and Chief DiFruscio acknowledged that he understood the procedures and had no questions.

Chief (ret.) Timothy Merrill was sworn and recognized as representation for the Council. Chief Merrill offered the following synopsis, as well as Staff Exhibits A through R.

Synopsis:

T. Merrill Testimony re: Randolph DiFruscio
Council Hearing 06/30/09

Exhibits submitted:

Staff Exhibit A	Form A NH Marine Patrol	11/02/00
Staff Exhibit B	Form A Northwood PD	12/21/01
Staff Exhibit C	Part time Certification	02/23/02
Staff Exhibit D	Full time Certification	03/26/03
Staff Exhibit E	Form B Northwood PD	04/01/04
Staff Exhibit F	Form A Northwood PD	04/01/04
Staff Exhibit G	Form B Northwood Pd	04/12/05
Staff Exhibit H	Form A NH Marine Patrol	04/15/05
Staff Exhibit I	Form B NH Marine Patrol	04/15/05
Staff Exhibit J	Form B NH Marine Patrol	06/03/05
Staff Exhibit K	Form A NH Marine Patrol	06/04/05
Staff Exhibit L	Form A Errol PD	07/13/05
Staff Exhibit M	Form B NH Marine Patrol	05/13/06
Staff Exhibit N 1-27	Arrest Reports R. DiFruscio	02/08/09 – 02/19/09
Staff Exhibit O	Council Form G REC'D	02/12/09
Staff Exhibit P 1-8	Complaint/Sentencing Order	04/13/09

Staff Exhibit Q 1-2	Notice of Hearing letter and	04/16/09
	Return Receipt	04/20/09
Staff Exhibit R 1-22	Depart. of Safety ALS documents	03/20/09

Testimony notes:

Randolph DiFruscio was hired as a part time officer by NH Marine Patrol on November 2, 2000.
Staff Exhibit A

He was hired as a part time officer by Northwood PD on December 21, 2001. Staff Exhibit B

On February 23, 2002 Mr. DiFruscio was certified by PSTC as a part time police officer.
Staff Exhibit C

On March 26, 2003 he was certified by PSTC as a full time police officer. Staff Exhibit D

On April 1, 2004 Mr. DiFruscio went from part time to full time at Northwood PD.
Staff Exhibit E, Staff Exhibit F

On April 12, 2005 Mr. DiFruscio resigned from Northwood PD. Staff Exhibit G

On April 15, 2005 was hired to work full time for NH Marine Patrol. Staff Exhibit H

On June 3, 2005 Mr. DiFruscio resigned from full time at NH Marine Patrol. Staff Exhibit I

On June 4, 2005 Mr. DiFruscio changed to part time at NH Marine Patrol. Staffs Exhibit J and K

On July 13, 2005 Mr. DiFruscio was hired part time for Errol PD as chief. Staff Exhibit L

On May 13, 2006 Mr. DiFruscio resigned from his part time position at NH Marine Patrol.
Staff Exhibit M

On February 12, 2009 staff at Police Standards and Training Council received a Form G reporting the arrest of Randolph DiFruscio for DWI, RSA 265:A-4 on February 8, 2009 by New Hampshire State Police Troop E, Trooper James R. Fogarty. Staff Exhibit O

On February 8, 2009 at approximately 8:43 PM, NHSP received a call from a motorist reporting a dark colored pickup truck with NH registration number 2687431 heading southbound on Rt. 16 in Tamworth, operating in an erratic manner.

Trooper Fogarty was traveling northbound on Rt 16 and observed the vehicle, traveling southbound partially in the northbound lane. He reversed direction and followed the vehicle.

As the vehicle began to negotiate a left hand curve of the road it drifted into the opposite lane with on coming traffic, then drifting back into it's own lane.

Trooper Fogarty activated his emergency lights and the driver turned on his right directional and pulled to the right side of the road.

The Trooper approached the pickup, identified himself and advised the driver and sole occupant that he was being recorded. (without external microphone).

The driver, latter identified as Randolph DiFruscio of 55 Deerfield Road, Northwood NH, presented a badge which Trooper Fogarty ignored. The Trooper told him why he was being stopped and Mr. DiFruscio presented the badge again. Trooper Fogarty did not acknowledge the badge but noticed it was from Errol PD.

Trooper Fogarty noted an odor of an intoxicating beverage coming from inside the truck. When asked how much he had to drink Mr. DiFruscio said "a few". His face was flushed, his eyes were red and glossy, his movements were slow.

It took him several seconds to produce his drivers license from his wallet, which he gave to Trooper Fogarty along with his Errol PD ID card.

Trooper Fogarty explained that someone had called in a complaint about his truck being driven erratically, to which he responded "Steering problem". When asked, he stated he was driving to Northwood from Errol.

Mr. DiFruscio was asked to stepped from his vehicle, which he did very slowly, and met Tr. Fogarty at the back of his truck. Mr. DiFruscio agreed take field sobriety tests, and stated that he was not taking medication, did not have any head injuries, and did not have any physical issues to prevent him from taking a test. He did not wear contacts or glasses. The area where the tests were performed was dry and free of debris, snow and ice.

Tests performed were: Horizontal Gaze Nystagmus, One Leg Stand and Walk and Turn all of which Trooper Fogarty formed the opinion that Mr. DiFruscio failed.

Tr. Fogarty asked Mr. DiFruscio if he would take a roadside breath test, to which Mr. DiFruscio agreed. The BrAC reading was 0.169 at 9:05 pm. Mr. DiFruscio was shown the result.

Tr. Fogarty told Mr. DiFruscio he was under arrest for Driving While Intoxicated. Mr. DiFruscio was handcuffed by Tr. Fogarty.

Sgt Curran (arrived to assist) inventoried the truck before it was towed from the scene. The inventory included Mr. DiFruscio's duty belt, gun and other police gear. The firearm was a 9mm pistol, loaded with a round in the chamber and a loaded magazine.

Tr. Fogarty transported Mr. DiFruscio to the barrack for booking, and at 11:05 pm read him the Administrative License Suspension Rights form. Mr. DiFruscio refused to submit to a breath test and signed the form accordingly. Mr. DiFruscio was fingerprinted and photographed. He then used the phone to call his wife to take custody of him.

At 10:11 pm Tr. Fogarty read Miranda Rights to Mr. DiFruscio, who signed the department form waiving his rights and agreed to answer questions.

Mr. DiFruscio stated that he was coming from Errol NH when he was stopped, and that he had worked that day. He had consumed "one single large glass" of wine after work at his camp. He was asked if he was impaired when he was stopped, and stated "I don't think so". He was then asked if he was impaired now, to which he stated "no".

Randolph DiFruscio's bail was set by bail commissioner Neal Socha at \$1,000.00 personal recognizance, arraignment to be held at 12:30 pm March 4, 2009 at District Court for Southern Carroll County.

Tr. Fogarty waited with Mr. DiFruscio for his wife to pick him up. At 11:10 pm Mr. DiFruscio requested a breath test. Tr. Fogarty stated that he could take a breath test, but that the machine at the barracks was down, and they would have to travel to Carroll County Jail to use their machine.

Tr. Fogarty took Mr. DiFruscio to Carroll County Jail and at 11:42 pm read him the Administrative License Suspension Rights form #323342 for the second time. Mr. DiFruscio signed the form that he'd been informed of his rights and agreed to testing. He was observed for 20 minutes without an incident. (Mr. DiFruscio told Tr. Fogarty that he was an Intoxylizer 5000 operator).

Mr. DiFruscio blew at 12:12 am resulting in 0.13 BrAC, second blow at 12:15 am was also 0.13 BrAC. The value was reported as 0.13 BrAC three hours after his arrest. His license was taken and submitted to Division of Motor Vehicles with a notarized copy of the form.

Randolph DiFruscio was released to his wife's custody at the jail. Staff Exhibit N 1-27

Mr. DiFruscio was charged with RSA 265-A:2, DWI.

On April 13, 2009 Mr. DiFruscio appeared in Southern District Court of Carroll County represented by Attorney Earle F. Wingate III.

Mr. DiFruscio was charged with RSA 265-A:2, DWI, to which he plead nolo contendere with a guilty finding on April 13, 2009. A DWI Sentencing form and Acknowledgement of Rights was completed.

He was fined \$500.00 plus \$100.00 to penalty assessment. His driver's license was revoked for 9 months, he may seek return of the license after 90 days if he has participated in the driver intervention program within 45 days after conviction or as soon thereafter as any extenuating circumstances approved by the DHHS will allow. Staff Exhibit P 1-8

A Notice of hearing was sent to Mr. DiFruscio from PSTC, by certified return receipt US mail on April 16, 2009;

PSTC received the return receipt signed by Randolph DiFruscio on April 20, 2009.
Staff Exhibit Q 1-2

Following Chief Merrill's presentation, Attorney Wingate declined the opportunity to ask questions and requested to address the Council directly, stipulating that his statement would not constitute formal testimony. Chairman Prozzo recognized Attorney Wingate to speak.

Attorney Wingate asked if the view of the Council is that Chief DiFruscio's conviction alone is sufficient to suspend or revoke certification. He noted that Pol 402.02 (e) provides the authority for the Council not to revoke certification if they find just cause not to do so. However, "just cause" is not specifically defined; 402.02 (f) indicates that examples of just cause would include "(2) Suspension or revocation would not have a rehabilitative value, or promote a legitimate public interest;" or (3) The officer's health or service status make suspension or revocation a needless gesture."

Attorney Wingate posited that Chief DiFruscio's health and service status is "fine," so 402.02 (f) (3) does not apply. Attorney Wingate asked whether the administrative license suspension stemming from the conviction in and of itself would be sufficient to suspend or revoke certification. He stated that Chief DiFruscio completed an impaired driver intervention program

(IDIP) ordered by the court; this process entails ongoing testing to determine risk of recidivism. As part of the plea negotiations with the State Police prosecutor, Attorney Wingate sought and obtained a minimum sentence for Chief DiFruscio. Specifically, that included loss of his drivers license for a period of nine months, reduced to 90 days upon successful completion of the IDIP.

In fact, Chief DiFruscio completed the IDIP in fewer than 90 days. Subsequently Carroll County District Court granted his request for his suspension/revocation to be reduced from nine months to 90 days and his license was reinstated on June 11, 2009. Attorney Wingate suggested that suspension/revocation of Chief DiFruscio's certification would have no further "rehabilitative value."

Attorney Wingate raised the fact that Chief DiFruscio suffered from gout and at the time of his arrest was taking a medication prescribed for that condition. This medication is not to be mixed with alcohol, but Chief DiFruscio "forgot" about this warning. He suggested that the arrest was made under "very windy and very cold" conditions that possibly affected the administration of the roadside sobriety test.

Attorney Wingate pointed to the fact that Chief DiFruscio maintained his certification following his arrest and throughout his drivers license suspension; further, once his drivers license was restored, the Errol Police Department invited him to return to work. And, although Pol 402.02 (a) (12) directs that the Council *shall* suspend or revoke certification if "The officer has entered no plea or an innocent plea to a criminal offense, and agreed to participate in a diversion program in lieu of a trial," the Council did not take any action following the conviction.

Attorney Wingate stated that an error was made in the collection of breath samples, that the samples were not collected properly. He suggested that if a trial had taken place and this fact had been presented, the outcome may not have been a conviction. However, Chief DiFruscio expressed the desire to take responsibility for his action and after consulting legal counsel chose not to make a challenge in court. Attorney Wingate produced two letters dated June 26, 2009, that he received June 30, 2009, and asked permission to read the letters to the Council. Both of these letters express support for Chief DiFruscio to return to his position as the Errol Police Chief, one from a member of the Errol Board of Selectmen, the other from a resident and former Selectman.

Chief DiFruscio was sworn in to testify. In his testimony, he outlined for the Council the circumstances leading up to his arrest, including the state of his health at the time and the medications prescribed to him for prevention and treatment of chronic gout. He acknowledged consuming alcohol with the medication and stated that he had not mixed the medication with alcohol prior this night and would never do so again. He briefly described the events leading up to his arrest.

In response to a question by Commissioner Wrenn, Chief DiFruscio confirmed that over the course of two hours he had likely consumed up to 24 ounces of wine and the medication for his gout. Judge Champagne noted that the arrest report indicated that Chief DiFruscio had displayed his badge to the arresting officer two times, and the Chief explained that he had done so to offer assurance in light of the fact that his duty bag and weapons were in plain view in the rear of his vehicle; the badge was displayed as he retrieved his drivers license from his billfold. He stated he offered both the drivers license and the badge when asked for his license and registration and informed the officer of the medications he was taking. He acknowledged that he had entered a plea of no contest and did not testify under oath during any of the proceedings that followed.

Hearing no further questions, Chairman Prozzo asked if Chief DiFruscio wanted to make further statements; he declined. Chairman Prozzo recognized Chief Merrill for a follow-up statement. Chief Merrill recommended that Pol 402.02 (a) (4) c, the basis for compelling the hearing before the Council, be applied and certification be revoked.

Chairman Prozzo recognized Attorney Wingate to make further comments. Attorney Wingate stated that Chief DiFruscio had offered no testimony at the administrative license suspension hearing because the burden during such proceedings falls on the State, and he advised Chief DiFruscio to forego testifying at that hearing and plead no contest. He asked the Council to consider the testimony today as reason to find just cause to not impose a suspension.

Chief Dodge was recognized to speak and stated that he could find no just cause that the certification of Chief DiFruscio should not be suspended. Further, Chief Dodge moved that the Council suspend Chief DiFruscio's certification pursuant to Pol 402.02 (a) (4) for a period of six months, effective immediately. Following a second by Chief Magnant and with no further discussion, the voice vote of the Council was 8-0, with Major Forey abstaining.

Request for Continuance

Chairman Prozzo advised the Council that a continuance has been granted for a decertification hearing pursuant to Pol 402.02 (12). This item will be rescheduled to be heard in nonpublic session, pursuant to RSA 91-A:3, II (c).

Request for Reconsideration

Marc Theriault, New Hampshire Department of Corrections

CO Theriault's certification was suspended pursuant to Pol 402.02 (a) (4) for six months, effective January 27, 2009, a matter that was heard in nonpublic session.

Chairman Prozzo cited Pol 208.01 (b):

“Within 30 days after service of a final adjudicatory order of the council, any party may file a motion for reconsideration which, if the action is subject to judicial review under RSA 541, shall serve as a petition for rehearing under that statute. No distinction shall be made between the terms “reconsideration” and “rehearing.”

CO Theriault stated that he requested reconsideration because he had received notice in June that he was subject to being laid off on July 3, 2009. CO Theriault had no dispute with the basis for his suspension, but was hopeful that if the Council were to reinstate his certification effective immediately, he may avoid being laid off.

Chairman Prozzo made the following points:

1. The Council took action on January 27, 2009, to suspend certification. However, CO Theriault's request for reconsideration was not submitted until June 16, 2009; consequently, CO Theriault's request for reconsideration was not received within the 30 days allowed under Pol 208.01 (b).

2. On January 27, 2009, nine Council members were present for the suspension hearing and voted to suspend CO Theriault's certification effective immediately. The Council members present were: Chairman Prozzo, Sheriff Foote, Chief Dodge, Judge Champagne, Colonel Booth, Chief Morency, Judge Stephen Roberts, Chief Russell, and Attorney General Ayotte.
3. On June 30, 2009, only five of these Council members are present. Chief Russell retired on June 1, 2009; Judge Roberts, Colonel Booth and Chief Morency are not in attendance today, June 30, 2009. Five members do not constitute a quorum of six members required for a "rehearing." Further, Pol 208.02 (c) directs that "If the council believes further argument or data should be considered, an appropriate order providing the parties with notice and an opportunity to be heard shall be issued before any revision is made in the council's previous action." No such appropriate order was issued.

Chairman Prozzo indicated that the Council members present, if they wished to do so, could take action on CO Theriault's June 16, 2009, request for a hearing; however, scheduling such a hearing would require a sufficient and reasonable notice to all parties and, as such, the hearing would not occur until the next regular meeting of the Council, July 28, 2009. Even then, a quorum of those present for the January 27, 2009, hearing would be required in order to hear new testimony and/or consider new evidence in the case.

Chief Dodge moved that the Council deny CO Marc Theriault's request for a hearing for reconsideration of his six-month suspension ordered January 27, 2009, because he submitted it significantly later than 30 days from the Council's action. Chief Magnant seconded the motion. Hearing no discussion, the Chairman called for the voice vote of the Council. The motion carried, 8-0, with Commissioner Wrenn abstaining.

Hearing no objection, Chairman Prozzo then allowed Lieutenant Ron Gagliardi of the New Hampshire Department of Corrections to make additional comments in support of reinstating CO Theriault's certification prior to July 3, 2009.

Eligibility Hearing

NONPUBLIC SESSION: R. Robert Dolinak, Lyndeborough Police Department

Pursuant to Pol 301.05 Background Investigation, a hearing was scheduled to determine if R. Robert Dolinak is eligible for New Hampshire law enforcement certification. Interim Administrative Police Advisor Michael French represented the Town of Lyndeborough at this hearing.

Pursuant to RSA 91-A:3, II (b) and (c), Judge Champagne moved for the Council to enter into a nonpublic session. Commissioner Wrenn seconded the motion and the Chairman called for a roll call vote of the Council. It was unanimous in support, 9-0. The nonpublic session commenced at 10:09 a.m.

Justice Champagne, seconded by Commissioner Wrenn, moved to seal the minutes of the nonpublic session. The Council voiced unanimous support for the motion.

Judge Champagne further moved that the Council exit the nonpublic session. The motion, seconded by Sheriff Foote, carried with a unanimous roll vote of the Council. The nonpublic session concluded at 10:25 a.m.

Upon return to public session, Judge Champagne moved that the Council reject the Form A submitted for R. Robert Dolinak by the Lyndeborough Police Department, because it does not conform to the requirements of Pol 301.05. Commissioner Wrenn seconded the motion; and, hearing no discussion, the Chairman called for a voice vote of the Council. The Council supported the motion without exception, 9-0.

Mr. French asked for clarification on the basis of rejecting the Form A, and Chairman Prozzo confirmed that it was incomplete and did not meet the requirements of the Rules. He inquired if this would preclude the Town from resubmitting the Form A once they believe that all requirements have been met. Chairman Prozzo confirmed that the Form A could be resubmitted.

CONSENT CALENDAR

The Council considered the following requests and recommendations by staff:

PT&E - Full-Time

Officer Lisa M. Censabella, Deering Police Department

(DOH: 09/11/09) requests consideration for full-time certification based upon prior training and experience. Staff recommends that lapsed certification be reinstated with no further action other than First Aid/CPR certification, if lapsed.

Requests for Extensions

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

Full-Time Police Officer - 150th Academy 08/31/09 – 12/04/09 (fitness test 08/17/09)

Officer Mark R. Ashland, Canterbury Police Department

(Full Time DOH: 03/17/09 **Part-time certified**) extension through the end of the 150th Full-time Police Officer Academy. An extension is required because the completion date of the Academy exceeds six months from his date of hire. Staff recommends Council approval.

Officer Jonathan R. Bullard, Bethlehem Police Department

(DOH: 05/05/09 **Not part-time certified**) extension through the end of the 150th Full-time Police Officer Academy. An extension is required because the completion date of the Academy exceeds six months from his date of hire. Staff recommends granting the extension with the stipulation that Officer Bullard continue to work only in the direct presence of a certified police officer.

Deputy Nina M. Camelio, Hillsborough County Sheriff's Office

(DOH: 02/09/09 **Part-time certified**) extension through the end of the 150th Full-time Police Officer Academy. An extension is required because the completion date of the Academy exceeds six months from her date of hire. Staff recommends Council approval.

Officer Aaron M. Gibson, Northumberland Police Department

(DOH: 04/20/09 **Not part-time certified**) extension through the end of the 150th Full-time Police Officer Academy. An extension is required because the completion date of the Academy exceeds six months from his date of hire. Staff recommends granting the extension with the stipulation that Officer Gibson continue to work only in the direct presence of a certified police officer.

Officer Keith D. Hervieux, Lyndeborough Police Department

(DOH: 03/04/09 Not part-time certified) extension through the end of the 150th Full-time Police Officer Academy. An extension is required because the completion date of the Academy exceeds six months from his date of hire. Staff recommends granting the extension with the stipulation that Officer Hervieux continue to work only in the direct presence of a certified police officer.

Officer Charles C. Lockhart, Northumberland Police Department

(DOH: 10/06/08 Part-time certified) extension through the end of the 150th Full-time Police Officer Academy. An extension is required because the completion date of the Academy exceeds six months from his date of hire. Staff recommends Council approval.

Chief Anthony L. Randall, Ashland Police Department

(DOH: 04/24/09 Not part-time certified) extension through the end of the 150th Full-time Police Officer Academy. An extension is required because the completion date of the 150th Academy exceeds six months from his date of hire. Staff recommends granting the extension with the stipulation that Chief Randall continue to work only in the direct presence of a certified police officer.

Officer Alan M. Rice, Brookline Police Department

(DOH: 05/11/09 Part-time certified) extension through the end of the 150th Full-time Police Officer Academy. An extension is required because the completion date of the 150th Academy exceeds six months from his date of hire. Staff recommends Council approval.

Officer Stephen E. Wallin, Merrimack Police Department

(DOH: 01/18/09 Not part-time certified) extension through the end of the 150th Full-time Police Officer Academy. An extension is required because the completion date of the 150th Academy exceeds six months from his date of hire. Staff recommends granting the extension with the stipulation that Officer Wallin continue to work only in the direct presence of a certified police officer.

Officer Stephen A. Winter, Sandown Police Department

(DOH: 05/12/09 Part-time certified) extension through the end of the 150th Full-time Police Officer Academy. An extension is required because the completion date of the 150th Academy exceeds six months from his date of hire. Staff recommends Council approval.

Part-Time Police Officer -- 256th Academy 08/08/09 – 11/13/09 (fitness test 07/25/09)

Officer Michael T. Crate, Enfield Police Department

(DOH: 04/10/09) extension through the end of the 256th Part-Time Police Officer Academy. An extension is required because the completion date of the 256th Academy exceeds six months from his date of hire. Staff recommends granting the extension with the stipulation that Officer Crate continue to work only in the direct presence of a certified police officer.

Officer Robert J. Dyer, Jr., Hampton Police Department

(DOH: 01/17/09) requests extension through the end of the 256th Part-Time Police Officer Academy. An extension is required because the completion date of the 256th Academy exceeds six months from his date of hire. Staff recommends granting the extension with the stipulation that Officer Dyer continue to work only in the direct presence of a certified police officer.

Officer Mark H. Lindsley, Henniker Police Department

(DOH: 01/06/09 Formerly full-time certified) requests extension through the date of the entrance fitness test for the 256th Part-Time Police Officer Academy. Officer Lindsley's certification lapsed after 30 days of separation from his former employer, and successful completion of the entrance fitness test is the only requirement to have it reinstated. An extension is required because the date of the entrance fitness test for the 256th Part-Time Police Officer Academy exceeds six months from his date of hire.

(END OF APPROVED CONSENT CALENDAR)

Commissioner Wrenn moved that the Council approve all items on the Consent Calendar as presented with recommendations by staff. After Chief Dodge seconded the motion, the Council voiced their unanimous approval.

The Council considered the following **Training Grant Requests:**

Requests for Command Training (contingent upon funds available in FY 10)

Lancaster Police Department requests approval of funds for Sergeant Christopher St. Cyr to attend the Command Training Series: Executive Development course sponsored by the New England Association of Chiefs of Police at Roger Williams University in Portsmouth, Rhode Island, from October 20 through November 19, 2009, and by internet for seven weeks. Staff recommends granting funds once monies are available from the FY 2010 budget. **Amount: \$1,000.00**

Middleton Police Department requests approval of funds for Sergeant Stacy Gilman to attend the FBI-LEEDA Supervisor Leadership Institute at the Laconia Police Department in Laconia, New Hampshire, from September 14 through September 18, 2009. Staff recommends granting funds once monies are available from the FY 2010 budget. **Amount: \$433.33**

Requests for Other Training (contingent upon funds available in FY 10)

Rochester Police Department requests approval of funds for Detective James Bonneau to attend the International Outlaw Motorcycle Gang Investigators Association 35th annual training conference in Nashua, New Hampshire, from September 20 through September 25, 2009. **Amount: \$660.00**

New Hampshire Division of State Police requests approval of funds for TFC Frederick J. Lulka of the Major Crime Unit to attend the National Forensic Academy at the Law Enforcement Innovation Center at the University of Tennessee at Oak Ridge, Tennessee, from September 11 through November 21, 2009. Staff recommends granting funds once monies are available from the FY 2010 budget. **Amount: \$1,000.00**

Director Vittum explained that the availability of monies for current requests for specialized training grants was contingent upon funds becoming available in the next fiscal year that begins July 1, 2009. The Director recommended that Rochester Police Department's request for funds be denied because the request concerns attendance at a conference and the Council has made a policy not to approve grants for conferences.

Chief Dodge moved that the Council approve the requests submitted by Lancaster Police Department, Middleton Police Department, and the New Hampshire Division of State Police as presented. After a second by Commissioner Wrenn, the voice vote of the Council was unanimous, 9-0.

Chief Dodge moved that the Council deny the request submitted by Rochester Police Department; following a second by Sheriff Foote, the Council voiced their unanimous agreement.

Requests for Fitness Testing Extension

Based on recommendations by staff, Judge Champagne moved to approve fitness testing extensions for the following officers through January 1, 2010:

Officer Stephen Akerstom, Belmont Police Department

Officer Christopher Anderson, Jaffrey Police Department

Officer Jessalyn Camelio, Milford Police Department

Chief Stuart M. Chase, Wolfeboro Police Department

Officer William F. Duffy, Weare Police Department

Trooper Michael Feinauer, New Hampshire Division of State Police

CO Colleen Gagne, NH Department of Corrections – Goffstown

Officer Beatrice Harden, NH Department of Corrections – Field Services

CO Kathy Langlois, NH Department of Corrections – Berlin

CO Keith Melanson, NH Department of Corrections – Field Services

CO Silvia Preda, NH Department of Corrections – Laconia

Officer Eric D. Robertson, Barnstead Police Department

Officer Jacob Weber, Lancaster Police Department

Officer Scott Weiss, Center Harbor Police Dept and Meredith Police Dept.

Following a second by Chief Magnant, the Council voiced their unanimous support.

Other New Business

NONPUBLIC SESSION: Ongoing Physical Fitness Testing Noncompliance

Chief Timothy Merrill advised the Council that four officers granted fitness testing extensions through June 30, 2009, have not submitted documents that substantiate their compliance, nor have they submitted a new request for extension.

Pursuant to RSA 91-A:3, II (c), Chief Dodge moved for the Council to enter into a nonpublic session. With a second by Attorney General Ayotte, a roll call vote of the Council was unanimous, 9-0. The nonpublic session commenced at 10:35 a.m.

Commissioner Wrenn, with a second by Chief Dodge, moved to seal the minutes of the nonpublic session. The voice vote of the Council was unanimous in favor, 9-0.

Commissioner Wrenn further moved that the Council exit the nonpublic session and Sheriff Foote seconded the motion. The roll call vote of the Council was 9-0 in favor. The nonpublic session concluded at 10:42 a.m.

Upon return to public session, Director Vittum recommended that the certification of these officers be suspended effective immediately, until they comply with requirements for ongoing physical fitness testing. Commissioner Wrenn asked if any Council action was necessary or if the suspensions are considered automatic after June 30, 2009. Assistant Attorney General Nancy Smith advised that sufficient notice of automatic suspension was given in previous letters to these officers, as well as in phone calls to the chiefs of their departments. The Council may make further notice of their intention to suspend certification if they choose, but they are not required to do so.

Judge Champagne noted that one of the four officers had replied to Police Standards and Training, but the documentation he provided was deemed "incomplete/inadequate." Judge Champagne felt that the Council should follow up with this officer and provide written notice that he was still not in compliance. Chief Merrill was asked to define "incomplete/inadequate." Chief Magnant felt that such detail should not be disclosed in public session.

Chief Dodge moved for the Council to enter into a nonpublic session to discuss personnel matters, as provided in RSA 91-A:3, II (c); Commissioner Wrenn seconded the motion, and the roll call vote of the Council was unanimous.

Chief Dodge moved to seal the minutes of the nonpublic session. Following a second by Commissioner Wrenn, the Council voiced their unanimous support.

Chief Dodge moved for the Council to exit the nonpublic session, with a second by Commissioner Wrenn. The roll call vote of the Council supported the motion, 9-0. The nonpublic session concluded at 10:55 a.m.

Upon return to public session, Attorney General suggested that no further action on the part of the Council was required to effect the suspension of officers who either fail to provide documentation of medical suitability and successfully passing the fitness test or fail to submit a note from a doctor with a request for another extension.

However, in the case of CO Wayne Bugbee, Attorney General Ayotte moved that the Council grant an extension for fitness testing through July 24, 2009. Following a second by Chief Sullivan, there was no further discussion on the motion. Commissioner Wrenn indicated that he would abstain. Consequently, the vote of the eight other members was tied, 4-4, and the motion failed.

Part-Time Police Officer Academy

Director Vittum asked the Council for their input in determining the minimum enrollment number for holding the Part-Time Police Academy. Lieutenant Thomas McCabe indicated that six completed applications have been received for the next session, the 256th Academy that begins on August 8, 2009. Additionally, two applications submitted but not complete will soon be completed. Another 10 applications are anticipated from six police departments. When all applications expected are received complete, the number will be 18, plus 3 students for the Law Package – a total of 21. Lieutenant McCabe stated that the lowest enrollment number for a prior session of the Part-Time Academy was 14 students.

Director Vittum confirmed that the 256th will be the first Part-Time Academy that will require entrance fitness testing and this change could reduce the number of recruits that are accepted. The Director asked the Council for their recommendation on a minimum number of recruits to hold future academies, either full-time or part time. The Council considered that in the past, only two sessions per year were held in the Part-Time Academy, in the spring and in the fall. If only five recruits pass the entrance fitness test for the Part-Time Academy, will it be feasible to run the program for only five? Director Vittum indicated that a low enrollment would preclude the utilization of regional training sites due to the costs involved.

Commissioner Wrenn felt that if the Part-Time Academy were reduced to two sessions from three sessions per year, this could negatively impact departments who employ part-time officers on a seasonal basis, such as Hampton Police Department. Chairman Prozzo felt that if only one or two Part-Time Academies were held each year, one should begin in January. Furthermore, budget considerations may necessitate holding only one session per year and the Council should come to a decision soon about the timing.

Sheriff Foote moved to table the discussion about minimum enrollment in the Part-Time Academy until the Council's next regular meeting on July 28, 2009. Chairman Prozzo asked for the staff to present a breakdown of costs required for holding the Part-Time Academy – even for only five or six people. Following a second by Commissioner Wrenn, the Council voiced their support, 7-0.

Election of Vice Chairman pursuant to RSA 185-F:24, III

Chairman Prozzo recommended that Commissioner Wrenn serve another term as Vice Chairman, and Commissioner Wrenn expressed his desire to continue. Chief Dodge moved that the Council re-elect Commissioner William Wrenn for a term of one year as Vice Chairman. Judge Champagne seconded the motion. The Council supported the motion in a unanimous voice vote.

General

No issues presented.

Other Business

On-line Training by The Response Network

As a followup to his presentation to the Council at the April 7 planning session, Mr. Bradley Naples will address the Council to request a letter from the New Hampshire Police Standards and Training Council stating that courses completed through the **policecommunity.net** web portal are acceptable for annual in-service training requirements

Mr. Naples indicated that he has had direct contact with police chiefs and law enforcement officers in New Hampshire and they have asked for assurance that on-line training will be recognized by the Council as meeting requirements for annual in-service training. Mr. Naples explained the benefits of the testing included with the on-line training programs and the cost benefits, including laptop computers that could be provided at no charge and designing customized training for New Hampshire law enforcement.

Commissioner Wrenn recommended that some restrictions should be placed on the number of hours of annual training that can be completed on line and what courses, based on their content, would be recognized. These standards should be applied to all vendors of on-line training.

The Council requested that Mr. Naples provide further detail on the content of courses that are supported by the IACP. Following a review of this information, the Council will consider issuing a statement to confirm that courses completed through the policecommunity.net web portal are acceptable for annual in-service training requirements.

Discussion: SWAT/SOU Study

Commissioner Wrenn noted that a draft report had been received. The content of the initial draft report was discussed in a lengthy conference call and revisions were agreed to by NTOA.

A second and final draft is anticipated to include the requested changes.

If it is found to be acceptable, a final draft of the report will be presented at the next regular meeting of the Council on Tuesday, July 28, 2009.

Mission Statement

The Council reviewed the current Mission Statement and considered suggested changes for inclusion in the annual report for the fiscal year ending June 30, 2009. A motion to adopt the suggested changes was put forth by Sheriff Foote and seconded by Chief Dodge. After a brief discussion, Sheriff Foote moved to table the motion to allow time for further input. Following a second by Commissioner Wrenn, the motion to table carried on a voice vote, 7-0.

Status of Certification for Corrections Officers Subject to Layoff

Commissioner Wrenn stated that a number of corrections officers (37) will receive notice of layoff on July 2, 2009. A policy of the Council is that certification will lapse after 30 days of not being actively employed. Recertification requires passing the entrance fitness test at a minimum and depending on the length of separation, other requirements could be imposed. Is this policy fair to officers who become unemployed through no choice of their own, i.e., a layoff or a mandatory furlough?

Another question to consider is how the requirement for ongoing fitness testing should be applied concerning officers who are laid off and subsequently called back to work. Some of these officers were hired prior to 2001 and have not been subject to the requirement for ongoing physical fitness testing.

Chairman Prozzo cited Pol 401.01 Lapse in Service, which states:

“(a) The certification of a police , corrections or probation/parole officer shall lapse *if an officer terminates employment and* (emphasis added) is not employed as a police, corrections or probation/parole officer within a period of 30 days after such termination.”

The Council considered the specificity of the language in the rule and questioned whether or not individuals whose employment is terminated because of a layoff attributed to budgetary reasons could be considered for recertification without conditions. The Council resolved to determine with legal counsel whether they have the authority to do so, and Commissioner Wrenn was given the authority to consult with Assistant Attorney General Nancy Smith on this issue prior to the next meeting of the Council on July 28, 2009.

Next Meeting Date/Adjournment

The next meeting of the New Hampshire Police Standards and Training Council will be held on **Tuesday, July 28, 2009**, at nine o'clock in the morning in **Concord**.

Upon a motion by Chief Dodge, seconded by Judge Champagne, the Council voted 7-0 to adjourn the meeting at 11:50 a.m.

Respectfully submitted,


Chairman Michael L. Prozzo, Jr.