

Approved Minutes

January 26, 2010

Call to Order

The 392nd meeting of the New Hampshire Police Standards and Training Council was called to order at 9:08 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.

NOTE: Colonel Booth arrived at 9:10 a.m. Commissioner Wrenn arrived at 10 a.m.

Members Present: Chairman Michael Prozzo, Sheriff of Sullivan County; Chief James Sullivan, Hampton Police Department; Associate Justice Norman E. Champagne, Manchester District Court; Colonel Frederick H. Booth, New Hampshire State Police; Chief Anthony Colarusso, Dover Police Department; Vice Chancellor Charles Annal, Community College System of New Hampshire; Chief Peter Morency, Berlin Police Department; William L. Wrenn, Jr., Commissioner of the New Hampshire Department of Corrections, and Richard Foote, Sheriff of Cheshire County, and Attorney General Michael Delaney.

Members Absent: Chief Gregory C. Dodge, Epping Police Department; and, Associate Justice Stephen H. Roberts, Dover District Court

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

Guests Present: CO Jessica Riendeau, New Hampshire Department of Corrections; CO Charles Graham, New Hampshire Department of Corrections; Officer Timothy Sanborn and Sergeant Crystal McLain, New Hampshire Marine Patrol; and, Assistant Attorney General Nancy Smith.

Approval of Minutes

Justice Champagne, with a second by Chief Morency, moved for the Council to approve the draft minutes of December 22, 2009, as presented. The Council voiced unanimous consent, 8-0.

NOTE: Commissioner Wrenn and Colonel Booth were not present for this vote.

Director's Report

There were no comments or questions on the Director's report, and the Director had no additional remarks. Chairman Prozzo commented that the study committee tasked with reviewing current mental health training for law enforcement will file a report soon. The Director said that the study made positive conclusions about the current program of Police Standards and Training Council in this area. He noted improvements that have been initiated such as, expanding the time allocated for this training in the curriculum for the Full-Time Academy from six hours in January 2009 to sixteen hours later in the year. There are plans to increase the time to as many as 24 hours in the future. Director Vittum stated that he "was satisfied that the study committee will

not find it necessary to impose any mandatory requirements” on in-service training if PST can document in their annual report the number of officers receiving this training annually and the number of in-service training hours offered each year on this topic. He said that mental health professionals who testified before this committee were very supportive of the training PST is currently providing.

Previous and/or Unfinished Business

CONSULTATION WITH LEGAL COUNSEL (Meeting in Recess)

As provided in RSA 91-A:2, I (c), Chairman Prozzo called for a recess to allow the Council to consult with their legal counsel, Assistant Attorney General Nancy Smith, and receive advice concerning questions they raised at their meeting on December 22, 2009, about certain provisions in RSA 188:27, III, and the Council’s authority regarding compliance with deadlines for compliance with ongoing physical fitness testing.

The meeting was in recess for this purpose from 9:18 a.m. until 9:41 a.m.

NOTE: Commissioner Wrenn was not present for this conference.

Alternative Testing for Meeting the Ongoing Physical Fitness Testing Requirement

Director Vittum asked the Council to articulate a policy for alternative tests for components required (i.e., 1.5 mile run, situps, pushups) for compliance with ongoing physical fitness testing.

Justice Champagne moved that alternative tests for compliance with the requirement for ongoing physical fitness testing should be voted on by the Council and may not be approved unilaterally by the Director of Police Standards and Training. Following a second by Colonel Booth, Chairman Prozzo restated the motion and elaborated that information gathered by the Director and staff about any alternative test should be presented to the Council for their review and approval, and he asked if the Council would like to comment further on the motion.

Chief Morency recommended that the record should reflect that no alternative test has been authorized by the Council other than an alternative test for the 1.5 mile run, namely, the Air-Dyne bicycle test. Director Vittum concurred and he stated that this alternative has been authorized since 2007 and that the Council authorized the alternative only after the agency had purchased an Air-Dyne bicycle and the staff had been trained to utilize the equipment for administering an alternative test for the 1.5 mile run and presented complete information on their findings for the Council’s approval. The Director further stated that at no time during which he has served as the director has any alternative test been allowed without the Council’s full knowledge and approval.

The voice vote of the Council carried the motion without exception. NOTE: Commissioner Wrenn was not present for this vote.

Later in this meeting Colonel Booth raised the fact that no alternative has been considered for the situps and pushups that are part of the fitness test. He suggested that if the Council has the authority to modify the requirements for completing the physical fitness test and if an alternative test for the 1.5 mile run has been accepted, a double standard exists because no alternative test has been adopted for situps.

First, there are two ways to do situps. Second, there are many individuals who have sustained neck and back injuries, on or off the job. Why has the Council not considered an alternative for situps to accommodate those persons; performing the situps according to current protocol may cause further injury to these individuals. Is it reasonable for the Council to impose this risk?

Justice Champagne suggested that an alternative for situps is not an accommodation that should be made on an individual basis; any alternative test that the Council may authorize should be based on objective criteria.

Colonel Booth felt that it would be prudent for the Council to act promptly to approve an acceptable alternative test for situps and not wait for it to become necessary, and he suggested that it would not be a desirable outcome for neck and back injuries that have healed to be compromised by the requirement to conform with “the Cooper’s method” for conducting ongoing physical fitness testing. A modification was made to the 1.5 mile run to accommodate other injuries and an alternative for situps that would provide the same results is a reasonable option for the Council to investigate. He said that Corporal Riendeau’s request presents an adequate motivation for the Council to act on establishing an alternative to the Cooper method for situps.

Attorney General Delaney recommended that, for informational purposes, the Director investigate any objective criteria for alternatives for the situps and apprise the Council of what might be considered. Chairman Prozzo concurred and directed the staff to present this information to the Council at a future meeting.

Vice Chancellor Annal recommended that the Director contact the physical therapy program at River Valley Community College for information, because “they are very current on what’s appropriate for core strengthening and things like that.” It would be “a good place (for the Director) to start” gathering information. The Council agreed that any alternatives should at least meet what the Cooper standards require; currently Cooper does not endorse any alternative to situps with hands clasped behind the head.

Sheriff Foote cautioned moving away from the Cooper standards. There needs to be justification for changing the Council’s current policy; and, any alternative that is offered must be able to test the strengths needed to perform the requirements of the job and compliance with the requirement for ongoing physical fitness already established by the Council (i.e., they have formally adopted Cooper standards).

Chairman Prozzo clarified that the Director should present to the Council what alternatives are available that are within the Cooper standards, and the Council will consider whether they want to adopt that alternative; if there are no alternatives within the Cooper standards for a particular test, the Director should inform the Council that is the case. He asked for the Council to articulate whether the Director should look for alternatives outside the Cooper standards.

In response to Mr. Annal’s questions, Captain Varney stated that the Cooper standards for law enforcement are based on norms (hands “laced” behind the head) that are defensible in court. A set of exercises (1.5 mile run, situps, pushups) are performed to demonstrate the core strength and upper body strength required for law enforcement. No modified version of the situp has been designated as “defensible in court” by Cooper. The Air-Dyne bicycle test has been designated by Cooper as an alternative for the 1.5 mile run. The Cooper standards were updated in 2008

Colonel Booth asked the Director to also look into any medical research on how injuries are affected by performing the situps with fingers laced behind the head. Is this a medical issue? Are the Cooper standards taking into consideration the opinion of the medical community?

NONPUBLIC SESSION: Corporal Jessica Riendeau, No. Country Correctional Facility

Corporal Jessica Riendeau appeared before the Council to be advised on the status of a temporary waiver for compliance with ongoing physical fitness testing and to provide to the Council any new information on her own behalf. At their meeting on December 22, 2009, the Council moved to grant the waiver until the date of their next meeting, January 26, 2010, to allow time to receive advice from legal counsel and to permit a second medical examination by a physician selected by the agency.

Chairman Prozzo asked if Corporal Riendeau would like to continue the discussion of December 22, 2009, in a nonpublic session, and she stated that she did.

Chief Morency, with a second by Chief Colarusso, moved that the Council enter into a nonpublic session to discuss personnel matters, as provided in RSA 91-A:3, II (a). A roll call vote of the Council was unanimous in support. NOTE: Commissioner Wrenn was not present for this nonpublic session. The nonpublic session commenced at 9:44 a.m.

Chief Morency moved that the minutes of the nonpublic session be sealed. With a second by Chief Colarusso, the voice vote of the Council was unanimous in support.

Chief Morency's motion for the Council to exit the nonpublic session was seconded by Chief Colarusso. The roll call vote of the Council was in support, 9-0. The nonpublic session concluded at 9:55 a.m.

In public session, Justice Champagne stated that if the request before the Council was to grant an extension beyond the two-year probationary period for compliance with ongoing physical fitness testing the statute does not give the Council the authority to do so. Further, he moved that the Council deny a request of Corporal Jessica Riendeau for an extension to comply with requirements for ongoing physical fitness testing, based on the fact that the Council has no statutory authority to do so.

With a second by Sheriff Foote, the Chairman called for a vote. The Council voiced unanimous agreement, with Commissioner Wrenn abstaining.

Corporal Riendeau stated her intention to successfully complete the fitness requirement; she anticipates that after her doctor evaluates her progress on February 8, 2010, she will have medical clearance to take the test and should pass the test with no difficulty. Once she successfully passes the test, her certification will be reinstated.

Attorney General Delaney stated that the record should reflect that Corporal Riendeau has made a specific request for an alternative test for the situps, and he asked Ms. Smith if the Council should entertain a formal motion to deny this request based on the absence of any alternative test and/or the lack of any objective criteria for offering an alternative.

If the Council wants to establish that the officer requesting an alternative test bears the burden of presenting objective criteria that supports the alternative and the onus is on the officer to request the alternative test, Ms. Smith advised that this action would clarify the record.

Attorney General Delaney, therefore,

MOVED: That the Council deny Corporal Jessica Riendeau's request for an alternative test for situps, because it is inconsistent with the Council's adopted fitness policy and due to the absence of any alternative test for the Council to take under consideration.

Following a second by Justice Champagne, the voice vote of the Council was unanimous, with Commissioner Wrenn abstaining.

Attorney General Delaney noted for the record that there is a pending request for the Director to arrange a second opinion and he asked for the Director to document that he has chosen a physician to perform this additional medical exam, pursuant to the statute, if she chooses to do so. Justice Champagne cautioned that this request must fall within the two-year period; Attorney

General Delaney suggested that the request made December 22, 2009, does meet this criteria and the Council's response should be documented. No formal motion was made.

New Business

CONSENT CALENDAR

The Council reviewed staff recommendations for all items presented on the Consent Calendar. Chairman Prozzo noted that the Consent Calendar would not include any addendums or handouts that the members received at the meeting. NOTE: Commissioner Wrenn was not present.

Chief Morency moved that the Council approve all requests on the Consent Calendar as recommended by staff. The motion was seconded by Chief Colarusso.

Sheriff Prozzo noted that a request submitted by the Merrimack Police Department for a five-day course being held at the Hampton Police Department included an amount of \$445 for overnight lodging expenses. He suggested that the Council consider recommending this officer travel the distance of approximately 50 miles each day from Merrimack to Hampton. Chief Morency agreed to withdraw his motion. The Merrimack Police Department's request for training grant funds was removed from the Consent Calendar without objection and set aside for further consideration.

Chief Morency, seconded by Chief Colarusso, put forth a new motion:

MOVED: That the Council approve the staff recommendations for items presented on the Consent Calendar, excluding the request for training grant funds submitted by Merrimack Police Department.

The Council voted unanimously to approve the Consent Calendar, excluding the request for training grant funds submitted by Merrimack Police Department.

NOTE: Commissioner Wrenn was not present for this vote.

APPROVED CONSENT CALENDAR

Requests Granted for Extensions to Complete an Academy

Officer Ryan M. Daigle, Conway Police Department was granted an extension through July 30, 2010, with the stipulation that Officer Daigle continue working only in the direct presence of a certified officer.

Officer Joseph M. Dyrkacz, Chester Police Department was granted an extension through July 30, 2010.

Officer William M. Goulet, Meredith Police Department was granted an extension through May 7, 2010, with the stipulation that Officer Goulet continue working only in the direct presence of a certified officer.

Officer Chester A. Lang, New Castle Police Department was granted an extension through July 30, 2010

Officer Charles C. Lockhart, Northumberland Police Department was granted an extension through July 30, 2010

Officer Steven W. O'Brien, Newmarket Police Department was granted an extension through July 30, 2010

Officer David B. Scott, Barnstead Police Department was granted an extension through July 30, 2010

Officer Adam P. VanSteenburg, Gilford Police Department was granted an extension through July 30, 2010, with the stipulation that Officer VanSteenburg continue working only in the direct presence of a certified officer.

Requests for Specialized Training Funds Approved

Hooksett Police Department will be granted a maximum of \$2,000 to send Detective Sergeant Kristofer Dupuis and Lieutenant Troy Cline to the Command Training Series: Mid-Management Course at Roger Williams University, Portsmouth, Rhode Island, for two weeks, beginning March 1, 2010.

(END OF APPROVED CONSENT CALENDAR)

Request for Specialized Training Funds (Excluded from the Consent Calendar)

Merrimack Police Department

The Department requested approval for funds to send an officer to the FBI-LEEDA Supervisor Leadership Institute for Law Enforcement Executives at the Hampton Police Department in Hampton, New Hampshire, for five days beginning May 3, 2010. The Department estimated that two thirds of the total cost (“the Council Share”) would be \$730, or two thirds of \$1,095, and submitted a request for \$730.

Chairman Prozzo noted that the total cost included \$445 for lodging and he recommended that the Council approve an amount equal to two thirds of the \$650 tuition cost only.

Colonel Booth moved that the Council approve two thirds of the tuition cost of \$650 and advise that if Merrimack Police Department felt lodging was necessary, that expense (\$445) would be the responsibility of the Department. Following a second by Chief Morency, the voice vote of the Council was 10-0 in favor.

NOTE: Commissioner Wrenn was not present for this vote.

Request for Other Training

In the absence of Vice Chairman Wrenn, Chairman Prozzo requested that Chief Morency assume the chair and permit him to present a request for the Council’s consideration. A completed Request for Specialized Training Grant Funds was distributed to the members. Chairman Prozzo requested that the Council consider a request for training grant funds submitted on January 25, 2010, on behalf of the Sullivan County Sheriff’s Office.

(Handout) Sullivan County Sheriff’s Office

Sheriff Michael Prozzo asked the Council to approve funds for the Sullivan County Sheriff and eight deputies to attend training presented by Global Security Professionals LLC on February 21, 2010, at the Superior Court House in Newport, New Hampshire. The training requested is a course titled Entry Access Control and the amount the Council is asked to approve is a maximum total of \$1,000 for nine officers. Chairman Prozzo asked the Council to waive the customary 60-day waiting period for grant approvals, indicating that he became aware of this training opportunity earlier in January. It is, however, critical training and available only on a limited basis; only ten students are accepted into each session.

Hearing no discussion, Acting Chairman Morency called for a motion to approve the request. Approval was moved by Chief Colarusso, seconded by Chief Sullivan, and the motion carried on a unanimous voice vote, 8-0.

NOTE: Commissioner Wrenn was not present for this vote. Chairman Prozzo was recused from consideration of this matter.

NONPUBLIC SESSION: Extension Requests and Medical Issues

Certain matters that involved discussion of personnel matters and medical issues were presented for Council action/consideration:

1. At their meeting on December 22, 2009, the Council instructed Ms. Paquin to continue to accept requests for extensions for compliance with ongoing fitness testing through the end of December 31, 2009, and granted the Director the authority to submit these requests for the Council's approval at their meeting on January 26, 2010. Such a request was submitted by **Sergeant Lauren M. Tirone, University of NH Police Department.**
2. The Council was asked to consider a request on behalf of **CO Charles Graham, New Hampshire Department of Corrections** for an extension beyond the two-year probationary period for compliance with ongoing fitness testing.
3. A request was submitted on behalf of **Officer Timothy Sanborn, Marine Patrol**, for the Council to determine whether he may participate in the 257th Part-Time Officer Academy.
4. The Council was asked to approve a request on behalf of **Officer Mark Ashland, Canterbury Police Department**, for an extension of more than six months to complete requirements for entrance to the 152nd Full-Time Police Officer Academy.
5. **The Town of Ashland** requested that the Council consider granting **Chief Anthony Randall** an extension of time to fulfill basic training requirements for full-time police officer certification until one year following his election as Ashland Chief of Police, until March 9, 2010.

As provided in RSA 91-A:3, II (a), discussion concerning personnel matters and/or the details of medical information took place in a nonpublic session, following a motion by Chief Sullivan, a second by Chief Colarusso, and a unanimous roll call vote of the ten members present. The nonpublic session commenced at 10:19 a.m. NOTE: Commissioner Wrenn was present for this session.

A motion to seal the minutes of the nonpublic session was put forth by Chief Morency and seconded by Chief Colarusso. The Council supported the motion without exception.

Following a motion by Chief Morency, seconded by Chief Colarusso, the Council voted unanimously to exit the nonpublic session in a roll call vote. The nonpublic session concluded at 10:41 a.m.

COUNCIL ACTION (in Public Session)

1. Sergeant Lauren M. Tirone, University of NH Police Department

In public session, Chief Morency moved that the Council approve the staff recommendation to grant an extension for six months beyond the date for compliance with requirements for ongoing physical fitness testing, until July 1, 2010, for Sergeant Lauren M. Tirone, University of New Hampshire Police Department. With a second by Chief Colarusso, the Council approved without exception, 10-0.

2. CO Charles Graham, New Hampshire Department of Corrections

CO Graham's initial fitness testing date was December 31, 2007. A request for an extension to comply with ongoing physical fitness testing was submitted to the Director on December 24, 2009.

Justice Champagne noted that the Council has no statutory authority to grant an extension beyond the two-year probationary period following the date for compliance with ongoing physical fitness testing. Therefore, he put forth the following motion:

MOVED: That the Council deny the request of CO Charles Graham for an extension beyond the two-year probationary period following the date for compliance with ongoing physical fitness testing, because they have no statutory authority to do so.

Following a second by Chief Morency, Chairman Prozzo inquired if any member wished to discuss the motion.

Vice Chancellor Annal asked if it is fair to CO Graham if, as he stated in nonpublic session, that he was never informed about the possibility of being permitted to perform an alternative test for the 1.5 mile run. He asked if it was typical for the staff to inform an officer about the alternative test or if the onus is on the applicant to request the alternative test.

Director Vittum indicated that information about the alternative test is included in the Technical Assistance Manual and the onus is upon the applicant to request an alternative test. CO Graham stated that he was not aware of the availability of the alternative test and would have requested it if he had known about it.

Chairman Prozzo called for a voice vote on the pending motion. The Council voted 9-0 to deny the request, with Commissioner Wrenn abstaining.

Chairman Prozzo instructed CO Graham that he must submit a request for an alternative test to the 1.5 mile run and obtain medical clearance from his physician to participate in the Air-Dyne bicycle test and provide this documentation to the Director. If he can successfully complete the alternative test and the situps and pushups, CO Graham's certification will be reinstated with no further Council action required.

3. Officer Timothy Sanborn, New Hampshire Marine Patrol

The Council considered that Officer Sanborn's next opportunity to attend would not happen until January 2011.

Commissioner Wrenn put forth the following motion:

MOVED: That the Council grant Officer Timothy Sanborn, Marine Patrol an extension of time to take the entrance fitness test for the 257th Part-Time Academy on the condition that he passes an additional hearing test and reports the results to the Director; and, that the Council authorize the Director to arrange a time for Officer Sanborn to take the entrance fitness test prior to the start of the 257th Part-Time Academy.

The motion, seconded by Colonel Booth, was approved on a unanimous voice vote.

4. Officer Mark Ashland, Canterbury Police Department

Commissioner Wrenn, with a second by Chief Morency, moved that the Council approve a request submitted on behalf Officer Mark Ashland for an extension through the end of the 152nd Full-Time Police Officer Academy. The voice vote of the Council was unanimous in favor.

5. Chief Anthony Randall, Town of Ashland

Commissioner Wrenn, with a second by Chief Sullivan, moved that the Council approve an extension request submitted on behalf of Chief Randall through March 9, 2010, with the stipulation that Chief Randall continue working only in the direct presence of a certified officer. A voice vote of the Council was unanimous in support.

Other New Business

2009 Annual Compliance

Director Vittum confirmed with Investigative Paralegal Anne Paquin that 73 agencies have not yet complied with Pol 404.04 requirements for annual reporting to Police Standards and Training as of January 25, 2010. He advised the Council that staff members would be contacting these agencies by telephone this week. Is there any further action the Council wants the Director to take to follow up? If some are still out of compliance after January 30, should these officers be compelled to appear before the Council in February?

Commissioner Wrenn moved that the chief law enforcement officer of any agency who has not submitted documentation that annual compliance has been met by January 30 will be requested to submit in writing the reasons for their noncompliance with the statute and projected date for coming into compliance and will be put on notice that that Council will consider sanctions as appropriate. If this communication is not received before the February 23, 2010, meeting of the Council, those officers will be required to appear at the Council's March meeting.

Hearing no second, Chairman Prozzo declared the motion "dead."

Commissioner Wrenn moved that the chief law enforcement officer of any agency who has not submitted documentation that annual compliance has been met by January 30 will be required to appear at the February 23, 2010, Council meeting for a hearing on being sanctioned for violation of state law. With a second by Colonel Booth, the voice vote of the Council was 10-0, in favor.

General

2010 Awards for Looking Beyond the Traffic Ticket

Chairman Prozzo designated Chief Anthony Colarusso to represent the Council on the panel that will review the nominations and select this year's award recipients.

Other Business

SWAT/SOU Discussion

Commissioner Wrenn advised that Scott Weden has told him that the Local Government Center has been working on developing model policies and procedures for law enforcement in New Hampshire. Would Police Standards and Training Council have an interest in working with LGC to present this material to law enforcement? Commissioner Wrenn felt this was a good idea and asked for the Council members to give this some thought. He said LGC has also offered to work with Police Standards and Training Council to develop protocols and training for SWAT/SOU and has even offered to pay for some of this training.

Chief Sullivan noted that the Chiefs Association has expressed concern that model policies were being developed from an insurer's point of view and he pointed out that model policies in general are not binding.

Director Vittum confirmed to Chief Morency that the staff is currently working with sheriffs, chiefs, and team members to develop model policies and procedures for the Council's consideration. This activity is ongoing and proceeding satisfactorily.

Proposed Revision to Protocol for Alternative Air-Dyne Bicycle Test

Captain Varney stated that the Cooper standards were revised in 2008 and he asked the Council to consider realigning the Academy's protocol for the Air-Dyne bicycle test to conform with the Cooper updated standards.

Commissioner Wrenn moved that the Council approve the amendment proposed by staff to the protocol for the alternative Air-Dyne bicycle test to coincide with the Cooper standards as presented this day. With a second by Colonel Booth, the motion carried on a voice vote, 10-0.

Proposed Change for Driver Training Instructor Certification

Lieutenant Bodanza explained that from time to time driving instructors assist with the driving program for the Full-Time Academy and for in-service training. The change proposed will allow a certified instructor to also assist with the Part-Time Academy and removes the requirement for instructors to attend a two-hour meeting each year to maintain their instructor certification.

Chief Sullivan moved that the Council adopt the change for driver training instructor certification recommended by staff. Following a second by Sheriff Foote, a unanimous voice vote of the Council was recorded.

Updated Revenue for FY 10

A handout was distributed by Director Vittum that compares revenue for the first six months of FY 10 with the same period in FY 09.

Next Meeting Date/Adjournment

The next meeting of the New Hampshire Police Standards and Training Council will be held on Tuesday, February 23, 2010, at nine o'clock in the morning.

Upon a motion by Chief Morency, seconded by Sheriff Foote, the Council voted unanimously to adjourn the meeting at 11:25 a.m.

Respectfully submitted,

Chairman Michael L. Prozzo, Jr.