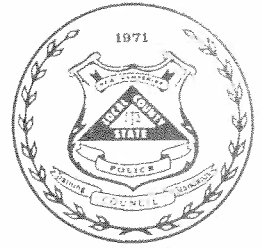




State of New Hampshire
POLICE STANDARDS & TRAINING COUNCIL
ARTHUR D. KEHAS
LAW ENFORCEMENT TRAINING FACILITY & CAMPUS
17 Institute Drive — Concord, N.H. 03301-7413
603-271-2133 FAX 603-271-1785
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Sheriff Michael L. Prozzo, Jr.
Chairman

Approved Minutes

Donald L. Vittum
Director

February 23, 2010

NOTE: Prior to approval of the February 23, 2010, unapproved minutes on March 23, 2010, the Council adopted amendments to Page 6 and Page 15.

Call to Order

The 393rd meeting of the New Hampshire Police Standards and Training Council was called to order at 9:06 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: 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; Chief Gregory C. Dodge, Epping Police Department; William L. Wrenn, Jr., Commissioner of the New Hampshire Department of Corrections; Richard Foote, Sheriff of Cheshire County; and, Attorney General Michael Delaney

NOTE: The Council meeting was in recess from 11:05 a.m. until 11:10 a.m. Mr. Annal departed the meeting at 11:05 a.m.

Members Absent: Associate Justice Stephen H. Roberts, Dover District Court

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

Guests Present: Chief Andrew Ware, Orange Police Department; Chief David D. Wentworth and Officer David A. Wentworth, Sugar Hill Police Department; Mr. Kyle Metcalf; Mr. Brian Storace; and, from the Town of Ashland, Chief Anthony Randall, Attorney Laura Spector, Lieutenant Donald Marren Jr., and Town Administrator Timothy A. Cullenen

Approval of Minutes

Colonel Booth, with a second by Chief Sullivan, moved for the Council to approve the draft minutes of January 26, 2010, as presented. The Council voiced their consent, 10-0, with Chief Gregory Dodge abstaining.

Director's Report

The Director advised that he would be leaving the meeting at 11 a.m. to travel to Nashua to meet with Chief Conley and other police chiefs in that area at 12 noon. Chief Conley requested this meeting and the Director said he would apprise the Council on the outcome when he returned.

Previous and/or Unfinished Business

With regard to the ongoing discussion concerning SWAT/SOUs, Commissioner Wrenn stated that he had received no new information since his last report. The Director stated that, "The only thing is we've been meeting with the various groups ... now they're going to put a plan together and tell us what their outcome's going to be and how they're going to look at things. So, I will have a plan for you to look at -- the whole progress of that -- and, LGC now wants to join that discussion -- that's fine with me; I don't get too concerned over that. We'll get it together for you and give you a plan and see what the outcome's going to be and we'll work towards getting it done."

The Director also advised that a review of ongoing physical fitness testing protocol is under way and the "college system is working with us -- Captain Varney's met with them -- and we'll have something for you at the planning session to look at this and see how you feel about that ...". Additionally, the staff will investigate alternative tests for the situps as a part of this exercise.

New Business

Hearings

Officer Raymond L. Berube, Danville Police Department

Pursuant to RSA 188-F:27, Pol 404.06 and 404.07, a hearing was convened regarding revocation of Officer Berube's certification to conduct ongoing physical fitness testing. Officer Berube was not present, and the Council proceeded to hear the matter in public session.

Lieutenant Bodanza was sworn and presented the following Exhibits and synopsis:

EXHIBITS

Form A hired part time for Danville Police Department August 1, 1998	Staff Exhibit A
Part time Officer Certification February 6, 1999	Staff Exhibit B
Conducting Physical Fitness Certification for Raymond Berube May 13, 2004	Staff Exhibit C
1. Form B part time to full time for Danville Police Department June 7, 2009	Staff Exhibit D
2. Form A hired full time for Danville Police Department June 7, 2009	
3. Confirmation of notification of RSA 188-F:27 the medical and physical agility requirements June 24, 2009	
Full time officer certification December 4, 2009	Staff Exhibit E
Statement of Raymond Berube December 15, 2009	Staff Exhibit F
Letter to Chief Merrill from Chief Wade Parsons December 17, 2009	Staff Exhibit G

Ongoing 3 year fitness test form for Wade Parsons January 31, 2007 Staff Exhibit H
Medical Clearance Report Form for Wade Parsons January 31, 2007 Staff Exhibit I
Technical Assistance Manual on Fitness Testing 2004 Staff Exhibit J

SYNOPSIS

On August 1, 1998 Raymond Berube was hired part time for Danville Police Department Staff Exhibit A. On February 6, 1999 he received his Part-Time Officer Certification from PSTC, Staff Exhibit B. On May 13, 2004, Raymond Berube received a Certification for Conducting Physical Fitness at PSTC, Staff Exhibit C.

On June 24, 2009, a Form B dated June 7, 2009, was received at PSTC indicating that Officer Berube's position at Danville Police Department was changing from part time to full time; a Form A also dated June 7, 2009, for Officer Berube's full-time hire was also received on June 24, 2009, as well as the form "Confirmation of Notification of NH State Law RSA 188-F:27," Staff Exhibit D (3 DOCUMENTS).

On December 4, 2009, Officer Berube received his Full-time Officer Certification, Staff Exhibit E.

Police Standards and Training Council received a written complaint about Officer Berube conducting a fraudulent fitness test for Chief Wade Parsons, Danville Police Department, and subsequently opened an investigation into the matter.

Officer Berube was interviewed on December 15, 2009 -- Raymond Berube's statement of December 15, 2009, Staff Exhibit F. Chief Parsons was interviewed on December 17, 2009. Chief Parsons followed up with a letter to Chief Merrill dated December 17, 2009, Staff Exhibit G

During these interviews, the ongoing physical fitness test form for Wade Parsons dated January 31, 2007, (Staff Exhibit H) and the Medical Clearance Report Form for Wade Parsons dated January 31, 2007, (Staff Exhibit I) were discussed.

The first issue at hand is the deviation from the fitness protocol sequence. The fitness test is conducted in a systematic way prescribed by Cooper's and adopted by the Council. The proper sequence for ongoing physical fitness testing is as follows: the situps, pushups, and then, the run.

When Officer Berube was asked what order he conducted the test, he was not able to recall the order in which the situps and pushups were conducted; furthermore, when pressed about the order in which he was trained to do the tests he stated, "Honestly, that was three years ago. I do not remember."

The second issue before the Council deals directly with the required paperwork in a proper ongoing physical fitness test. During Mr. Berube's interview he voluntarily admitted he reported incorrect information on the Ongoing Fitness Test Sheet, Staff Exhibit H. He further disclosed he had typed January 31, 2007, on the test form when he actually conducted the test sometime in the beginning of December 2006. He explained he had conducted the test after work one day and did not get around to typing up the paperwork until the Chief called him a month later. This prompted a review of the Medical Clearance Report, dated January 31, 2007, (Pol 404.06) and the

Ongoing Fitness Test Sheet, that was submitted for Chief Parsons. Officer Berube was asked when he received the Medical Clearance sheet for Chief Parsons to be able to do the test. Berube indicated he never received a medical clearance sheet on this test or any tests he has conducted.

Referring to the Ongoing Fitness Test Sheet, Staff Exhibit H, Berube acknowledged he typed an "X" in the box indicating Chief Parsons HAS submitted a medical clearance sheet prior to testing, and this was not true.

In a subsequent interview with Chief Parsons, it was revealed that Chief Parsons had completed the Medical Clearance Sheet on January 31, 2007, more that a month after the ongoing physical fitness test was completed, in an effort to get all his year in compliance paperwork in to the Council.

Chief Parsons stated he did not see a doctor until January 31, 2007 and continued by indicating he did not realize the Medical Clearance had to be done prior to the test.

Since the 2007 test, Chief Parsons submitted a test in 2009 which was conducted by another officer, from a different agency, in which he had the medical clearance sheet prior to conducting the ongoing physical fitness test.

(END SYNOPSIS)

Lieutenant Bodanza indicated that the matter before the Council is to determine what action is appropriate, considering the exhibits admitted, concerning an ongoing physical fitness test being conducted in violation of Council Rule 404.06 and 404.07, RSA 188-F:27 III-d, III-f, by a Police Standards and Training Council-certified ongoing fitness testing instructor.

Commissioner Wrenn asked if the specific violations were Officer Berube's failure to follow the fitness protocol by not adhering to the prescribed sequence of tests and that he falsified documents. Lieutenant Bodanza responded that this understanding was correct. Commissioner Wrenn then asked, "What about Chief Parsons?" Is he involved with this as well, since he had knowledge of how the test was conducted? Lieutenant Bodanza replied that it can be assumed that Chief Parsons, not being a certified fitness testing instructor, did not have knowledge of the protocol and relied on Officer Berube to administer the test correctly.

Commissioner Wrenn asked if Chief Parsons had been aware that the medical clearance form must be submitted prior to taking the fitness test. Lieutenant Bodanza stated Chief Parsons indicated to Chief Timothy Merrill that he was not aware of this requirement. Chief Dodge noted that the medical waiver was dated January 31, 2007, and documentation submitted by Officer Berube indicated that the fitness test was conducted in December 2006. Lieutenant Bodanza confirmed that the date on the medical clearance form had been written by the doctor who signed it and that the medical exam was in fact conducted on January 31, 2007. Moreover, the documentation filed by Officer Berube stated that the test was conducted on January 31, 2007, which is false.

Commissioner Wrenn proposed that the circumstances surrounding the medical clearance form was a separate matter upon which the Council should also act and suggested that Chief Parsons should appear before the Council on this matter. Chief Sullivan agreed and supported Commissioner Wrenn's recommendation for Chief Parsons to address this matter with the Council.

Justice Champagne, with a second by Colonel Booth, moved for the Council to revoke Officer Berube's certification to conduct ongoing physical fitness testing, pursuant to Pol 404.06 and 404.07 and RSA 188-F:27, III (d) and III (f). Justice Champagne stipulated that this action has no effect on Officer Berube's New Hampshire law enforcement certification.

Director Vittum confirmed that this action would be appropriate, based upon prior decisions of the Council in similar circumstances (e.g., firearms instructor certification).

Commissioner Wrenn emphasized the seriousness of falsification of documents and recommended that such a violation should prompt the Council to act on Officer Berube's law enforcement certification in a separate action, perhaps at the next Council meeting, with Officer Berube being duly noticed to appear at a hearing.

Chairman Prozzo called for a vote on the pending motion. The voice vote of the Council was unanimous in the affirmative.

Chairman Prozzo instructed the Director to notice both Officer Berube and Chief Parsons to appear before the Council at their meeting on March 23, 2010.

NONPUBLIC SESSION: Chief Andrew Ware, Orange Police Department

Pursuant to Pol 402.02 (a) (8) and 404.04, a hearing was convened regarding the Department's noncompliance with requirements for annual certification of firearms training.

Chief Ware was present for this hearing and was advised of the protocol for the hearing. Chief Ware expressed his preference for the matter to be heard in a nonpublic session.

Pursuant to RSA 91-A:3, II (a), Chief Dodge moved for the Council to enter into a nonpublic session to discuss personnel matters. Following a second by Chief Colarusso and a unanimous roll call vote, the nonpublic session commenced at 9:47 a.m.

A motion by Chief Dodge, seconded by Chief Morency, to seal the minutes of the nonpublic session was unanimously approved by the Council.

Chief Dodge further moved that the Council exit the nonpublic session. Chief Morency seconded the motion. With a unanimous roll call vote of the Council, the nonpublic session concluded at 9:59 a.m.

In public session, Chief Dodge moved that Chief Ware's certification be suspended until he completes the annual requirement for firearms training certification and that he must do so no later than March 15, 2010. Chief Colarusso seconded the motion.

Commissioner Wrenn requested that the motion include the stipulation that Chief Ware's certification will be reinstated when the required documentation (a completed Form F) has been submitted to Police Standards and Training. Commissioner Wrenn asked what should happen if compliance was not met by March 15? Why include this date in the motion, if the Council wants compliance to occur as soon as possible?

Chief Dodge agreed, and Chief Colarusso concurred, to amend the motion. Therefore, the motion before the Council was amended as follows:

MOVED: That Chief Ware's certification be suspended until he completes the annual requirement for firearms training certification and that his certification will be automatically reinstated when Form F has been received by Police Standards and Training.

In the course of further discussion, the Council considered extenuating circumstances brought forth in the nonpublic session regarding the current matter, but what about future noncompliance issues? Should there be consequences beyond suspension until compliance is met? What penalty should be imposed on part-time officers who are already restricted to working 1,300 hours per year? Should they be restricted to working fewer hours in addition to a conditional suspension period? Chairman Prozzo recommended that the Council discuss these questions at the upcoming planning session and instructed the Director to include this topic in the planning session agenda.

Hearing no further discussion, the Chairman asked for the Council's approval of the amended motion and their voice vote was unanimous in support.

Petition for Rescission

NONPUBLIC SESSION: Kyle Metcalf, formerly of New Hampshire Liquor Enforcement

Pursuant to Pol 402.02 (h) and (i), a hearing was convened on a Petition for Rescission of the Council's revocation of the New Hampshire law enforcement certification of Kyle Metcalf. Mr. Metcalf was present and was informed of the hearing protocol. He indicated that it was his desire for the matter to be heard in a nonpublic session.

Pursuant to RSA 91-A:3, II (a), Chief Dodge moved for the Council to enter into a nonpublic session to discuss personnel matters. Following a second by Chief Morency and a unanimous roll call vote, the nonpublic session commenced at 10:07 a.m.

A motion by Chief Dodge, seconded by Chief Morency, to seal the minutes of the nonpublic session was unanimously approved by the Council.

Chief Dodge further moved that the Council exit the nonpublic session. Chief Morency seconded the motion. With a unanimous roll call vote of the Council, the nonpublic session concluded at 10:20 a.m.

In public session, a motion was put forward by Chief Dodge and seconded by Justice Champagne:

MOVED: That the Council deny the request put forth in the Petition for Rescission for the Council to rescind the revocation of Kyle Metcalf's certification.

NOTE: The approved minutes were amended to strike "given that the Council finds that, pursuant Pol 402.02 (h), conditions or circumstances have not changed so that such revocation is no longer necessary" from the end of the motion stated above at the request of Commissioner Wrenn on 3/23/10.

Chairman Prozzo recognized Commissioner Wrenn who noted that although Mr. Metcalf has offered assurances that he has modified his behavior since the incident that precipitated the Council's revocation of his law enforcement certification there is no indication that he has made an effort to seek counseling to address and resolve the cause of his prior behavior. Commissioner Wrenn recommended that such counseling should take place before he seeks to have his certification restored in the future. Hearing no further discussion, Chairman Prozzo called for a vote on the pending motion, and the voice vote of the Council in support of the motion was 10-0, with Colonel Booth abstaining.

Eligibility

NONPUBLIC SESSION: Sugar Hill Police Department Request for Consideration

Chief David D. Wentworth appeared with Officer David A. Wentworth to address the Council and to be advised of the determination of the Council regarding Officer Wentworth's eligibility to attend the Full-Time Police Academy.

Chairman Prozzo advised that the matter could be heard in public session or in nonpublic session, and Chief Wentworth stated his preference to be heard in a nonpublic session.

Pursuant to RSA 91-A:3, II (a), Chief Dodge moved for the Council to enter into a nonpublic session to discuss personnel matters. Following a second by Chief Morency and a unanimous roll call vote, the nonpublic session commenced at 10:28 a.m. A motion by Chief Dodge, seconded by Chief Morency, to seal the minutes of the nonpublic session was unanimously approved by the Council.

Chief Dodge further moved that the Council exit the nonpublic session. Chief Morency seconded the motion. With a unanimous roll call vote of the Council, the nonpublic session concluded at 11:02 a.m.

In public session, Chief Morency moved, with a second by Colonel Booth, that based upon the facts and circumstances the Council allow Officer David A. Wentworth to attend the Full-Time Police Academy.

Commissioner Wrenn commented that he supported Chief Morency's motion and that he was very impressed with how Chief Wentworth handled the situation, namely, that he had refrained from allowing Officer Wentworth to work for his department before completing the Academy. He also addressed Officer Wentworth, advising him that this should present an opportunity for him to "turn things around" and be successful as a police officer. The voice vote of the Council was 9-2, with Justice Champagne and Chief Dodge opposed.

The Council proceeded to address Officer Wentworth's request for an extension through the end of the 152nd Full-Time Police Academy. (See **Other Requests for Extension to Complete an Academy**)

CONSENT CALENDAR

The Council reviewed staff recommendations for all items presented on the Consent Calendar. Chief Dodge moved that the Council approve all requests on the Consent Calendar as recommended by staff. The motion was seconded by Chief Morency. The Council voted unanimously to approve the Consent Calendar.

APPROVED CONSENT CALENDAR

Requests Granted for Extensions to Complete an Academy

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

Full-Time Police Officer

152nd Academy 04/26/10 – 07/30/10 (fitness test 04/12/10)

Officer Casey B. Brennan, Belmont Police Department

(DOH: 11/29/09 **Part-time certified**) through the end of the 152nd Full-Time Police Officer Academy.

Officer Jeremy D. Brisson, Gorham Police Department

(DOH: 01/18/10 **Not part-time certified**) through the end of the 152nd Full-Time Police Officer Academy with the stipulation that Officer Brisson continue working only under the direct supervision of a certified officer.

Officer Scott C. Brokaw, Keene Police Department

(DOH: 01/11/10 **Not part-time certified**) through the end of the 152nd Full-Time Police Officer Academy with the stipulation that Officer Brokaw continue working only under the direct supervision of a certified officer.

Officer Thomas J. Byrne, Keene Police Department

(DOH: 01/11/10 **Not part-time certified**) through the end of the 152nd Full-Time Police Officer Academy with the stipulation that Officer Byrne continue working only under the direct supervision of a certified officer.

Officer Marc E. Cilley, Milton Police Department

(DOH: 12/30/09 **Not part-time certified**) through the end of the 152nd Full-Time Police Officer Academy with the stipulation that Officer Cilley continue working only under the direct supervision of a certified officer.

Officer Leslie A. Collier, Keene Police Department

(DOH: 01/11/10 **Not part-time certified**) through the end of the 152nd Full-Time Police Officer Academy with the stipulation that Officer Collier continue working only under the direct supervision of a certified officer.

Officer Kempes R. Corbally, Belmont Police Department

(DOH: 11/29/09 **Not part-time certified**) through the end of the 152nd Full-Time Police Officer Academy with the stipulation that Officer Corbally continue working only under the direct supervision of a certified officer.

Officer Katie M. Corbett, Keene Police Department

(DOH: 11/15/09 **Not part-time certified**) through the end of the 152nd Full-Time Police Officer Academy with the stipulation that Officer Corbett continue working only under the direct supervision of a certified officer.

Officer Eric M. Fluette, NH Fish and Game Department

(DOH: 01/15/10 **Not part-time certified**) through the end of the 152nd Full-Time Police Officer Academy with the stipulation that Officer Fluette continue working only under the direct supervision of a certified officer.

Officer Jonathan B. Hanson, Somersworth Police Department

(DOH: 01/25/10 **Not part-time certified**) through the end of the 152nd Full-Time Police Officer Academy with the stipulation that Officer Hanson continue working only under the direct supervision of a certified officer.

Officer Nicholas A. Jowders, Jaffrey Police Department

(DOH: 01/01/10 **Part-time certified**) through the end of the 152nd Full-Time Police Officer Academy.

Officer Richard A. LaValley, Webster Police Department

(DOH: 01/11/10 **Part-time certified**) through the end of the 152nd Full-Time Police Officer Academy.

Officer Neal B. Pawlik, Somersworth Police Department

(DOH: 01/25/10 **Not part-time certified**) through the end of the 152nd Full-Time Police Officer Academy with the stipulation that Officer Pawlik continue working only under the direct supervision of a certified officer.

Officer Michael T. Tollett, Hinsdale Police Department

(DOH: 11/15/09 **Not part-time certified**) through the end of the 152nd Full-Time Police Officer Academy with the stipulation that Officer Tollett continue working only under the direct supervision of a certified officer.

Part-Time Police Officer

258th Academy 08/14/10 – 11/19/10 (fitness test 07/31/10)

Officer Kurt D. Holston, Chester Police Department

(DOH: 12/23/09) through the end of the 258th Part-Time Police Officer Academy with the stipulation that Officer Holston continue working only in the direct presence of a certified officer.

Approved Requests for Specialized Training Grant Funds

Belmont Police Department will be granted funds for Officer Kevin Baron to attend the Police Motorcycle Instructor and Certification National Academy being presented by Northwestern University in Durham, New Hampshire, for 15 days beginning May 24, 2010. Staff recommends approving the request. **Amount: \$1,000.00**

Berlin Police Department will be granted funds for Corporal Luc Poulin to attend the Polygraph Examiners Course presented by Crawford Polygraph Services LLC at Police Standards and Training in Concord, New Hampshire, for eleven weeks beginning March 22, 2010. Staff recommends approving the request. **Amount: \$1,000.00**

Hampton Police Department will be granted funds for an officer to attend the Polygraph Examiners Course presented by Crawford Polygraph Services LLC at Police Standards and Training in Concord, New Hampshire, for eleven weeks beginning March 22, 2010. Staff recommends approving the request. **Amount: \$1,000.00**

Pembroke Police Department will be granted funds for Detective Sergeant Dawn Shea to attend the Command Training Series: First Line Supervisor Course at Roger Williams University in Portsmouth, Rhode Island, for two weeks beginning April 12, 2010. Staff recommends approving the request. **Amount: \$1,000.00**

Tilton Police Department will be granted funds for Detectives Buffington, Dawson, and Morrison to attend a Homicide and Crime Scene Management class being presented by the Derry Police Department in Derry, New Hampshire, for three days beginning June 8, 2010. Staff recommends approving the request. **Amount for three officers: \$550.00**

(END OF APPROVED CONSENT CALENDAR)

NONPUBLIC SESSION: Request for Fitness Testing Extension

One request that involved discussion of medical issues was presented for Council consideration/action:

Officer Amie Prescott, Northumberland Police Department requested an extension until July 1, 2010, to comply with requirements for ongoing physical fitness testing. 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 Dodge, a second by Chief Morency, and a unanimous roll call vote of the ten members present. The nonpublic session commenced at 11:14 a.m.

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

Following a motion by Chief Dodge, seconded by Chief Morency, the Council voted unanimously to exit the nonpublic session in a roll call vote. The nonpublic session concluded at 11:16 a.m. NOTE: Mr. Annal was not present for this nonpublic session.

COUNCIL ACTION (in Public Session)

Officer Amie Prescott, Northumberland Police Department

In public session, Justice Champagne moved that the Council approve the staff recommendation to grant her request, received January 29, 2010, for extension for six months beyond the date for compliance with requirements for ongoing physical fitness testing, until July 1, 2010, for Officer Amie Prescott of the Northumberland Police Department. With a second by Commissioner Wrenn, the Council approved without exception, 10-0. NOTE: Mr. Annal was not present.

Other New Business

The Council considered staff recommendations on a number of requests excluded from the Consent Calendar:

Other Requests for Extension to Complete an Academy

Deputy Kaleb B. Jacob, Hillsborough County Sheriff's Department

(DOH: 12/19/08 **Not part-time certified**) through April 12, 2010, the date of the next entrance fitness test with the stipulation that Deputy Jacob continue working only in the direct presence of a certified officer.

Following a motion by Justice Champagne, seconded by Chief Colarusso, the Council voted unanimously to grant an extension for Deputy Kaleb Jacob through April 12, 2010. Upon successful completion of the entrance fitness test, his part-time certification will be reinstated.

NOTE: Mr. Annal was not present for this vote.

Officer Jared W. Knox, New Castle Police Department

(DOH: 01/19/10 **Part-time certified**) through the end of the 153rd Full-Time Police Academy.

Colonel Booth moved that the Council approve the request of Officer Jared Knox for an extension through the end of the 153rd Academy. Following a second by Chief Sullivan, the Council voted 10-0 to approve the request.

NOTE: Mr. Annal was not present for this vote.

Officer David A. Wentworth, Sugar Hill Police Department

(DOH: 08/03/09 **Not part-time certified**) through the end of the 152nd Full-Time Police Officer Academy with the stipulation that Officer Wentworth continue working only in the direct presence of a certified officer.

Commissioner Wrenn, with a second by Chief Sullivan, moved that the Council approve Officer Wentworth's request for an extension through the end of the 152nd Academy. The voice vote of the Council was 10-1, with Chief Dodge voting no.

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

Two requests had been set aside for special consideration. First, the Council was asked to determine guidelines for allowing expenses for overnight lodging; then, two requests recommended by staff for approval were considered.

Colonel Booth recommended that the Council adopt guidelines that mirror the policy established by the State of New Hampshire. At the present time, this policy states expenses for overnight lodging are covered if the travel distance is 50 miles or more. Mr. Annal recommended that the Council not stipulate the exact mileage in their policy, because the State may decide in the future to amend that figure; rather, the Council policy should reflect current State policy at any given time.

Therefore, Colonel Booth put forth the following motion that was seconded by Chief Morency:

MOVED: That the Council adopt a policy regarding reimbursing expenses for overnight travel that will mirror current guidelines established by the State of New Hampshire.

The Council voted 11-0 in favor of the stated policy.

Chairman Prozzo asked Captain Jean to specify the travel distance for each of the departments who requested to attend a five-day training session being held at the Laconia Police Department.

Captain Jean stated that the distance from the Cheshire County Sheriff's Office to the Laconia Police Department is 80 miles, and the distance from the Merrimack Police Department to the Laconia Police Department is 57 miles.

Chief Morency, with a second by Chief Colarusso, moved that the Council approve the requests of Cheshire County Sheriff's Office and the Merrimack Police Department for training grant funds as submitted and recommended by staff for approval. With Sheriff Foote abstaining, the Council voted 10-0 in favor. It was, therefore, resolved that:

Cheshire County Sheriff's Office will be granted funds for Captain Trevor S. Croteau to attend the FBI-LEEDA Command Institute at the Laconia Police Department in Laconia, New Hampshire, for five days beginning April 19, 2010. **Amount: \$829.50**

Merrimack Police Department will be granted funds for Captain Peter Albert and Captain Michael Dudash to attend the FBI-LEEDA Command Institute at the Laconia Police Department in Laconia, New Hampshire, for five days beginning April 19, 2010.

Amount for two officers: \$1,340.00

Matrix for Evaluating Corrections Officers' Prior Training/Experience

In response to the Council's request, the staff presented a matrix specifically for evaluating the prior training and experience of Corrections Officers requesting certification and it has been reviewed and approved by the Department of Corrections. Commissioner Wrenn endorsed the document presented by staff and stated that it appears to parallel what is in place for evaluating the prior training and experience of police officers.

Chief Dodge moved that the Council adopt the matrix for evaluating Corrections Officers' prior training and experience as presented. Following a second by Chief Sullivan, the Council voted 11-0 to adopt the matrix.

PT&E Request – Corrections Officer

Chief Dodge moved that the Council approve Stephen Sullivan's request for certification as a Corrections Officer based upon his prior training and experience as recommended by staff. Following a second by Chief Colarusso, the Council voted 10-0 to approve the request, with Commissioner Wrenn abstaining.

General

Annual Planning Session on May 3 and 4, 2010

The Director noted that the Littleton location for the planning session in May is a distance of 50 miles or more from where most of the Council members will travel. Overnight accommodations will be arranged for those who notify the Director that they plan to attend on May 3 and 4.

The Council members were asked to confirm their attendance by Friday, February 26, 2010, if possible. The Director also asked the members to raise any topics of discussion they want to include in the agenda for May 3. Staff members have commented on what might be included and have suggested goals for the coming year, as well.

The Director noted that at the last New Hampshire Association of Chiefs of Police meeting Chief Dubois and his group raised issues with traffic control and the agency has been working with the Department of Transportation to develop training. Input from the Council members on proposed training will be a topic of discussion at the planning session.

The Director commented that budgetary issues will also be discussed, noting that revenues are relatively flat. He asked the members to prepare to offer new ideas for raising revenue in the future. He advised that revenues from penalty assessment will not be adequate to meet future needs, so fresh ideas need to be explored by the Council.

Chief Morency asked if ideas that were raised last year and in years past can be resurrected for this discussion. The Director advised that most of these "are dead." In particular, an increased gas tax will not be a viable option. Colonel Booth said that when the issue of traffic details was raised at a recent meeting of police chiefs, it was recommended that officers be certified to conduct traffic control every three years. He thought it might be a good opportunity to raise revenue if the Council were to institute a fee for this certification. If Police Standards and Training were to "take over" traffic detail training and certification, the training would be more consistent and the fees generated would create a "pretty good revenue stream."

Chairman Prozzo recommended that if the Council can promulgate a couple of good ideas it would benefit the agency for Council members to engage the Governor and key legislators in a discussion. With their support, the prospects for implementing the Council's recommendations would be improved. The members agreed that instituting a tuition charge for attendance at the Academy would not be palatable to police departments and towns, considering that they continue to pay their officers' salaries and benefits while they are attending the Academy.

Other Business

Request for Consideration

Chief Anthony Randall, Town of Ashland, et al

Chief Anthony Randall was accompanied by Timothy A. Cullenen, Town Administrator, and Lieutenant Donald Marren Jr. of the Ashland Police Department. Also present was Attorney Laura Spector, representing the Town of Ashland. NOTE: Mr. Annal was not present for this discussion.

The Town of Ashland had requested an opportunity to address the Council to update them on the progress of Chief Randall's recovery from hip replacement surgery and his efforts to come into compliance with the requirement for ongoing physical fitness testing.

Chairman Prozzo advised Chief Randall that his concerns could be heard in a nonpublic session, but he declined this offer and asked to be heard in public session.

Chairman Prozzo stated that at their meeting on January 26, 2010, the Council received a letter from Town Administrator Cullenen requesting an opportunity to address the Council.

Lieutenant Bodanza was sworn and made reference to the following pertinent documents:

- Form A dated April 24, 2009
- Form C dated May 9, 2009, for the Academy starting August 31, 2009

- Request for an extension beyond six months dated June 15, 2009 (stated hire date of April 24, 2009)
- Police Standards and Training Council's letter to Chief Randall dated July 1, 2009, granting the request for an extension
- Police Standards and Training Council's letter to Chief Randall announcing his being scheduled to attend the 150th Academy
- Police Standards and Training Council's letter to Chief Randall dated December 4, 2009, notifying him that he was permitted one year to complete training and that he must pass a fitness test
- A letter to Dennis Potter, Chairman of the Ashland Board of Selectmen, regarding Chief Randall's fitness test failure, including another Request for Extension form
- Request dated December 22, 2009, for extension through February 3, 2010 (date of hire listed as April 24, 2009)

Lieutenant Bodanza stated that the Form A received indicated that Chief Anthony Randall had been elected as Chief of Police for the Town of Ashland on April 24, 2009.

Chief Randall attended the start of the 150th Police Academy after successfully completing the entrance fitness test (meeting the 35th percentile). At the midpoint of the Academy, recruits must take the fitness test at the 45th percentile and Chief Randall successfully completed this test. At the conclusion of the Academy, exit fitness testing is conducted at the 50th percentile. All recruits must successfully pass this final fitness test to comply with the protocols established in the Technical Assistance Manual and the protocols that have been adopted under RSA 188-F:27. Lieutenant Bodanza further stipulated that the Technical Assistance Manual requires a fitness test conducted at the 50th percentile must be passed no less than 30 days and no more than 60 days after the end of the Academy.

The Council granted a second extension on December 22, 2009, through March 9, 2010, one year following Chief Randall's election. The extension was granted because Chief Randall could not successfully complete the exit fitness test by the date required due to a medical issue.

Lieutenant Bodanza noted that RSA 188-F:27 indicates that an elected officer must become certified within one year and the statute takes precedence over the Technical Assistance Manual. Chief Randall's current extension, therefore, will expire on March 9, 2010. Lieutenant Bodanza implied the Town of Ashland's intention to inquire if there is any further accommodation that can be extended, specifically, an alternative test for the 1.5 mile run, or a further extension that would allow additional time for Chief Randall to become medically able to take the 50th percentile test.

Additionally, RSA 188-F:27 provides that if Chief Randall cannot become certified by March 9, 2010, the Town of Ashland has the authority to appoint a police officer to fill the vacancy "until the remainder of that election period has been completed ... or, until somebody else has been elected at the next cycle." If, during that time, Chief Randall successfully passes the fitness test, he may resume his position as the elected police chief.

The Council had no questions for Lieutenant Bodanza, so the Chairman recognized Attorney Laura Spector to speak. Being duly sworn, Attorney Spector introduced herself as the legal counsel for the Town of Ashland. Attorney Spector stated that Chief Randall had successfully passed the entrance fitness test for the 150th Academy and had successfully completed all aspects of the 150th Academy, with the exception of the 1.5 mile run in the exit fitness test. More specifically, he completed the 1.5 mile run, but not within the time allotted in the 50th percentile. The reason for this was a deteriorating hip which has since been replaced. Unfortunately, with

his new hip, his doctor has advised him that he is unable to engage in sustained running, as would be required to train for and complete the 1.5 mile run in the time allowed.

Attorney Spector stated that it is the intention of the Town to ask the Council to allow Chief Randall to take an alternative test to demonstrate his cardiovascular fitness and be granted an extension of time in which to accomplish that. Attorney Spector said that, after reviewing the Council's Administrative Rules, she noted that they did not include the physical fitness standards for initial completion of the fitness test. These are found in the Technical Assistance Manual which the staff provided for her on the date of this meeting.

However, in the Administrative Rules are the standards for continuing physical fitness that must be met every three years, and those standards refer to the Cooper Institute. These standards, as well as in the statute, RSA 188-F:27, III (j), allow the Council to grant a waiver from the continuing physical fitness standards "to the extent required to comply with federal or state law." She proposed that, just because there is no provision for the Council to grant a waiver from the initial requirements, the Council may have the authority to do so. Under the Americans With Disabilities Act, the Council is authorized and, perhaps, required to grant an accommodation for Chief Randall. She cited Title II of the ADA, which provides that "a public entity may not discriminate against a qualified individual with a disability in its certification activities," such as the Council performs. A disability is defined as "an impairment which interferes with a major life activity." And, a qualified individual with a disability is someone who "can meet the essential eligibility requirements to receive certification, with or without reasonable modifications."

Attorney Spector asked the Council to consider that Chief Randall is disabled under the provisions of the Americans with Disabilities Act, because he has an impairment that interferes with his ability to run, which is a major life activity. She further assured the Council that Chief Randall can meet the requirements for being a police officer and/or a police chief, including the requirement that the 1.5 mile run is intended to assess, i.e., cardiovascular fitness.

She stated that the Cooper Institute has said that the purpose of the 1.5 mile run is to assess cardiovascular fitness, and Cooper has also issued a publication, Common Questions Regarding Physical Fitness Tests, Standards and Programs for Public Safety. Attorney Spector at this time provided copies of a letter addressed to Director Vittum with the publication attached. She asked the Council to turn to Page 5 of the attachment and referenced the section that talks about an officer who is permanently disabled and not able to run. Cooper recommends that there should be a review to determine if the officer is able to continue in the position if it requires running as an essential task. Cooper recommends using the Schwinn Air-Dyne test or the maximum treadmill exercise test as an alternative to the 1.5 mile run. This is the request that the Town of Ashland is bringing to the Council this day.

Specifically, Attorney Spector articulated that the Town of Ashland is requesting that Chief Randall be permitted to demonstrate his cardiovascular fitness, not by running 1.5 miles, but, instead, by completing whatever test the Council prescribes on the Air-Dyne bicycle. She stated again that Chief Randall is able to complete the essential tasks of being a police officer, he can run in short bursts, he can run to chase a criminal – he just cannot train for and then run 1.5 miles within the required time. She suggested that this is a reasonable modification and asked the Council to look with favor on the Town's request for the Air-Dyne bicycle test and for an additional extension of time to allow Chief Randall to complete ongoing physical therapy before attempting the alternative test, as his physician has recommended.

The additional extension of time requested is through March 9, 2011, the date when his current term in elected office will expire. She noted that non-elected police officers are permitted two years following their date of hire to become certified and that "regulations" state that the Council "shall" grant a waiver for a medical disability such as this.

Chairman Prozzo recognized Attorney General Delaney for a question of Attorney Spector. He asked if the Town were making this request under the ADA on the grounds that the Council is a “public entity,” as opposed to an employer. She confirmed that the Council is considered a public entity that issues certifications, and not an employer.

AG Delaney asked Attorney Spector if she could cite any authority that supports her assertion that the Council is considered a public entity under the ADA, as opposed to an employer. She cited Title II of the ADA Technical Assistance Manual (available on line at ada.gov). He asked her to provide the ADA definition of a public entity; she cited, “Public entity: Any state or local government, any department, agency, special purpose district, or other instrumentality of a state or local government.”

Chairman Prozzo recognized Sheriff Foote, who commented that **his deputy (amended 3/23/10 – strike “he personally has” at the request of Sheriff Foote)** pursued a criminal on foot in the snow for more than 1.5 miles as recently as January 2010. Attorney Spector speculated that if Chief Randall were faced with that situation, “adrenalin would kick in” and he would be able to pursue the criminal – but, at present his medical disability prevents him from training and successfully testing for the 1.5 mile run. She assured the Council that Chief Randall does have the cardiovascular fitness required to complete the essential tasks of being a police officer.

Commissioner Wrenn asked if, based on the Common Questions Regarding Physical Fitness Tests, Standards and Programs for Public Safety, Attorney Spector was stating that Chief Randall would be willing to take any alternative methods that Cooper has suggested. She replied, “...anything Cooper has suggested that he is able to do with his hip – absolutely.” Commissioner Wrenn specifically referenced the Schwinn Air-Dyne bicycle test as an acceptable alternative, and asked for clarification that Chief Randall has difficulty with only the 1.5 mile run component of the fitness test. She assured the Council that Chief Randall would be able to do the bicycle test when his physical therapy was completed. Chief Randall’s surgery was performed only four weeks ago.

Chairman Prozzo noted that the statute indicates that “an elected officer” is only allowed six months and a six-month extension (total of twelve months) to comply. He suggested that what the Town is asking the Council to do would be a violation of the law. Attorney Spector countered that the ADA, being federal law, requires that the Council make reasonable modifications and that granting an extension for Chief Randall to comply would be a reasonable modification. Chairman Prozzo said that he did not agree with this assertion.

Chairman Prozzo further stated that the Air-Dyne bicycle test is an available alternative for Chief Randall; however, the statute says he must comply within one year of his date of election. And, in the case of a nonelected officer, the Council has no authority to grant an extension beyond the maximum two-year period permitted under the statute. Responding to a question from Commissioner Wrenn, Lieutenant Bodanza clarified Council Rules allow that the alternative test is permitted for ongoing physical fitness testing, but not for fitness testing required to receive certification, as the Chairman had stated.

Attorney Spector suggested that perhaps it is an option for Chief Randall to be certified as a part-time officer until he is able to comply; this would allow him to continue to work and make the effort to comply with the fitness requirement, while a replacement is appointed to his elected position. Commissioner Wrenn stated that this would be the decision of the Town and not an action taken by the Council.

Chief Dodge asked if a similar issue has already been investigated by the Council's legal counsel in the Attorney General's office, Nancy Smith. Attorney General Delaney stated that the matter at hand brings up a new issue in this regard and that he would ask her to look into it. Attorney Spector said that the Town is open to any alternatives that the Council may put forward that would allow Chief Randall to meet the fitness requirement and the needs of the Town.

Chief Randall was sworn and testified to his dedication to the Town and his commitment to law enforcement. He explained that his need for a hip replacement came to light after he had completed most of the Academy; he proceeded to complete the Academy Session and the only requirement he could not complete successfully was the 1.5 mile run. Chief Randall stated that he was able to train on the Air-Dyne during the Academy as way of building his endurance for performing the 1.5 mile run, but these efforts were not successful.

Commissioner Wrenn asked if Chief Randall had consulted with his doctor about his ability to use the Air-Dyne bicycle, if it would be a viable option if the Council were able to make the alternative test available for meeting initial fitness requirements. Chief Randall said that he would be meeting with his surgeon in the near future and would confirm that he will be able to take the bicycle test after his physical therapy has been completed. He stated that his doctor's recommendation is that sustained running at any time would negate any improvement that the surgery had accomplished, but using the Air-Dyne bicycle would be an option. Both Chief Randall and Attorney Spector assured that a letter from this doctor would be made available, but could not be produced for this meeting because the doctor was out of town at the present.

Chairman Prozzo stated that the statute dictates that after March 9, 2010, no further extensions could be granted; notwithstanding the need for the Council to seek the advice of legal counsel regarding the points raised by Attorney Spector, the next Council meeting will not occur until March 23, 2010. Attorney General Delaney agreed that the Council has no option to grant a further extension/waiver. Assuming that the Town will exercise their authority to appoint a replacement, there is an opportunity for Chief Randall to resume his elected office if he is able to meet the fitness requirement before the end of that term of office, March 9, 2011.

Commissioner Wrenn, with a second by Attorney General Delaney, moved that the discussion relative to the matter at hand be tabled until the Council can receive advice from legal counsel.

Request for Consideration

NONPUBLIC SESSION: Brian S. Storace

Mr. Brian S. Storace requested the opportunity to address the Council regarding the removal of certain documentation from his Police Standards and Training Council training file. Having been informed of the Council's administrative protocol, Mr. Storace voiced his preference for the matter to be heard in a nonpublic session.

As provided in RSA 91-A:3, II (a), discussion concerning personnel matters took place in a nonpublic session, following a motion by Chief Dodge, a second by Chief Morency, and a unanimous roll call vote of the ten members present. NOTE: Mr. Annal was not present for this matter. The nonpublic session commenced at 11:53 a.m.

A motion by Chief Dodge, seconded by Chief Morency, to seal the minutes of the nonpublic session was unanimously approved by the Council.

Chief Dodge further moved that the Council exit the nonpublic session. Chief Morency seconded the motion. With a unanimous roll call vote of the Council, the nonpublic session concluded at 12:10 p.m.


In public session, Justice Champagne moved that the Council deny the request of Brian Storace for the Council to remove Form G from his training file. Following a second by Sheriff Foote, the Council supported the motion without exception.

Next Meeting Date/Adjournment

The next meeting of the New Hampshire Police Standards and Training Council will be held on Tuesday, March 23, 2010, at nine o'clock in the morning, at 17 Institute Drive, Concord, New Hampshire, in the John O. Morton conference room.

Upon a motion by Chief Dodge, seconded by Chief Morency, the Council voted unanimously to adjourn the meeting at 12:14 p.m.

Respectfully submitted,



Chairman Michael L. Prozzo, Jr.