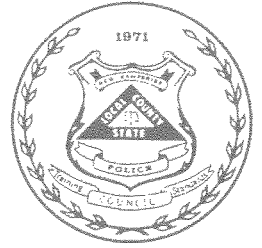




Sheriff Michael L. Prozzo, Jr.
Chairman

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

Approved Minutes

July 27, 2010

Call to Order

The 397th meeting of the New Hampshire Police Standards and Training Council was called to order at 9:07 a.m. by Vice Chairman William L. Wrenn, Jr., Commissioner of the New Hampshire Department of Corrections, at the John O. Morton conference room at Police Standards and Training in Concord, New Hampshire.

Members Present: Associate Justice Stephen H. Roberts, Dover District Court; Associate Justice Norman E. Champagne, Manchester District Court; Colonel Robert Quinn, New Hampshire State Police; Chief Anthony Colarusso, Dover Police Department; Chief Gregory C. Dodge, Epping Police Department; and, Attorney General Michael Delaney

Members Absent: Chief James Sullivan, Hampton Police Department; Richard Foote, Sheriff of Cheshire County; Michael L. Prozzo, Jr., Sheriff of Sullivan County; and, Chief Peter Morency, Berlin Police Department, did not attend. No representative from the Community College System of NH was present.

Staff Present: Director Donald Vittum, Lieutenant Mark Bodanza, Captain Benjamin Jean, Captain Robert Stafford, Captain Thomas McCabe, Lieutenant Stephen Kerlee, Investigative Paralegal Anne Paquin, and Council Secretary Kathryn Day

Others Present: Chief William R. Hart, Londonderry Police Department; Attorney Donald L. Blazka, Jr.; Officer Jason Archambault; Mrs. Olivia Archambault; Sergeant Ryan Carney, Officer Eric Arel, and several officers from the Londonderry Police Department; and, New Hampshire Marine Patrol Director David Barrett

Approval of Minutes

The Council considered an amendment for minor corrections to the minutes. Chief Colarusso, with a second by Justice Champagne, moved for the Council to approve the minutes as amended. The voice vote of the Council was unanimous in favor.

Director's Report

Director Vittum had no comments to add and the Council members had no questions for the Director.

RECESS

The meeting was in recess from 9:10 a.m. to 9:24 a.m. while the Council consulted with legal counsel regarding a request of UNH Police Chief Halias.

The meeting was in recess again from 10:11 a.m. to 10:20 a.m. for a break period.

Previous and/or Unfinished Business

TABLED 6/22/10: Request of University of New Hampshire Police Department

On June 22, 2010, the Council voted that Council action on Chief Halias' request be tabled and that the Council refer the matter for a review by legal counsel, so that the Council could come to an understanding of their options under RSA 188-F:27.

After a recess to consult with legal counsel, the meeting was resumed and Vice Chairman Wrenn articulated that the Council is instructing Director Vittum to send a letter to inform Chief Halias of their determination that the officer in question is grandfathered under the Rules and will not be required to comply with requirements for ongoing physical fitness testing.

Justice Champagne pointed out that there may still be a request to waive the entrance fitness requirement for certification to be reinstated and to attend the Law Package. Commissioner Wrenn recommended that the Director inform UNH PD that if the officer wants to request a waiver of the entrance fitness requirement, that request will be considered as a separate issue.

Justice Champagne stated that he could not recall if this waiver was a part of the request UNH presented at the June 2010 meeting. Lieutenant Bodanza advised that there was a "...request for a blanket waiver ... because, I think he thought one triggers the next. According to the minutes, the specific request was for a waiver of the fitness testing requirements mandated by RSA 188-F:27." Vice Chairman Wrenn concluded that at this time, no action on the part of the Council is required, because the Director will address the matter at hand in his letter. End of discussion

TABLED 6/22/10: Proposed Rule Changes

At their meeting on June 22, 2010, the Council chose to take no action on this proposal and the staff was advised to make further recommendations/changes and resubmit their proposal for a change to Pol 402.02 Revocation and Suspension.

At the Council meeting on July 27, 2010, the staff presented the following revision to the proposed Rule change:

Pol 402.02 Revocation or Suspension

(a) The council shall, unless it has just cause to do otherwise as provided in (e) below, order the suspension or revocation of the certification of any police or corrections officer for any of the following reasons:

- (1) The certification was obtained by fraudulent or illegal means;
- (2) The officer has been convicted either prior to or after certification of a crime which constitutes a felony in this or any other state, territory, province or country;
- (3) The officer has been convicted either prior to or after certification of a misdemeanor for which there was a sentence of incarceration, regardless of whether all or part of the sentence was suspended;
- (4) The officer has been convicted either prior to or after certification of a crime of moral turpitude or of a crime which tends to bring discredit on the police or corrections service, including but not limited to:
 - a. Theft;
 - b. Assault;
 - c. DWI;
 - d. Criminal threatening;
 - e. Reckless conduct;
 - f. Corrupt practices;
 - g. Falsification of documents or evidence;
 - h. Fraud;

- i. Sexual assault;
- j. Public indecency;
- k. Stalking or criminal violation of a protective order;
- l. Reckless driving; or
- m. Disobeying an officer;

(5) The officer's discharge has become final or he or she has been allowed to resign in lieu of discharge from police or corrections employment in this or any other state, country, or territory for reasons of a lack of moral character as defined in Pol 101.28 or Pol 402.02 (k) or moral turpitude as defined in Pol 101.29 or for acts or omissions of conduct which would cause a reasonable person to have doubts about the individual's honesty, fairness, and respect for the rights of others and for the laws of the state or nation.

(6) The officer has, after being hired as a police, corrections or probation/parole officer:

- a. Used marijuana;
- b. Illegally used or possessed any other controlled substance; or
- c. Illegally purchased, sold, cultivated, transported, manufactured, or distributed a controlled drug or an imitation controlled drug.

(7) The officer is unable to continue as an active duty police, corrections or probation/parole officer for a period of 45 days or more by reason of a severe level mental disorder as diagnosed by a psychologist or psychiatrist who uses mental status examinations and standardized psychological tests normed for police or corrections officers;

Proposed changes

In section 402.02 (a)(8) remove the word "chief" and reorganize (8) A chief law enforcement officer has willfully:(a) violated council rules relative to himself or herself or the officers working under his/her control; or (b) submitted false or forged documents; or (c) misrepresented a document or testimony before the council;

Source. #1534, eff 2-17-80; ss by #1988, eff 3-25-82; ss by #2783, eff 7-27-84; ss by #4437, eff 6-22-88; ss by #5836, eff 6-15-94; ss by #7302, eff 6-8-00; ss by #9168, INTERIM, eff 6-3-08, EXPIRES: 11-30-08; ss by #9224, eff 8-1-08

Justice Roberts remarked that the revisions made by staff appear to address the Council's concerns by clarifying that (a), (b), and (c) in Pol 402.02 (a) (8) are separate considerations. Justice Roberts moved for the Council to approve the proposed Rule change as amended. With a second by Justice Champagne and a unanimous voice vote, the motion passed 7-0.

Proposed Protocol for Conducting Ongoing Fitness Testing

At their meeting in May 2010, the Council agreed to establish protocol for conducting ongoing physical fitness testing. The Council reviewed the proposal developed by staff based on input given by Council members and staff recommendations.

Chief Colarusso, with a second by Justice Roberts, moved for the Council to approve the document as presented. Without further discussion, the Council voted 7-0 to support the motion.

Law Enforcement Training in New Hampshire DOT Work Zones

At their meeting on June 22, 2010, the staff was asked to provide further information about the legal requirements for this training (clarify "any detail") and the funding and the resources required to deliver the training, specifically a "train-the-trainer" approach.

On this day, the Council reviewed a cost analysis prepared by Captain Varney and discussed the potential for Police Standards and Training to conduct a "train-the-trainer" program for the "officer presence" and "flagger" components.

Lieutenant Bodanza confirmed that ATSSA will permit us to conduct “train-the-trainer” programs for flagger training; however, the “officer presence” is still under review by the Department of Transportation and they have not certified their own program yet. An ATSSA certified instructor can teach “something that is comparable to the program.”

Director Vittum asked if LGC intended to do the same training. Lieutenant Bodanza stated that, “We just received an email the other day that LGC is going to offer “train-the-trainer” in these areas to its members.”

Vice Chairman Wrenn encouraged the Council to move forward and not to wait for the DOT to reach a conclusion about officer presence training, if only to reduce exposure to liabilities, because the DOT committee meets only three times each year and the requirements for the training are in force now.

Colonel Quinn again raised the question, “How is the word “detail” defined as it relates to the different circumstances that would require an officer to control, direct, and divert traffic? Does this include all police details?”

Lieutenant Bodanza explained that flagger training was for those details that are on any roadway where traffic needs to be stopped. The officer would be required by the Department of Labor to use a paddle; the “officer presence” pertains to interstate highway details where there is no stopping of traffic. There may be a diverting of traffic, but no stopping that would require an officer to use a paddle. Right now, the focus of the Department of Labor is the flagger training, and not “officer presence.” Officer presence is the DOT’s project; they support the recommendation that every person on a New Hampshire DOT funded job, federal or state, needs to have officer presence training in order to perform details that they fund. The two components together would enable an officer to do flagging, use paddles, and to monitor and divert traffic otherwise.

Colonel Quinn suggested that the use of paddles should be viewed as a practical matter; for example, if an officer is on a nighttime detail and is using a flashlight, is it practical to also require the use of paddles which may or may not be visible to the driver(s)? Commissioner Wrenn suggested that regulations would be covered in the training and expectations for different types of details would be clarified.

At the conclusion of this discussion, Justice Champagne moved that the Council table this matter for further study. Justice Roberts seconded the motion and the Council voted 7-0 in favor.

DOC Curriculum Project Planning Update

The Director has received confirmation from Christopher Kench, Director of NH Department of Corrections, that the proposed Phase II curriculum meets with the approval of the Department of Corrections. On this day, the Council was asked to give final approval to implement the curriculum.

Chief Dodge moved that the Council adopt the Phase II DOC Academy curriculum as presented and approved by the Department of Corrections. Justice Roberts moved to second. There was no discussion and the Council voted 7-0 to adopt the curriculum.

New Business

Hearings

NONPUBLIC SESSION: Officer Jason Archambault, Londonderry Police Department

Officer Archambault appeared to show cause why the Council should not suspend or revoke his certification pursuant to Pol 402.02 (a) (12). Officer Archambault stated that it was his wish for this matter to be heard in nonpublic session.

Justice Roberts, with a second by Justice Champagne, moved that the Council enter into a nonpublic session to discuss personnel matters, as provided in RSA 91-A:3, II (a). The roll call vote of the seven members present was unanimous in favor. The nonpublic session commenced at 9:29 a.m.

Chief Dodge moved to seal the minutes of the nonpublic session. Following a second by Chief Colarusso, the Council voted 7-0 in support of the motion.

Justice Roberts moved for the Council to exit the nonpublic session, and Colonel Quinn seconded the motion. In a roll call vote, all seven members present voted yes. The nonpublic session concluded at 10:01 a.m.

Upon return to public session, Chief Dodge requested that the staff reference the Rules.

Lieutenant Bodanza responded that under Pol 402.02 Revocation or Suspension, the introductory paragraph reads, "... (a) *The council shall, unless it has just cause to do otherwise as provided in (e) below...*" Lieutenant Bodanza stated that Paragraph (e) says that, "*Council will unless finding just cause, because ... (sic)*" Lieutenant Bodanza began his statement again, "Because ... (1) *The charges against the officer were not proven by a preponderance of the evidence; (2) Suspension or revocation would have no rehabilitative value, or promote a legitimate public interest; or (3) The officer's health or service status makes suspension or revocation a needless gesture.*"

Lieutenant Bodanza continued, (paraphrasing) "... (The Council) will suspend the officer's certification if, in fact, they have ... (12) *entered into a no plea or an innocent plea to a criminal offense and agreed to participate in a diversion program in lieu of trial.* So, in (e) there's three considerations as to ... the Council can take into ... uh, considering the matter ... as to why not to suspend the officer's certification ... where he has entered into a diversion program, with a no plea or an innocent plea."

Vice Chairman Wrenn asked if the Council had any further questions. Hearing none, Vice Chairman Wrenn stated that in his opinion this officer "certainly has presented a very strong argument that he and his wife and family seemed to have done everything they could; he said that this is demonstrated by ongoing participation in counseling, individually and together. Testimony heard in nonpublic session explained the unusual stressors on this officer at the time of the incident. Vice Chairman Wrenn asked the Council to consider that these circumstances were likely recognized by the court when the decision was reached to Nolle Pros the charges and that the officer voluntarily initiated counseling prior to the court's decision and that counseling is ongoing as directed by the court order. Vice Chairman Wrenn proposed that the thirty-day suspension period already imposed by the Londonderry Police Department effectively enhances the punitive aspect and that further action by the Council would not have any more corrective effect.

Chief Dodge agreed with these statements and that the case presented was a compelling one; he noted the presence of the contingent of Londonderry officers in support of Officer Archambault and the extraordinary measures initiated by the officer "above and beyond what was required" to address and correct any issues. These facts should be considered "just cause" for the Council not to act on the officer's certification.

Chief Dodge moved that the Council take no action on this officer's certification. Chief Colarusso seconded the motion.

In the discussion that followed, Justice Champagne stated that he would recommend instead that the Council's final decision be postponed, because the charges could potentially be brought forward in the future under the Agreement for Conditional Nolle Pros in effect until April 29, 2011. However unlikely a future violation might be, the Council should preserve their authority

to suspend or revoke certification until there is no longer a possibility of the charges being "revisited". Justice Roberts agreed that this was a better solution.

Chief Dodge, with the agreement of Chief Colarusso, withdrew his motion. Justice Champagne confirmed that the diversion program is expected to be completed in one year, and he put forth the following

MOTION: That the Council take no action at this time on the certification of Jason Archambault, and at the end of one year (i.e., May 1, 2011), if there has been no further action taken and no criminal charges have been brought forward, this matter will be closed.

Chief Colarusso seconded the motion. Vice Chairman Wrenn clarified that Officer Archambault will retain his certification. The vote of the Council was 7-0 in support of the motion.

Continuance

A hearing scheduled pursuant to Pol 402.02 and 403.01, concerning a police chief submitting false documents regarding training and noncompliance with requirements for annual refresher training, **will be continued until August 24, 2010**. Pursuant to RSA 91-A:3, II (a), this hearing is scheduled to be heard in nonpublic session.

Christopher Boucher – TABLED

Lieutenant Bodanza informed that Mr. Boucher was not present for the hearing to show cause why the Council should not suspend or revoke his certification pursuant to Pol 402.02 (a) (5) and that this matter arises out of a disposition negotiated with the Office of the Attorney General.

Vice Chairman Wrenn proposed that the Council postpone this matter until the next meeting when perhaps more Council members would be available to hear this case.

Chief Dodge moved for the Council to table the matter of Christopher Boucher until August 24, 2010, the date of the next Council meeting. Following a second by Chief Colarusso, the Council supported the motion without exception.

Lawrence Fredette III – TABLED

Vice Chairman Wrenn informed the Council that there was not a quorum to hold a hearing for Mr. Fredette to show cause why the Council should not suspend or revoke his certification pursuant to Pol 402.02 (a) (4) (g), since the Office of the Attorney General had involvement in the case and because Mr. Fredette was a former Highway Patrol officer. As result, both Attorney General Delaney and Colonel Quinn would be recused.

Justice Champagne moved for the Council to table the matter of Lawrence Fredette until August 24, 2010, the date of the next Council meeting. Following a second by Justice Roberts, the Council supported the motion without exception.

NONPUBLIC SESSION: New Hampshire Marine Patrol – Eligibility Hearing

Director David Barrett filed a request under Pol 301.05 (g) (8) for the Council to determine eligibility for **Officer Timothy Hanchuruck** for certification as a New Hampshire police officer. Director Barrett was present for the hearing. Lieutenant Bodanza advised that RSA 91-A:3, III (b) provides that matters regarding the hiring of any person as a public employee may be heard in nonpublic session.

A motion by Justice Roberts, seconded by Chief Dodge, for the Council to enter into a nonpublic session, pursuant to RSA 91-A:3, III (b), received unanimous support in a roll call vote. The nonpublic session commenced at 10:22 a.m.

Discussion during the nonpublic session raised questions about facts revealed in the background investigation of this officer, namely, the statutes in effect in the State of Connecticut where Officer Hanchuruck resided at 17 years of age and whether Council Rules would prohibit granting certification to Officer Hanchuruck.

Chief Dodge moved that the minutes of the nonpublic session be sealed. Following a second by Chief Colarusso, the voice vote of the Council was 7-0 in favor.

Chief Dodge further moved, with a second by Chief Colarusso, that the Council exit the nonpublic session. The roll call vote of the Council was 7-0 in support. The nonpublic session concluded at 10:41 a.m.

Upon return to public session, Chief Dodge, with a second by Chief Colarusso, put forth this

MOTION: That the Council table the matter of the eligibility of Officer Timothy Hanchuruck to be granted New Hampshire law enforcement certification until the State of Connecticut statutes can be verified in order to clarify whether the Council's Rule (Pol 301.05 (g) (8) a.) does in fact preclude a decision to grant certification to this officer.

The motion passed on a voice vote of 7-0.

CONSENT CALENDAR

The Council considered staff recommendations for items presented on the Consent Calendar, along with an amendment presented by staff. With a motion by Justice Roberts and a second by Colonel Quinn, the Council approved all requests presented on the amended Consent Calendar.

APPROVED CONSENT CALENDAR

PT&E Requests

Full Time

Officer Shawn C. Carlson, Fremont Police Department will be granted full-time police officer certification based upon prior training and experience upon successful completion of the medical exam, entrance fitness test, and the Law Package of the Full-Time Police Officer Academy, providing that CPR/First Aid certification is current.

Officer Juel K. Cooper, Dover Police Department will be granted full-time police officer certification based upon prior training and experience upon successful completion of the medical exam, entrance fitness test, and the Law Package of the Full-Time Police Officer Academy, providing that CPR/First Aid certification is current.

Officer Christopher R. Patten, Goffstown Police Department will be granted full-time police officer certification based upon prior training and experience upon successful completion of the medical exam, entrance fitness test, and the Law Package of the Full-Time Police Officer Academy, providing that CPR/First Aid certification is current.

Part Time

Officer Timothy J. Cusato, Chester Police Department will be granted part-time police officer certification based upon prior training and experience after successful completion of the medical exam, the entrance fitness test, and the full program of the Part-Time Police Officer Academy.

Adam A. Painchaud, Alton Police Department will be granted part-time police officer certification based upon prior training and experience after successful completion of the medical exam, the entrance fitness test, and the full program of the Part-Time Police Officer Academy.

Officer Mark Souza, New Hampshire Marine Patrol will be granted part-time police officer certification based upon prior training and experience after successful completion of the medical exam, the entrance fitness test, and the full program of the Part-Time Police Officer Academy.

Requests for Extensions

Full-Time Police Officer

153rd Academy 08/30/10 -12/03/10 (fitness test 08/16/10)

Officer Gregory E. Bryar, Sugar Hill Police Department

Extension granted through the end of the 153rd Full-Time Police Officer Academy with the stipulation that Officer Bryar continue working only in the direct presence of a certified officer

Officer Tracy L. Hayes, Rochester Police Department

Extension granted through the end of the 153rd Full-Time Police Officer Academy with the stipulation that Officer Hayes continue working only in the direct presence of a certified officer.

Officer Ian M. MacMillan, Ossipee Police Department

Extension granted through the end of the 153rd Full-Time Police Officer Academy.

Part-Time Police Officer

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

Officer Daniel T. Duffy, Strafford Police Department

Extension granted through the end of the 258th Part-Time Police Officer Academy with the stipulation that Officer Duffy continue working only in the direct presence of a certified officer

Officer Brandon D. Gagnon, Merrimack Police Department

Extension granted through the end of the 258th Part-Time Police Officer Academy with the stipulation that Officer Gagnon continue working only in the direct presence of a certified officer.

Officer Alek H. Ladd, Loudon Police Department

Extension granted through the end of the 258th Part-Time Police Officer Academy with the stipulation that Officer Ladd continue working only in the direct presence of a certified officer.

259th Academy 02/05/11 – 05/06/11 (fitness test 01/22/11)

Officer Lauren A. Andrews, New Hampshire Marine Patrol

Extension granted through the end of the 259th Part-Time Police Academy with the stipulation that Officer Andrews continue working only in the direct presence of a certified officer

Officer Adam J. Thistle, New Hampshire Marine Patrol

Extension granted through the end of the 259th Part-Time Police Academy with the stipulation that Officer Thistle continue working only in the direct presence of a certified officer.

Officer Michael A. Wetherbee, New Hampshire Marine Patrol

Extension granted through the end of the 259th Part-Time Police Academy with the stipulation that Officer Wetherbee continue working only in the direct presence of a certified officer.

Requests for Specialized Training Grant Funds

Center Harbor Police Department was granted funds for Chief Mark C. Chase to attend the Command Training Series Executive Development Course at Roger Williams University in Portsmouth, Rhode Island, presented in two sessions, October 12 through 14 and November 16 through 18, 2010. **Amount: \$1,000.00**

Cheshire County Sheriff's Office was granted funds for an officer to attend the FBI-LEEDA Command Institute for Law Enforcement Executives at the Hampton Police Department, September 13 through 17, 2010. **Amount: \$763.00**

Lebanon Police Department was granted funds for Sergeant Mike S. Robert to attend the Command Training Series First Line Supervisor Course at Roger Williams University in Portsmouth, Rhode Island, for two weeks beginning September 19, 2010. **Amount: \$1,000.00**

Merrimack Police Department was granted funds for Captain Peter Albert and Captain Michael Dudash to attend the FBI-LEEDA Command Institute for Law Enforcement Executives at the Hampton Police Department, September 13 through 17, 2010. **Amount: \$867.00 (total)**

Police Standards and Training was granted funds for staff development and training in Fiscal Year 2011. **Amount: \$6,000.00**

Stratham Police Department was granted funds for Sergeant J. Christopher Call to attend the Command Training Series First Line Supervisor Course at Roger Williams University in Portsmouth, Rhode Island, for two weeks beginning September 19, 2010. **Amount: \$1,000.00**

Wakefield Police Department was granted funds for Sergeant Brian King to attend the FBI-LEEDA Command Institute for Law Enforcement Executives at the Hampton Police Department, September 13 through 17, 2010. **Amount: \$772.96**

(END APPROVED CONSENT CALENDAR)

Other New Business

General (Discussion)

Model Policies for Police Departments

Vice Chairman Wrenn referenced a communication from the Local Government Center addressed to members of the New Hampshire Association of Chiefs of Police, Director Vittum, and two other PS&T staff members.

Vice Chairman Wrenn commented that, "Some of the information that has come from the Local Government Center about our (Police Standards and Training Council) involvement in this is inaccurate. There has never been any discussion with them about ...taking these model policies and making them our model policies. The discussion that I had with Mr. Scott Weden (last summer or last fall) had to do with their writing up model policies that would be voted on by (NHACOP) ... and supporting their efforts to develop policies. And, they had asked if we would review these policies, and I said that we would review them, but we are not going to be a part of approving model policies; but, certainly, we would like to see what they had in draft form before they went out."

Subsequently, the LGC appeared to presume that Police Standards and Training Council would not only review them, but approve them and work on them. Vice Chairman Wrenn stated that this was "never a part of the discussion." He asked the Council to consider that legal counsel has researched the issue and given an opinion to the Council and he wanted to ensure at this time that the members have a clear understanding of the Council's position. End of discussion.

Other Business

Next Meeting Date/Adjournment

The next meeting of the New Hampshire Police Standards and Training Council will be held on Tuesday August 24, 2010, at nine o'clock in the morning, at 17 Institute Drive in Concord, New Hampshire.

Upon a motion by Attorney General Delaney, seconded by Chief Colarusso, the Council voted unanimously to adjourn the meeting at 11:10 a.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William L. Wrenn, Jr.", written in a cursive style with a long horizontal flourish at the end.

Vice Chairman William L. Wrenn, Jr.