



Chief Anthony F. Colarusso, Jr.  
Chairman

**State of New Hampshire**  
**POLICE STANDARDS & TRAINING COUNCIL**  
**ARTHUR D. KEHAS**  
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Donald L. Vittum  
Director

**Approved Minutes**

**December 20, 2016**

The 474th meeting of the New Hampshire Police Standards and Training Council was called to order at 9:03 a.m. by Chairman, Chief Anthony Colarusso, Jr., in classroom one at the Arthur D. Kehas Law Enforcement Training Facility and Campus in Concord, New Hampshire.

Members Present: Chairman Chief Anthony Colarusso, Jr., Dover Police Department, Strafford County, Chief David Cahill, Sunapee Police Department, Attorney General Joseph Foster, Chief William Hart, Londonderry Police Department, Sheriff Douglas Dutile, Major David Parenteau, New Hampshire State Police, Sheriff David Dubois, Strafford County Sheriff's Office, Chief Enoch Willard, Manchester Police Department, Dr. Ekaterina Hurst.

Members Absent: Judge Sawako Gardner, 10<sup>th</sup> Circuit-District Division – Portsmouth, President Susan Dunton, Community College System of New Hampshire, Paula Wall, Vice-Chairman Commissioner William Wrenn, Department of Corrections, Justice Honorable James Carroll.

Staff Present: Captain Benjamin Jean, Captain Mark Bodanza, Chief Timothy Merrill, Captain Thomas McCabe

**Call Meeting to Order**

Chairman Colarusso called meeting to order at 9:05 a.m.

**Approval of Minutes**

**Motion** made to accept the Minutes of the November 15, 2016 Council meeting by Chief Hart. Following a second by Sheriff Dutile, the voice vote of the Council was unanimous in favor of the Motion.

**Director's Report**

Saved for discussion at the end of meeting.

**Financial Report**

Nothing new to report regarding financial and no questions asked by Council regarding

same.

### **Daniel Shapiro – Waiver of Three Year Testing**

Captain Bodanza stated Mr. Shapiro was present represented by his attorney, Jason Major. Mr. Shapiro submitted a request to speak with the Council on his fitness testing status. It was the Council's decision in 2009 that officers hired under New Hampshire Hospital Authority who received certification as part-time officers were given unlimited hours. After that, a merger with the NH State Police occurred and officers were given an option to attend the full-time academy to increase their training. Mr. Shapiro completed the full-time academy. The question arose as to whether being certified as a full-time officer he needed to take the three year fitness test. While certified as a part-time officer, he was not subject to test as he was grandfathered in 1999.

In 2009, Council looked at this issue and ruled as follows: "As long as Officer Shapiro stayed with the NH Campus Police, he was exempt from fitness requirements under 188-F:27. However, if he left that agency and was employed full-time by another agency, he was then subject to the three year fitness test." Mr. Shapiro did, in fact, leave State Police Campus Security in 2011 and went to the Webster Police Department full-time. There was a Form A filed, and a question arose regarding 188-F:27, Form \_\_\_\_\_. The only documentation was limited e-mail correspondence between a Council's secretary at the time and the Webster Police Department lieutenant. The e-mail first requested the 188-F:27 form, and there is some dialogue about whether or not it is required because he was grandfathered for the campus police position. An e-mail response back from PSTC stated that he is "all set". Therefore, Mr. Shapiro never did a three year fitness test while employed by Webster and is now at Barnstead Police Department as a full-time officer. The subject arose as to why no three year fitness test has been taken. Mr. Shapiro came before the Council to inquire whether he is exempt from testing or whether he needs to test due to his full-time employment with the Barnstead Police Department.

Attorney Jason Major summarized the facts of the matter. He indicated that Daniel Shapiro is going to take the test at PSTC on December 21, 2016. The issue he is looking at is because the Council indicated in 2011 that Mr. Shapiro was all set, it has been five years and Mr. Shapiro is now faced with the situation that he has used up the maximum time allowed for the three year testing. If Mr. Shapiro does not pass the test, he will be de-certified effective midnight, December 31, 2016. Attorney Major requested that if Mr. Shapiro does not pass test that he be allowed a two year probationary status to re-test. He indicated Mr. Shapiro has served with distinction for several years, and the way it stands now if he does not pass the test he can lose his job. Attorney Major believed it would only be fair if Mr. Shapiro is given extra time if he does not pass the test on his first attempt. If the e-mail had not been sent back in 2012, and he had tested in 2009, he would have had multiple chances to pass the test. Mr. Shapiro is in this situation now due to e-mail from PSTC.

After discussion by Council, it was decided that Mr. Shapiro cannot be faulted for this situation, he has followed all the rules, and is an outstanding officer. Chairman Colarusso raises question as to whether Council has the authority to give extensions beyond the five years regardless of what transpired between 2009 and now.

Captain Bodanza indicated under 188-F:27, he does not see an exception in the law, even

for administrative error.

**Motion** made by Sheriff Dubois that Daniel Shapiro is grandfathered regardless of where he is working, and following a second by Chief Hart "for discussion purposes". The Council continued the discussion when the vote was called, and this Motion failed.

Attorney General Foster indicated that decision at that time, by the Council in 2009, was rational. On the issue of whether he can get additional time, it becomes a statutory situation. It would seem to be fair to give him more time if Mr. Shapiro cannot pass.

Sheriff Dubois and Chief Hart indicated Academy has to take some responsibility, whether administrative or not, for this situation.

**Motion** by Chief Hart that Council, in recognition of the exception made in 2009, tolls the statute as against Officer Shapiro and grant an exception, beginning today, under the statute to allow him to take the fitness test with the typical statutory limit to pass, which is up to two years, which is considered the probationary period. Following a second by Sheriff Dutile, the voice vote of the Council was unanimous in favor of the Motion.

### **Accreditation**

Captain Thomas McCabe introduced himself to Council members. Captain McCabe performed research on accreditation and stated there are two companies that offer accreditation for Public Safety Training facilities, CALEA and IDEALEST. On paper IADEALEST looked similar but, after researching both, CALEA has been an established program since 2002. There are five phases for accreditation which takes about 24 months from the signing of any Agreement with them, and staff support is provided throughout the process. The cost of on-site assessment is \$6,000.00. IDEALEST gave very little information online, and Captain McCabe's phone conversation with Mark Damitio of IDEALEST yielded very little information. Captain McCabe indicated there was a lot of double talk and they are only preparing POST-training now. In fact, IDEALEST has not certified any academy at this point. The literature they send out indicates they have all sorts of programs available, but none of them have been established.

Chairman Colarusso indicated it is clear CALEA is the better established program.

**Motion** by Sheriff Dubois that Council pursue CALEA for accreditation purposes. Following a second by Chief Cahill, the voice vote of the Council was unanimous in favor of the Motion.

### **172<sup>nd</sup> Academy Request**

This was on the agenda in case of issues. Chief Merrill wanted Council to know there were several requests from Chiefs regarding whether officers were able to attend the 172<sup>nd</sup> Academy.

### **Jennifer Watson**

Chairman indicated Council is waiting for Attorney Nancy Smith to arrive, who is not here yet, and moved to Item No. 10, David Burris.

### **David Burris**

Attorney for David Burris, Peter Perroni, introduced himself to the Council members and requested a non-public hearing.

**Motion** to enter non-public hearing at 9:28 a.m. for personnel issue by Chief Cahill. Following a second by Sheriff Dutile, a roll call vote was taken and was unanimous in favor of the Motion. At 9:42 a.m., Council exited the non-public session.

**Motion** to exit non-public session by Sheriff Dubois. Following a second by Major Parenteau, a roll call was taken and was unanimous in favor of the Motion.

**Motion** to seal minutes from non-public session by Chief Cahill. Following a second by Attorney General Foster, the voice vote of the Council was unanimous in favor of the Motion.

**Motion** by Sheriff Dubois that Council takes no action due to the administrative action already taken. There is no safety threat to the public or lack of confidence in the criminal justice system for this case. Following a second by Chief Hart, the voice vote of the Council was unanimous in favor of the Motion. Chairman added. clarification is made that if Mr. Burris' status changes, he will need to come before the Council again (unanimously agreed).

### **Consent Calendar**

#### **PT&E Requests**

Chairman Colarusso indicated the Consent Calendar had eight addendums, all medical extensions. However, Addendum #7 is acceptance of a coin and a shoulder patch from staff, with a total value of \$13.00.

**Mark Dressel, Washington Police Department** (DOH: 11/21/16) will be granted certification based on prior training and experience upon completion of medical examination, entrance fitness test and law package of the full-time academy.

**Benedict Liberatore, Webster Police Department** (DOH: 10/17/16) will be granted certification based on prior training and experience upon completion of medical examination, entrance fitness test and law package of the full-time academy.

**Jenna Roberts, Londonderry Police Department** (DOH 12/12/16), will be granted certification based on prior training and experience upon completion of medical examination, entrance fitness test and law package of the full-time academy.

Ferenc Silye, Littleton Police Department (DOH 12/1/16) will be granted certification based on prior training and experience upon completion of medical examination, entrance fitness test and law package of the full-time academy.

### **Requests for Extensions**

Note: Extensions granted until the first council meeting following the fitness testing for the requested Academy, and, if testing is successful, to the first council meeting following the end of the requested Academy.

Robert Mott, Gilmanton Police Department (DOH: 08/19/16 Part-Time) was granted an extension until the first council meeting following the fitness testing for the requested academy, and, if testing is successful, to the first council meeting following the end of the requested academy with the stipulation that the officer must remain actively enrolled in the 172nd Academy.

Emily Winslow, Lebanon Police Department (DOH: 09/25/16 **Not Part-time certified**) was granted an extension until the first council meeting following the fitness testing for the requested academy, and, if testing is successful, to the first council meeting following the end of the requested academy with the stipulation that the officer must remain actively enrolled in the 172nd Academy and may continue working only in the direct presence of a certified officer.

Peter Zamachaj, Frankestown Police Department (DOH: 11/07/16 Part-Time certified) was granted an extension until the first council meeting following the fitness testing for the requested academy, and, if testing is successful, to the first council meeting following the end of the requested academy with the stipulation that the officer must remain actively enrolled in the 172nd Academy.

Michael Heikkila, Temple-Greenville Police Department (DOH: 10/02/16 Part-Time certified) was granted an extension through the end of the 172nd Full-Time Police Officer Academy. An extension is granted until the first council meeting following the fitness testing for the requested academy, and, if testing is successful, to the first council meeting following the end of the requested academy with the stipulation that the officer must remain actively enrolled in the 172nd Academy.

Raimo Kalvi, New Hampshire Department of Corrections (DOH: 08/05/16 Not Probation/Parole Certified) was granted an extension until the first council meeting following the fitness testing for the requested academy, and, if testing is successful, to the first council meeting following the end of the requested academy with the stipulation that the officer must remain actively enrolled in the 172nd Academy and may continue working only in the direct presence of a certified Probation/Parole officer.

### **Requests for Specialized Training Grant Funds (Balance: \$5,407.16 )**

Lebanon Police Department Grant **Police Department** is granted funds for Lt. Matthew Isham and Lt. Richard Smolenski to attend the Command Training Mid Management by Roger Williams University in Portsmouth, RI, from March 19, 2017 to March 24, 2017.

Rochester Police Department Grant **Police Department** is granted funds for Lt. Andrew Swanberry to attend the Internal Affairs Investigation by Roger Williams University and Concord Police Department, held at NH Police Standards and Training Council, from December 5, 2016 to December 8, 2016.

**Ongoing Physical Fitness Testing**  
**Requests for Fitness Testing Extensions**

Brian Marion, New Hampshire Department of Corrections  
Bradley Morse, New Hampshire Fish and Game Department  
Thomas Burke, IV, Hillsborough County Sheriff's Department  
Justin Crotty, Warner Police Department  
James Yerardi, Dover Police Department  
Brian Landry, Derry Police Department  
Adam Fanjoy, Office of the Fire Marshal  
Cody DeMoss, New Hampshire Department of Corrections  
Michael Hughes, Derry Police Department  
Thomas Kalantzis, Hillsborough County Sheriff's Office  
Russell Bailey, New Hampshire State Police  
Steven Hyde, Madbury Police Department  
Richard Telfson, Concord Police Department

**End of Consent Calendar**

**Motion** to approve Consent Calendar, as well as the eight addendums, by Chief Cahill, followed by a second from Chief Hart. Chairman Colarusso recused himself from Item 27, James Yerardi, Dover Police Department. Chief Hart recused himself from Item 13, Jenna Roberts, Londonderry Police Department. Chief Willard recused himself from Addendum 1, Ryan Hickey, and Addendum 3, Aaron Brown (Manchester Police Department).

**Non Consent Calendar**

**Steven Marsh – New Hampton Police Department – PT Certified through PSTC**

Captain Bodanza stated New Hampton Police Department has asked for an extension for two academies. Traditionally Council has taken that as a non-consent item for consideration. Reasons are position will not be available until January. Mr. Marsh would not have made it into 172<sup>nd</sup> anyway but would be eligible for 173<sup>rd</sup>, but that is during bike week where the Department is concerned with staffing levels. Therefore, they are asking for the 174<sup>th</sup> academy, if permitted.

**Motion** by Chief Cahill for Mr. Marsh to attend the 174<sup>th</sup> academy based on stress to department with attending the 173<sup>rd</sup>. Following a second by Chief Hart, the voice vote of the Council was unanimous in favor of the Motion.

### **Allison Vachon**

Ms. Vachon was present and the Attorney General recused himself from this matter and left the room. Captain Bodanza stated since issue deals with medical, Ms. Vachon may want to have discussion in non-public. Ms. Vachon stated she was fine with keeping on the record.

Ms. Vachon was due for physical fitness testing back in 2013 and was on a two year extension which brought her to 2015. The Attorney General's office filed a 3-J wavier indicating Ms. Vachon could do the job, however she had an ADA concern that she could not do the physical fitness test. Council granted a one year 3-J waiver under RSA 188-F:27 in order for her to heal from the previous injury and take the fitness test. Ms. Vachon underwent another surgery this year and the Attorney General's office is asking for another 3-J waiver to get her through this current injury. Attorney General's office is willing to make accommodations for Ms. Vachon. Records show that Ms. Vachon has not done a physical fitness test since 2008 based off of extensions and/or failures.

Ms. Vachon stated she actively attends physical therapy and if waiver is extended that she will be able to do the PT test prior to the end of the year. Her doctor wants that time frame for her to continue to rehabilitate. Stated she broke both bones in her leg, with one protruding, and has taken a long time for her to get back to normal.

**Motion** by Chief Cahill to accept 12-month wavier for Ms. Vachon. Following a second by Major Parenteau, the voice vote of the Council was unanimous in favor of the Motion.

Chairman Colarusso indicated Council received letter from Congress thanking us for our work at PSTC.

Chief Merrill asked whether medical extensions that have not yet been received prior to the end of the year will be allowed on the January Council agenda.

**Motion** by Chief Cahill to allow staff to accept requests for medical extensions until next Council meeting. Following a second by Sheriff Dutile, the voice vote of the Council was unanimous in favor of the Motion.

### **10:00 Recess – Off the Record**

### **10:35 – Back on Record**

### **Jennifer Watson – Hearing on Request**

Attorney Ben Wyatt introduced himself as counsel representing Jennifer Watson. Chairman Colarusso asked whether Attorney would like non-public session and he stated they are fine with public.

Captain Bodanza stated that there is a request from Jennifer Watson, formerly employed by New Boston Police Department, through Council, is to have a declaratory ruling made, whether formal or informal, a declaratory ruling would be formal but, for Council

to consider a request to completely remove a Form B from her training file here at PSTC and replace it, potentially, with another Form B indicating a different type of leave from that agency. That is what is before the Council for consideration.

Attorney Wyatt indicated his client, Jennifer Watson, served as a police officer for New Boston from 2012 through early 2015. Prior to that Ms. Watson served nine years of honorable service in the Air Force and served three tours in Iraq and left as a . At the time of her departure from New Boston, there was a Form B submitted by New Boston, as well as supporting documentation, that reflected a context for Ms. Watson's departure that he believes is inaccurate. Ms. Watson submitted a charge to the NH Commission for Human Rights, and Attorney Wyatt did not give all the details of that charge in deference to New Boston, but it detailed a number of reasons why some of the characterizations were not true. The matter was eventually resolved. As part of that resolution, New Boston agreed that they would classify Ms. Watson's departure from New Boston as an "ordinary resignation," she submitted a resignation, New Boston accepted the resignation, their records reflect it was an ordinary resignation and they have been clear about that.

Attorney Wyatt indicated that there were two distinct issues before the Council:

- New Boston, in its preparedness, is committed to submit a Form B which reflects an ordinary, non-negotiated resignation, which is exactly what their records reflect. Chief Brace simply wanted some level of assurance that they are prepared to do that and could do that, and basically had the right to do that.
- The second issue is under Council's normal procedures, everything submitted to PSTC stays in the file. If nothing else was done, the corrected Form B that New Boston submitted would simply stay there so there were not be an incompatible Form B which no longer reflects the accurate records that New Boston has, as well as documentation that is inaccurate based on the records.

Attorney Wyatt stated his client simply wants to be allowed to follow her calling as a police officer and believes the current inaccurate records in PSTC's files could impede her ability to do that, as well as affect her earning capacity in the future. His client believes that the interest of justice will be served by not only allowing an updated and accurate Form B to be submitted, but to allow documentation which is inaccurate to be removed from the file. He stated that this action was sort of the basis for the resolution with the NH Human Rights Commission case.

Captain Bodanza stated that the original Form B in PSTC's file indicates a "discharge". PSTC's letter back to New Boston asked if there were implications of 402.02, which is suspension and revocation matters, and a letter came back stating it was not a violation of Council rules but an issue over progressive disciplinary action, to include two suspensions, which led to this determination. Now with impending resolution, they have a different resolution in their file as the employer versus what they submitted to PSTC. As of this date, we still have the original Form B that was filed. At the time the original Form B was submitted, it was reflected as a discharge. Obviously, a dispute arose which resulted in the NH Human Rights Commission action, which has been resolved.

Chief Cahill questioned whether a court or authority has determined that it was an inappropriate firing and Attorney Wyatt stated that because the issue has been resolved, Chief Cahill was correct but it gets into a splicing of hairs. Chief Cahill also asked if someone were to look back into the personnel file from New Boston, would they be able to identify all of the instances spelled out in her background? Attorney Wyatt does not know what is currently in her file at New Boston.

If someone did background check through PSTC, both Form B's would be in her file which would point any questions back to New Boston for clarification. PSTC would just have file in black and white.

Attorney Wyatt indicated there was a non-admission clause as part of the resolution with the Town of New Boston and Ms. Watson. Stated that there is, of course, some sort of face saving.

Chairman Colarusso indicated that what Council is asking to be submitted to PSTC is a document that represents the truth, and Council is also concerned over a future employer trying to make a determination if officer would be fit for a position in their department.

Chief Cahill indicated all Council is interested in is being the keeper of the records of truthful documentation so background investigations can be done properly. Whatever is going to be said about Ms. Watson will be said at the Town of New Boston and not PSTC. PSTC only has a paper trail. Whatever will be discussed will not be discussed here.

Chief Hart indicated that New Boston is asking Council to act in a capacity far greater than a record keeper. This type of situation is not a career killer.

Chairman Colarusso questions Captain Bodanza what Council is being asked to rule on today? Indicates that Council is disappointed being put in this position.

Captain Bodanza stated there are two issues:

- First one pretty much resolved itself. What is in the file is in the file, unless consideration is made to have it removed.
- The second issue is either pre-determining, or what is called a declaratory ruling, if a form is received from New Boston will the old one be taken out and replaced completely with new one? If Council wants a declaratory ruling and places it in the correct format, it can be ruled on.

Chairman Colarusso stated that hypothetically if we receive a Form B that is an ordinary resignation, that we will accept that for the file and remove the prior Form B and documentation from the file? Captain Bodanza indicated that was his understanding.

Attorney Wyatt stated in fairness to Chief of New Boston, it has been represented that New Boston file now reflects ordinary resignation, and he is prepared to submit a Form B and has been for a few months now, reflecting an ordinary resignation, which is an accurate representation of what New Boston's file reflects. There is an imputed question

of if that is what the file currently reflects, but wasn't reflected when the original Form B was submitted, Attorney Wyatt is guessing that the Chief is prepared to submit new Form B but if he does will he be in trouble for submitting this?

Chairman Colarusso indicated that any police chief would know that answer, as he does. Indicated Council is being asked to make a declaratory ruling.

Captain Bodanza stated that the rule we are looking at is 203.02. He is presuming that the letter submitted by Attorney Wyatt is in compliance with 203.02. What is the actual amendment or repealing of 602 that you are asking the Council to undertake this morning? What is the actual language that you are asking for? What are you asking Council to amend or repeal as a declaratory ruling under 602.02?

Attorney Wyatt said they are seeking two things:

- New Boston is prepared to submit a Form B with the characterization of ordinary resignation and that that accurately reflects what their personnel file says currently. Consensus from Council that if a Form B is submitted that accurately reflects the personnel file, that Council processes that as it normally would.
- Second, from client's perspective, because there has been a change in the personnel file, and because the new Form B is accurately representing what the personnel file currently reflects, the second piece would be that when new Form B is submitted, that it replace and supersede, and cause the removal of, the previous documentation related to client's departure from New Boston.

**Motion** by Sheriff Dubois that the Town of New Boston has an obligation to keep Council updated as to the accurate records of their end of employment with this individual and that any subsequent forms we receive will not eliminate from our records any previous forms. We do not have the authority to do that. Following a second by Chief Cahill, roll call of the Council was unanimous in favor of the Motion.

**Motion** by Sheriff Dubois to have New Boston Police Chief at next meeting to explain why he has not updated Council with an appropriate form as required by Council rules as to the updated states we learned of today in this hearing. Following a second by Chief Cahill, the voice vote of the Council was unanimous in favor of the Motion.

### **Director's Report**

Chief Merrill is awarded a commendation by Council for his continued support and service to PSTC.

Director indicated recruits are still upstairs testing to acquire a spot at the academy. Many administrators are not pleased about the fact that they cannot get into the academy. Any questions regarding that refer to Director Vittum. Academy cannot extend entrance numbers any more than we can, and are limited to three academies per year without a huge expansion to the budget.

Also, about 200 people still need to take the PT test.

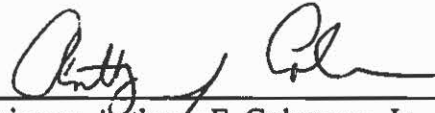
Will have a protocol in January or February on how to do graduation for comment by the Council.

**Next Meeting Date and Adjournment**

The next meeting of the New Hampshire Police Standards and Training Council will be held on January 24, 2017.

**Motion** by Attorney General Foster to adjourn. Following a second by Chief Cahill, the voice vote of the Council was unanimous in favor of the Motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Anthony F. Colarusso, Jr.', is written over a horizontal line.

Chairman Anthony F. Colarusso, Jr.