

Approved Minutes

January 31, 2017

The 475th meeting of the New Hampshire Police Standards and Training Council was called to order at 9:04 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, Vice-Chairman Commissioner William Wrenn, Department of Corrections, Chief David Cahill, Sunapee Police Department, Chief William Hart, Londonderry Police Department, Sheriff Douglas Dutile, Grafton County, Colonel Christopher Wagner, New Hampshire State Police, Sheriff David Dubois, Strafford County, Chief Enoch Willard, Manchester Police Department, Dr. Ekaterina Hurst and Paula Wall.

Members Absent: Judge Sawako Gardner, 10th Circuit-District Division – Portsmouth, President Susan Dunton, Community College System of New Hampshire, Judge James Carroll and Attorney General Joseph Foster.

Staff Present: Director Donald Vittum, Captain Benjamin Jean, Captain Mark Bodanza Investigative Paralegal Anne M. Paquin, and Program Specialist II Charlene Mains.

Call Meeting to Order

Chairman Colarusso called meeting to order at 9:04 a.m.

Approval of Minutes

Motion made to accept the Minutes of the December 20, 2016 Council meeting, (to include and amendment correcting a duplicate motion in the Jennifer Watson Matter) by Sheriff Dutile. Following a second by Chief Cahill, the voice vote of the Council was unanimous in favor of the Motion.

Director's Report

Save discussion for end of meeting.

Financial Report

The financial report was submitted in writing, and there were no questions asked by Council regarding same.

New Business

Chief Brace was invited to speak to the Council regarding the submission of a Form B from a former employee of the New Boston Police Department, Jennifer Watson. Ms. Watson and her attorney had appeared before the Council in December regarding the status change Form B filed by Chief Brace when Ms. Watson was discharged from New Boston on January 25, 2015. Ms. Watson retained counsel last year, bringing forth a procedural issue, with several claims. As a result, the Town of New Boston entered into an agreement that Ms. Watson was allowed to resign. Ms. Watson's attorney wanted the resignation classified as ordinary, while Chief Brace disagreed, stating that it was a negotiated resignation. Chief Brace spoke with PSTC's Chief Merrill last year. Chief Merrill advised that if this was a negotiated resignation that is what should be filed.

The Form B was not filed at the same time as the Town's agreement because the language in the agreement was that the Town of New Boston would seek an opinion from the Council on whether or not "ordinary resignation" would be allowed. Chairman Colarusso stated that Chief Brace had cleared up the situation; when a police chief submits a Form B, it must be accurate.

Chairman Colarusso indicated that Chief Brace cleared up the confusion. The Council's concern is that police chiefs are being put between a rock and a hard place, sometimes by their communities, in negotiating. The bottom line is when a police chief submits a Form B, it must be accurate no matter what was negotiated. Council made it very clear to Ms. Watson's attorney about position on this matter. No action needs to be taken.

Sean Moulton – New Hampshire Department of Corrections - Eligibility

Officer Sean Moulton introduced himself as well as Michael Zenck, Warden of the NH State Prison for Men. When asked, they agreed to a public session.

Captain Bodanza indicated that Mr. Moulton is employed with Department of Corrections and enrolled in the 104th Corrections Academy, which begins soon. The Form D Medical indicates that he has a seizure disorder. The Council's Technical Assistance Manual gives guidelines as to whether or not Mr. Moulton would be able to perform the duties of a certified New Hampshire correctional officer with such a disorder. Also on the Form D Medical, it reveals that Mr. Moulton has epilepsy. A follow-up appointment with Dartmouth Hitchcock indicated that he has had epilepsy under control for several years and responds well to pharmaceutical treatment. He is advised to get plenty of rest, avoid alcohol and stress, and take his medication as prescribed. According to the doctor's report, Mr. Moulton should be able to handle the duties of a correctional officer. The question before the Council is procedurally he has been identified as having

this issue, it is a concern in the Technical Assistance Manual, and despite this disqualifier is PSTC willing to certify Mr. Moulton as a corrections officer given the information provided?

A discussion ensued amongst Council.

According to the Technical Assistance Manual, Council has the ability to evaluate whether or not this candidate's disqualifier under conditions of taking medication, not have stress, getting adequate sleep, be able to perform the duties of a correctional officer, for certification purposes, not for employment purposes?

Chief Cahill stated he was concerned about the stress and sleep part of this position, and would like to hear from the Warden. As a correctional officer, there is forced overtime, as well as stressful situations. If the employer cannot make assurances for these types of problems, he is unsure if Council could make assurances.

Warden Zenck stated that there are correctional officers employed that have medical conditions, maybe not equal to Officer Moulton's, but there are some on medication, and the same thing applies with those individuals as far as managing medication, rest and stress. When someone has a medical condition, that does raise an issue and it has to be managed properly. It is not unusual to have individuals with medical conditions on staff. After reviewing Mr. Moulton's medicals, it sounds as though he takes care of himself, understands the treatment requirement, and has demonstrated on his initial performance that he is committed to do what is necessary to take care of himself and meet requirement. Warden Zenck looks at it as a risk, but a very low risk, similar to anyone employed with a medical condition that is comfortable that he can do the job.

When asked by Chairman Colarusso if Mr. Moulton's duties would be limited, the Warden stated he would rely on the medical provider to make an assessment; if there is a concern they would make adjustments. Chairman Colarusso indicated that letter states he has not had a seizure since 2011, and Mr. Moulton agreed and stated that he has a driver's license.

Further discussion ensued amongst the Council members and Mr. Moulton.

Chairman Colarusso confirmed if the Department of Corrections feels comfortable, the Commissioner feels comfortable and the officer himself feels like he wants to pursue this career, the Council should let him go forward and try to manage it.

Captain Bodanza stated that if the Council approved the recommendation, the next step would be to go to the Corrections Academy, setting up a fitness date and if he passes will attend the Corrections Academy.

Motion by Chief Hart to approve attendance at the Corrections Academy for potential certification, the Council recognized Mr. Moulton's medical issue and believes it has been rectified for the purpose of training. Following a second by Colonel Wagner, the voice vote was taken and was unanimous in favor of the Motion.

Commissioner Wrenn abstained from voting.

Hampton Police Department – Ian Ford – Eligibility Matter

Captain Bodanza inquired if this matter should be non-public and Lieutenant Gudaitis, on behalf of Hampton Police Department, stated that a public session was fine.

There was an issue with regard to Ian Ford on the Form D medical. Mr. Ford had a head injury which had been rectified but as a result he had lost most of his sense of smell. In the Technical Assistance Manual it does say if the individual cannot smell there is a follow-up suggestive test where the individual will go and meet with a doctor and smell substances that may be relative to the job. Lieutenant Gudaitis has had difficulty in trying to get a doctor to do this because it says such things as smelling explosives, smoke and marijuana, and if marijuana is not available take some oregano and smell the oregano. The reality is that Officer Ford has no sense of smell and cannot smell anything and that is one of the disqualifiers for the Academy and certification unless the Council, believing the employer will make reasonable accommodations for that loss of smell, and allow him to be certified through this process.

Lieutenant Gudaitis has spoken with Officer Ford, who has been dealing with his loss of sense of smell for two years. A letter from Officer Ford's neurologist has been provided for the Council.

The question was asked regardless what was done in this situation, would it have an impact on any other agency that may hire this officer later for full-time employment? Chairman Colarusso stated that his understanding was that these situations are a case-by-case basis. All facts with individuals are different and individual agency's accommodations come into play when Council makes a decision. If a particular agency is not willing to make accommodations, Council may have to make a different decision.

Chairman Colarusso stated there is so much more to being an officer, but if the department feels they have a good candidate who is good with people, has common sense, can treat people with dignity, has integrity and all the other things talked about in this profession, they should be able to hire him.

Motion by Colonel Wagner to allow the candidate to be hired and that the sense of smell is not a deterrent, and that he be certifiable as a part-time officer. Following a second by Sheriff Dutile, the voice vote of the Council was unanimous in favor of the Motion.

Paul David Cote – NH Department of Corrections – Hearing, Pol. 402.02(a)(8)

Chairman Colarusso introduced himself and asked Paul Cote to introduce himself for the record.

Captain Bodanza indicated that this was a final hearing on 402.02(a)(8) – suspension or revocation - for failing to follow Council Rules.

Chairman Colarusso swore in Captain Bodanza.

Captain Bodanza introduced himself and indicated that Mr. Cote, had failed to comply with the three year physical fitness testing under RSA 188(f)(27).

Through documents and testimony presented, Captain Bodanza summarized that CO Cote was noticed on January 5, 2017 that, in order to maintain his certification as an officer in New Hampshire, he was required to submit documentation of fitness testing for 2015, in compliance with RSA 188-F:27, III-d through j and New Hampshire Administrative Rules Pol 404.06 and 404.07.

On January 1, 2017 CO Cote's certification had been suspended. On January 4, 2017 PSTC received a Medical Clearance Report Form dated January 3, 2016, signed by Michael J. Murphy, III, M. D. indicating that he did not approve CO Cote's participation in the three year fitness testing.

Upon receipt of the medical clearance report form by PSTC, his certification was reinstated, until the next Council meeting.

Captain Bodanza summarized for the Council CO Cote's employment and education history. CO Cote was hired by the Department of Corrections on June 23, 2006 and on the same day signed an RSA 188-F Acknowledgment Form indicating that he understood the requirements of the three year fitness testing.

A form was faxed in on December 5, 2016 to PSTC from Mr. Cote who asked for an extension, but it was incorrect. It was a letter from Mr. Cote and the doctor's note said "No restrictions as tolerated".

Staff responded to Mr. Cote by e-mail as follows: "PSTC received your request today. The documents that you filed for a medical extension are incomplete. You must have the doctor complete a Medical Clearance Form that indicates his decision on whether you can or cannot participate in a fitness test. The Return to Work form that you provided does not meet the criteria of the medical request and therefore please complete the proper paperwork." E-mail was sent on December 6, 2016. Since that time, Mr. Cote has gone to the doctor and received a Medical Clearance Form from his doctor that he cannot participate in fitness testing.

Captain Bodanza concluded with, the question before the Council, are there any sanctions that you feel appropriate for not doing anything before the December 31, 2016 deadline that was required by Mr. Cote to supply documentation for compliance with three year fitness testing?

Paul Cote was sworn in by Chairman Colarusso. Mr. Cote apologized and stated to the Council that he owns his mistake. He did call his PCP, Dr. Michael Murphy, and sent him a form and asked him to document and sign the paperwork. He has an upcoming physical in May and is still healing from an ankle injury. After the New Year, he went to the office and had it signed on January 3rd. He admits there was no excuse for the late paperwork, even with the holidays, and he should have been more proactive. He apologized again to Council.

Chairman Colarusso advised Mr. Cote that that is the reason for him being before the Council, because he waited until the last minute.

Motion by Sheriff Dubois that there was a clear violation of process and having heard the circumstances that no further action by Council be made. Following a second by Chief Cahill, the voice vote of the Council was unanimous in favor of the Motion. Commissioner Wrenn abstained from voting.

William Bourassa – NH Department of Corrections – Pol. 402.02(a)(8)

Chairman Colarusso introduced himself and asked Mr. Bourassa to identify himself for the record, which he did.

Captain Bodanza announced that this item is a hearing on whether Mr. Bourassa's certification should be suspended under Pol. 402.02(a)(8) regarding three year fitness testing under RSA 188(f)(27). Captain Bodanza asked Mr. Bourassa if he wanted his hearing in public or non-public session, and Mr. Bourassa agreed to a public session.

Exhibits introduced as follows:

- A1-3 - Notice of Hearing indicating PSTC received no paperwork for testing due at the end of 2016;
- B – Form A stating hired by Department of Corrections on October 18, 2013.
- C – Certified as correctional officer by PSTC on May 16, 2014.
- D – Given reminder notice on October 10, 2016 that he would be due for fitness testing.
- E1-4 – Letter of suspension from the PSTC Council; the Council did not receive any information regarding ongoing three year fitness test required by December 31, 2016.
- F1-3 – Medical Clearance Form stating that Mr. Bourassa went to the doctor on January 5, 2017 and was cleared to participate, and on January 9, 2017 passed the physical fitness test with no issues, and the documents were submitted on January 9th. His certification was reinstated upon receipt of test documents.

Captain Bodanza concluded with, the question before the Council, are there any sanctions under the rule for failing to provide information under Pol. 404.06 and Pol. 404.07?

Chairman Colarusso swore in Mr. Bourassa. Mr. Bourassa indicated he did not receive the October 10th letter. He knew he had test, but was unaware of when he was due because of distractions of military and personal matters. He addressed the problem and had since fixed it.

Chairman Colarusso asked if Mr. Bourassa understood that it is his responsibility to be in compliance with three year fitness testing?

Mr. Bourassa answered yes, stating that he had spoken to the agency's human resource department.

Motion by Chief Cahill that there was a violation of Council rules that took place but at this point is self-corrected and Council take no further action. Following a second by Chief Willard, the voice vote of the Council was unanimous in favor of the Motion. Commissioner Wrenn abstained from voting.

Christopher Gilroy – Pol. 402.02(4)(c)

Chairman Colarusso participated in an informal conference requested by Christopher Gilroy and his attorney. Mr. Gilroy is a full-time officer with the Hampton Police Department, who was assigned as a detective. Mr. Gilroy was charged with DWI. Mr. Gilroy was cooperative, took responsibility and pled guilty. He was suspended by his agency for six months. At the conference, Chairman Colarusso and Chief Merrill reviewed the past decisions that the Council had made with DWI suspensions. The Council has suspended from 30, 60 to 90 days with one or two revocations.

Chairman Colarusso's proposed agreement with Mr. Gilroy and his attorney was a 60 day suspension to run concurrently with the suspension from the Hampton Police Department. Chairman Colarusso further explained that when Mr. Gilroy returns to work he will be back on patrol on the midnight shift.

Motion by Sheriff Dutile to support the 60 day suspension. Following a second by Sheriff Dubois, the voice vote of the Council was unanimous in favor of the Motion. Commissioner Wrenn and Colonel Wagner abstained from voting.

Aaron Throneberry-Perkins – NOH Pol. 402.02(a)(4)

Mr. Throneberry-Perkins requested an informal conference that is scheduled for Tuesday, February 7th, and the Council will be updated after the informal conference.

Consent Calendar

PTE Requests

Investigator Stephen Johnson, Attorney General's Office (DOH: 01/09/17) will be granted certification upon successful completion of the medical exam, entrance fitness test, and the Law Package of the Full-Time Police Officer Academy.

PPO Tanya Emerson, NH Department of Corrections (DOH: 12/23/16) will be granted full-time PPO officer certification based on prior training and experience upon successful completion of the medical exam, entrance fitness test, the Firearms Qualifications and In-service Defensive Tactics class.

Captain Bodanza indicated that on the current agenda, there were two items to be removed. Ian McKinnon, #23, resigned and that his request for extension was no longer needed, and Timothy Vincent, #26, Allenstown, has passed his test and no longer needs extension.

Addendum 1, was a medical extension request for fitness testing and is to be included in the Consent Calendar.

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.

Officer Lauren Bolduc, Winchester Police Department (DOH: 11/13/16 Part-Time certified) was granted an extension through the end of the 173rd Full-Time Police Officer 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 173rd Academy.

Officer Julian Guidry, III, Gilmanon Police Department (DOH: 08/9/2016 Not Part-time certified) was granted an extension through the end of the 173rd Full-Time Police Officer 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 173rd Academy. Officer Guidry has successfully completed his agency's FTO Program, and may continue working under normal supervision.

Officer Jesse Mabe, Winchester Police Department (DOH: 11/27/16 Not Part-time certified) was granted an extension through the end of the 173rd Full-Time Police Officer 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 173rd Academy and may continue working only in the direct presence of a certified officer.

Officer Patrick Riendeau, Gorham Police Department (DOH: 06/08/16 Not Part-time certified) was granted an extension through the end of the 173rd Full-Time Police Officer 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 173rd Academy and may continue working only in the direct presence of a certified officer.

Officer Joseph Walz, Pembroke Police Department (DOH: 09/01/16 Not Part-time certified) was granted an extension through the end of the 173rd Full-Time Police Officer 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 173rd Academy and may continue working only in the direct presence of a certified officer.

Officer Joshua Wright, Somersworth Police Department (DOH: 01/03/17 Not Part-time certified) was granted an extension through the end of the 173rd Full-Time Police Officer 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 173rd Academy and may continue working only in the direct presence of a certified officer.

Officer Peter Zamachaj, Francestown Police Department (DOH: 11/21/16 Part-Time certified) was granted an extension through the end of the 173rd Full-Time Police Officer 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 173rd Academy.

(Extension Part Time)

Officer Steven Henderson, Fremont Police Department (DOH: 05/19/16) (Part-time certified 10/04/86) was granted an extension until April 17, 2017.

Officer Matthew Lockhart, Charlestown Police Department (DOH: 06/30/16) was granted an extension through the end of the 273rd Part Time Academy.

Officer Ian McKinnon, Waterville Valley Police Department (DOH: 01/07/16) requests extension through the end of the 273rd Part Time Academy. An extension is required because Officer McKinnon missed the last academy due to full-time job requirements as a full-time firefighter. **(Item Removed from Calendar)**

Auxiliary Trooper Steven Puckett, NH State Police (DOH: 11/18/94), a lapse in service certification, was granted an extension through the end of the 173rd Full-Time Academy law package.

CO Amanda Donaghue, NH DOC (DOH 09/30/16) was granted an extension through the end of the 104th Corrections Academy.

Timothy Vincent Allenstown Police Department, Thirty Day Lapse, (DOH: 12/06/16 Part-time certified) requests extension through the entrance fitness testing date, April 17, 2017 for the 173rd Full-Time Police Officer Academy. An extension is required because Officer Vincent failed the entrance fitness test on December 20, 2016 for the 172nd Academy. **(Item Removed from Calendar)**

Requests for Fitness Testing Extensions

Christine Maille, Hillsborough County

Eric Ball, Rochester

Jason Dewire, Exeter

Edward Conley, Carroll County

Michael Bergeron, Manchester

Kenneth Owen, Salem

Bradley Wheeler, Newbury

Michael Beaton, Carroll

Scott Knox, Weare

Nina Camelio, Hillsborough County, UNH

Keith Bike, Auburn

Patrick Carr, Jefferson, Whitefield, Lancaster
Paul David Cote, NH DOC

End of Consent Calendar

Motion to approve Consent Calendar, as well as the addendum, by Chief Hart, followed by a second from Chief Cahill. Commissioner Wrenn recused himself from any consent items dealing with the Department of Corrections.

Captain Bodanza indicated that Item No. 42 was contingent upon the request made by Mr. Gilroy requesting a medical extension for three year fitness.

Motion by Sheriff Dutile to grant a six month extension for the three year fitness test. Following a second by Dr. Hurst, the voice vote of the Council was unanimous in favor of the Motion. Commissioner Wrenn abstained from voting.

Other New Business

Acceptance of gift, patch from DEA, value of 15.00. No objection by Council to accept the gift.

Director's Report

House Finance Committee: Chairman Colarusso and Captain Jean appeared before the House Committee and discussed what PSTC does. They did not get into any figures or numbers. There was talk about PSTC being part of general fund. Believed we will have support of the House and members of the Senate. Senator Morse was the catalyst for PSTC going under general fund. The reason for wanting to go under the general fund was that revenue was dipping, we can only spend up to our revenue, and it didn't rise as projected, so it forced PSTC to either get another funding source or go under the general fund. If someone said that we requested to go under the general fund, PSTC was really forced into it via circumstances beyond PSTC's control. In the end, do you want well-trained police officers or not? Questions arose re: price of meals, going to a day academy, length of training, overtraining, how we compare to other academies, and so on, questions we have dealt with for years. We are very efficient at 16 weeks to get all the training in. Overall, we just need to move forward and present budget.

Director Vittum indicated we need to have presentation on how PSTC will be handling graduations and should have document for Council in February. We need to know who speakers will be, how to run this or that, so there will be a good consensus that when we have a graduation it is consistent with the viewpoints of the Council.

Chairman Colarusso made a general statement that he would like to see as much attention as possible go to the graduating class. In his general opinion, the graduating class should be the highlight in the future. He is positive the Director will come up with a great program.

Sheriff Dutile stated that he is not interested in being part of a Council that directs the Director on how to run a graduation, or anything else for that matter. He feels that the Council can overstep the legislative intent, and wants to be on record as a member of the Council, that the Director runs the Academy and day-to-day operations. It does not need to be micromanaged by Council and Sheriff Dutile is interested in what Director would like to see as a graduation. Sheriff Dutile stated he is just one vote but wanted to make that clear before meeting ends.

Commissioner Wrenn stated that he does agree with Sheriff Dutile that it is the Director's call, but believed we need a format that keeps outside influences from putting pressure on the Director as to how things should be run at particular graduations. There are many chiefs that go to the Director and say "I want this or we want this" and that is putting undue pressure on the Director to try and accommodate different types of people. It should be understood that Director is running the graduation and no one else.

Sheriff Dubois stated that he agrees with the Commissioner, and to not take this wrong, but we appoint the Director. He does not need to see a document next month regarding the graduation. If Director changes it around a bit from month-to-month, that is his baby and that is why we appoint a Director.

Chief Cahill agrees with everything said and agrees that whoever is at graduation is there and is done by the Director's decision-making process and that we all support him when we walk out of here.

Commissioner Wrenn clarified that he was not looking for a so-called document but was looking for a statement that supports Council's position that the Director runs the show. His concern is there are times when individual chiefs approach the Director and say that they want someone recognized in the audience, someone to sit up on the stage, and so on, and it's a different setup than what would normally take place just because of the preference of one person that is attending that function. Those things should not be an issue and Director should not be subject to pressure to do that. Just suggesting that we all collectively support that it is the Director's call and not be entertaining people calling us as well.

Chief Hart fully agreed with Sheriffs Dutile and Dubois that it is, in his opinion, the Director's show.

Sheriff Dutile extended the topic to more than just graduations. He stated this is the Academy that is run by the Director. He senses sometimes that Council is asked to be involved in some things that Council does not need to be involved in, whether it is staff or implementation of program or curriculum that has been approved. Let the Director do the job that he was appointed to do – more than just graduations.

Sheriff Dubois wanted to say thank you to Chairman Colarusso for going over and lobbying for PSTC, and if the Chairman needs any help he is willing to help, and believes Council would feel the same.

Chairman Colarusso stated that he will let Council members know when important hearings are scheduled and the importance of having law enforcement there to show that training is important, especially at this time in our history.

Next Meeting Date and Adjournment

The next meeting of the New Hampshire Police Standards and Training Council will be held on February 28, 2017. Chairman Colarusso will not be available for February meeting and Commissioner Wrenn will be handling that meeting.

Motion at 10:28 a.m. by Chief Cahill to adjourn. Following a second by Sheriff Dubois, the voice vote of the Council was unanimous in favor of the Motion.

Respectfully submitted,

Chairman Anthony F. Colarusso, Jr.