

**MINUTES OF THE
PEACE OFFICER STANDARDS
AND TRAINING BOARD
THE LAW ENFORCEMENT TRAINING ACADEMY (LETA)
BISMARCK, NORTH DAKOTA
FEBRUARY 17, 2016**

MEMBERS PRESENT

Chad Kaiser
Paul Lies
Steve Engen
Danny Haugen
John Klug
Lyn James
Jack Nybakken
Sarah Warner
Scott Thorsteinson

GUESTS

Clayton Coker
Matthew Hegstad
David Klatt
Steven Scheuer
Mitch Wardzinski
John Maritato
Dave Draovitch

LEGAL COUNSEL

Mike Mahoney

ADMINISTRATIVE STAFF

Duane Stanley
Monica Sebastian

The meeting was called to order by Chairman Steve Engen at 1:00 p.m. with roll call. All members except Lyn James were present. It should be noted that Lyn James came into the meeting at 1:16 p.m.

Secretary Report

Meeting Minutes

Minutes were reviewed from the December 9, 2015, regular POST Board meeting.

Motion

John Klug made a motion to approve the minutes from the December 09, 2015, regular POST Board meeting. Sarah Warner seconded the motion. All in favor, motion carried.

Financial Report

Duane Stanley provided documentation to Board members and gave a detailed financial report on POST Board activity from January 1, 2016, through February 17, 2016.

Motion

Chad Kaiser made a motion to approve the financial report from January 1, 2016, through February 17, 2016. Scott Thorsteinson seconded the motion. All in favor, motion carried.

Old Business

LEXIPOL – Update

At the August 14, 2013, meeting, Lexipol representative Don Weaver came in front of the Board asking that their training program, which offers daily 5-15 minute training segments, be approved by the Board. There was lengthy discussion by board members whether or not this training should or could be used towards POST Board continuing education credits. There was discussion that these segments should be for interagency accountability and not for training credit along with discussion on the internal accounting issues with the small segments of time. It was stated that current POST Board administrative rules only allow for training increments to be no smaller than one hour in length. A motion was made that no action be taken at this time.

Lexipol representative Don Weaver came back at the December 9, 2015, meeting and addressed the Board asking that their web based training with 5-15 minute training videos once again be considered and be accepted by the Board. There was once again lengthy discussion amongst board members regarding the Administrative Rules which stated that training must be in one hour increments and how the POST Board would track and enter the training hours. Executive Secretary Duane Stanley went on to explain the issues with pre-approval of courses to stay consistent with administrative rules along with the timeliness issue for reporting. Duane gave several options that may work if Lexipol was able to provide the required information in a timely fashion. The Board requested that Duane get information from Lexipol on all of their 5-15 minute training videos along with the course content for a year and to be in communication with Mr. Weaver regarding the possibility of working out a solution. The Board tabled their decision until the information from Lexipol is provided to Mr. Stanley.

Between the December 9, 2015, meeting and the February 17, 2016, meeting, Mr. Weaver corresponded with Executive Secretary Duane Stanley providing the requested information. The solution was that a total of 20 hours for the 5-6 minute bulletins be given to the officers that take the Lexipol training. Lexipol would provide the course content thirty days prior to each months training. Once the daily bulletins were viewed, a roster would be submitted for the officers to receive training hours. It should be noted that Mr. Stanley and Mr. Weaver discussed the issue about the fact that Lexipol's training bulletins are considered the master policy and that it was very probable that an

agency could in fact be providing a training bulletin that reflected the agencies specific policy relating to that subject. One example given was on a pursuit policy and how Lexipol's master would more than likely vary from the agency policy. This was relayed to the Board and it was the consensus of the Board that it would be up to the individual agency to get training bulletin content to the POST Board in the allotted time prior to instruction if in fact the course content was changed in any way from the Lexipol master policy. No motion was needed.

Late License Fees – Update

At the December 9, 2015, meeting, Duane Stanley provided documentation to Board members and gave a detailed financial report on POST Board activity from January 1, 2015, through December 2, 2015. Lyn James asked if there was any policy or guidance on how the money for late fees being collected is going to be utilized. There was discussion by board members reference this issue.

Lyn James made a motion to form a subcommittee to determine how the excess fees should be utilized. Volunteers for the committee were John Klug, Scott Thorsteinson and Chad Kaiser. The committee was to report their recommendations at the February 17, 2016, POST Board meeting.

John Klug, Scott Thorsteinson, and Chad Kaiser recommended idea's from utilizing the money to fund further LE training when the legislatively appropriated funds ran out, offsetting credit card fee's along with reimbursing agencies that had to pay late fees for individual officers who did not renew their license or qualify in time.

Monica Sebastian informed the Board that she had been doing research for the POST Board on getting a credit card system set up. Ms. Sebastian informed the Board she would have information and a report at the next meeting for them.

Adverse License Action Update – Jeremiah Johnson

Officers Jeremy Johnson and Josh Nelson had been out at a city dump shooting an AK47 while on duty. A complaint was filed from citizens on the neighboring golf course that bullets were ricocheting off of the golf course grounds. A BCI investigation was conducted surrounding the incident. Mr. Johnson took responsibility that he unnecessarily endangered Officer Nelson's career. Adverse license action was initiated. On August 6th, 2015, the POST Board office received a letter from Mr. Johnson waiving his rights to a hearing. On August 17th, 2015, the POST Board office received a letter from Tioga Police Chief Larry Maize which stated Mr. Johnson was reduced in rank from Sergeant to patrol officer. The charges were reduced from a Class A Felony Reckless Endangerment to a Class B Misdemeanor Disorderly Conduct. Mr. Johnson ultimately pled guilty to this amended charge and was assessed a fine, one year unsupervised probation and given a deferred imposition of sentence. Mr. Johnson does have a current peace officer license through December 31, 2018.

A motion was made that Mr. Johnson be given probation to run concurrent with the probation in the criminal case currently through Williams County and that Mr. Johnson is to have no violations of the law, POST Board rules or code of conduct.

A Findings of Fact, Conclusions of Law and Order of Probation was sent to Mr. Johnson on January 22, 2016, stating that he would be placed on probation concurrent with his probation with the State of North Dakota.

The documents were sent certified mail, restricted delivery with return receipt and received by Mr. Johnson on January 26, 2016.

Adverse License Action Update – Mark Wallevand

Mark Wallevand was charged with the following felony crimes: Promoting a Sexual Performance by a Minor (one count), Possession of Certain Materials Prohibited (five counts). Mr. Wallevand is not currently working for an agency but his peace officer license is current until December 31, 2016. A letter, along with a Complaint, and Notice of Hearing from Executive Secretary Duane Stanley were sent certified mail, restricted delivery to the address listed on the search warrant that had been executed at Mr. Wallevand's residence. There was no response from Mr. Wallevand. If the POST Board does not hear back from the Post Officer regarding Mr. Wallevand's whereabouts, the process will start for notification of adverse license action through publication in the newspapers.

On January 11, 2016, a Complaint and Notice of Hearing from the ND POST Board was sent to Mr. Wallevand stating that adverse action has been taken against him. As of the February 17, 2016, meeting, Mr. Wallevand has not responded or received the paperwork. The postal service documentation indicated that the letter was not served or received by Mr. Wallevand. There was discussion to have Mr. Stanley coordinate with the Fargo probation office to possibly work out service of the documents.

Adverse License Action Update – Paul Meagher

The POST Board received information from the UND PD requesting decertification of Officer Paul Meagher's peace officer license. On November 3, 2015, a search warrant was executed at the residence of Officer Paul Meagher. At the time of the search, Mr. Meagher was downloading child pornography. Mr. Meagher was subsequently arrested and charged with 10 C-Felony counts of Possession of Certain Materials Prohibited, NDCC12.1-27.2-04.1 regarding child pornography. Mr. Meagher was terminated from the UND PD but it should be noted his license is current through 12/31/18.

A motion was made that there was in fact a code of conduct violation and this did have a direct bearing upon the individual's ability to serve as a peace officer.

A Complaint and Notice of Hearing from the ND POST Board was sent to Mr. Meagher on February 1, 2016. The postal service records show that this documentation was served and received on February 4, 2016. At the time of the meeting the POST Board office had not received a response from Mr. Meagher.

Adverse License Action Update – Matthew Beland

The POST Board received information from the UND PD regarding Officer Matthew Beland being arrested on January 28, 2015, in Polk County, MN, for a domestic violence charge. The board reviewed the facts of the case. Mr. Beland ultimately pled guilty to a misdemeanor charge of misdemeanor disorderly conduct with a deferred imposition of sentence for one year from the date of the incident. Mr. Beland's license is current through 12/31/17.

A motion was made that this disorderly conduct charge did in fact have a direct bearing upon the individual's ability to serve as a peace officer and to move forward with adverse license action with a formal complaint and notice of hearing.

There was discussion by Board members on what type of sanction should be imposed on Mr. Beland's license. The Board agreed on 12 months' probation beginning the day of the current POST Board meeting and that there be no violations of law, administrative rule or code during this timeframe.

A Complaint and Notice of Hearing from the ND POST Board was sent to Mr. Beland on February 10, 2016. The postal service showed that the letter was served and received by Mr. Beland.

Governor's Pardon – Tyler Modlin

At the April 1, 2015, meeting, ND Parks & Recreation Department asked for a limited license for Tyler Modlin. Mr. Modlin's criminal history background check came back showing there had been a C Felony Aggravated Assault incident that occurred in 2008. In the paperwork reviewed by the Board, there was a court order showing a plea of guilty to a Class A Misdemeanor Assault. Mr. Modlin was present and provided the Board with the specifics of the incident along with answering questions from members. Ken Sorenson also provided input about Mr. Modlin going before the Parole Board and their recommendation which was forwarded to the Governor requesting a pardon with removal of guilt.

A motion was made that Tyler Modlin's limited license be granted.

In the beginning of 2016, a photo of a wide eyed Tyler Modlin holding a dog on his lap with his left hand and with his right hand propping up a shotgun on his right thigh. In the background of the photo there was a beer can and beer bottle on a shelf. This photo was found on Tyler Modlin's social media page.

Chairman Engen provided the Board a letter that had been signed by Governor Dalrymple on May 13, 2015 in fact denying the pardon for Mr. Modlin due to the violent nature of the offense.

Funding Request

The Dunn County Sheriff's Department is asking for \$20,000.00 for a Leadership and Mastering Performance Management Training to be held in Killdeer. This would be a four phase process for training with 40 students for Phase 1, 2, and 4 and 30 students for Phase 3. Sheriff Coker and Chief Deputy Matthew Hegstad were present and addressed the Board reference the specifics of the course.

Motion

Scott Thorsteinson made a motion to approve the Leadership and Mastering Performance Management Training. Dan Haugen seconded the motion.

There was discussion amongst the Board members on who this training is targeted for and how many people would be able to attend this training. There was lengthy discussion on the tuition costs in reference to number of students attending.

Motion

Paul Lies made an amended motion to approve the \$20,000.00 for the Leadership and Mastering Performance Management Training as long as 30 students in each phase are signed up for this training. John Klug seconded the motion. All in favor motion carried.

Funding Request

The Bismarck Police Department is asking for a total of \$25,900.00 for three different courses. The courses and amounts are: Women in Command; Excelling as Female Leaders in the amount of \$9,900.00: Female Enforcers; Advanced Mental, Physical, and Tactical Skills to Survive in the amount of \$6,500.00: and Criminal Investigation of Police Officer Involved Shootings in the amount of \$9,500.00.

Motion

Dan Haugen made a motion to approve a total of \$25,900.00 for all three courses for Bismarck Police Department. Chad Kaiser seconded the motion.

There was discussion by Board members on treating everyone fairly in reference to any specific conditions that may be placed on a training request. The vote was taken. All in favor, motion carried.

Funding Request

The Jamestown Police Department is asking for \$1,260.00 for STOP Domestic Violence Training presented by CAWS.

Motion

Scott Thorsteinson made a motion to approve the STOP Domestic Violence Training. John Klug seconded the motion. All in favor, motion carried.

Funding Request

The Grand Forks Police Department is asking for \$2,500.00 for a week long SWAT Basic training at Camp Grafton.

Motion

Chad Kaiser made a motion to approve \$2,500.00 for the Basic SWAT Training. Sarah Warner seconded the motion. All in favor, motion carried.

At 1:52 p.m. Chairman Engen called a short recess. At 2:00p.m. the meeting was called back to order.

Physical Fitness Requirement Funding Request

At the December 9, 2015 meeting, LETA Academy Director Lt. Dan Haugen and Lake Region Police Academy Director John Maritato addressed the Board relaying that the LETA in Bismarck and Lake Region State College have been having issues with individuals "academy shopping" since the physical fitness requirements vary or are administered differently from basic academy to basic academy. The physical fitness requirements for Lake Region State College are different than the requirements through the POST Board. Both academies are in agreement and asking that the CTA (Critical Task Assessment Obstacle Course) be utilized for all law enforcement academies to address the current and future issues of "academy shopping." There was discussion on providing more information at the February Board meeting.

LETA Academy Director Lt. Dan Haugen addressed the Board and provided a video for Board members to watch regarding the CTA Obstacle Course. After viewing the video, Board members proceeded to the academy gym to observe two academy students run the course so Board members could see firsthand what the course entailed. Lt. Haugen went over the qualification times of what would need to be met to be accepted into the basic academy and what time frame would be accepted for graduation.

2016 IADLEST Convention

Duane Stanley informed the Board that the annual 2016 IADLEST Conference will be held in Grand Rapids, Michigan, June 5-8, 2016. Mr. Stanley explained the current budget situation and explained that in the past, BCI had always covered the expenses of POST board administrative staff for any trips or continuing education that was attended. Mr. Stanley asked if the Board would consider to start funding administrative staff for these expenses. Dan Haugen and John Klug expressed interest in attending this conference. It was decided that the Board would pay for four people total to attend the IADLEST conference. Mr. Stanley and Dan Haugen were also planning on

attending a regional meeting that was to be held in Wichita, Kansas. The Board also discussed funding this trip as well.

Motion

A motion by Chad Kaiser was made to fund the regional meeting and yearly conference. Scott Thorsteinson seconded the motion. All in favor, motion carried.

Peace Officer Memorial Foundation

An email was sent to Duane Stanley and Monica Sebastian from West Fargo Police Chief Mike Reiten asking about a member from the POST Board being present on the Peace Officer Memorial Foundation Board. Scott Thorsteinson volunteered to be a voting member on the Memorial Foundation Board.

POST Board Review – Arnie Rummel (BCI)

Duane Stanley provided members of the Board a detailed overview of the circumstances surrounding the execution of a search warrant on or about May 22, 2014, which authorized the seizure of a New Holland wheel loader. Darrell Schrum, who the wheel loader was seized from, filed a complaint against Mr. Rummel for returning the wheel loader to the rightful owner without having a court order. Mr. Rummel was subsequently charged with a Class A Misdemeanor Misapplication of Entrusted Funds. Mr. Stanley went on to explain what had transpired to date in reference to CJIS access being reinstated along with what the current status of the case was.

Motion

Scott Thorsteinson made a motion to table until adjudicated. Chad Kaiser seconded the motion. All in favor, motion carried.

POST Board Review – Gary Schwarzenberger (McKenzie County SO)

Duane Stanley provided members of the Board an overview of the circumstances surrounding a trip to Las Vegas, Nevada in March of 2015 and credit card activity that took place on or about January 2015 to May 2015. McKenzie County Sheriff Gary Schwarzenberger made various personal purchases on the counties credit card without prior approval. Mr. Schwarzenberger should have made these purchases with his personal credit card and sought reimbursement. These charges were not repaid for several months by Mr. Schwarzenberger and resulted in the credit card being shut down by the bank. Mr. Schwarzenberger only paid the money back to McKenzie County several months later and after numerous attempts by the auditor's office to seek repayment. Mr. Schwarzenberger was charged with a Class A Misdemeanor Misapplication of Entrusted Funds.

Motion

Jack Nybakken made a motion to table until adjudicated. Scott Thorsteinson seconded the motion.

There was discussion by Board members that although the same crime had been charged for both of the individuals that had just been reviewed, it was like comparing "apples and oranges" in regards to the circumstances surrounding each case. Some board members felt there was in fact a violation of the code of conduct and a message should be sent. Other members were not comfortable at this point in the process to make that determination.

A vote was taken. All in favor, motion carried to table.

POST Board Review – Travis Bateman (McKenzie County)

Lt. Dan Haugen utilized a white board to provide a visual representation to Board members in regards to McKenzie County Deputy Travis Bateman being charged with Class C Felony Reckless Endangerment. On August 31, 2015, ND Highway Patrol Trooper Austin Hilzendeger was involved in a pursuit when a motorcycle failed to stop for Trooper Hilzendeger. Trooper Hilzendeger activated his lights and sirens and was heading south on Highway 85 after the motorcycle. Trooper Hilzendeger notified units of the Watford City Police Department and the McKenzie County Sheriff's Office. Mr. Bateman responded to the request of Trooper Hilzendeger. Mr. Bateman was heading towards Trooper Hilzendeger and the motorcycle on the same road. Upon review of the patrol car video it was clear that Mr. Bateman, upon observing Trooper Hilzendeger's vehicle, entered the opposite lane of traffic's shoulder so Mr. Bateman's patrol vehicle and Trooper Hilzendeger patrol vehicle were heading head on. It can be seen from another patrol vehicle behind Mr. Bateman's patrol vehicle that Trooper Hilzendeger was still following the motorcycle.

As Mr. Bateman's patrol vehicle and Trooper Hilzendeger's patrol vehicle got near one another, the motorcycle, still in between the two vehicles, began to turn left to likely avoid a head on collision with Mr. Bateman's patrol vehicle. As the motorcycle turned left, Mr. Bateman also turned in the direction the motorcycle was turning until Mr. Bateman struck the motorcycle with his patrol vehicle, at which point both passengers were ejected from the motorcycle.

After medical attention was provided to the occupants of the motorcycle, Mr. Bateman was recorded via a body cam video shrugging his shoulders while making the statement "f*cking idiot," referring to the motorcycle.

There was discussion by Board members about the concern for public safety in this case and the fact that in the previous two cases reviewed, the officers' actions did not affect public safety. There were also comments in regard to the fact that it appears at this time the agency has done nothing about this issue.

Motion

Dan Haugen made a motion that Mr. Bateman violated the code of conduct, section c (To engage in conduct that is in violation of the criminal laws of the state or federal government or ordinances of a political subdivision of the state of North Dakota, whether or not the officer has been charged with or convicted of an offense) and his actions in fact have a direct bearing on his ability to perform peace officer duties. Scott Thorsteinson seconded the motion.

There was continued discussion by Board members as to their concern for public safety and how this differs greatly from the previous cases. Board members went on to state this was a felony and it is the duty of the Board to act. There was discussion about whether or not the Board would view this differently if the agency had suspended the individual.

The vote was taken. All in favor, motion carried.

Motion

Dan Haugen made a motion to start adverse action in accordance with 12-63-12 against Mr. Bateman. Lyn James seconded the motion. All in favor, motion carried.

POST Board Review – Weston Christianson (West Fargo PD)

Duane Stanley provided an overview of the circumstances involving West Fargo PD Officer Weston Christianson. Mr. Christianson was arrested for DUI on January 1, 2016. The DUI charge has since been reduced by the Cass County States Attorney's Office to a Class B Misdemeanor Reckless Driving. From the department, Mr. Christianson has since served a five day unpaid suspension. Mr. Christianson will receive his work permit on February 21, 2016, and return to work February 22, 2016. Mr. Christianson is currently getting rides to and from work to his assigned school. The school is aware of the charges and has no issues with this.

Motion

Dan Haugen made a motion that Mr. Christianson in fact has violated the code of conduct, specifically section c (To engage in conduct that is in violation of the criminal laws of the state or federal government or ordinances of a political subdivision of the state of North Dakota, whether or not the officer has been charged with or convicted of an offense) and his actions in fact have a direct bearing on his ability to perform peace officer duties. Scott Thorsteinson seconded the motion. All in favor, motion carried.

Motion

Dan Haugen made a motion to start adverse action in accordance with 12-63-12 against Mr. Christianson. Paul Lies seconded the motion. All in favor, motion carried. There was discussion that Mr. Christianson should receive probation for a year.

POST Board Review – Peter Brown (Newtown PD)

Duane Stanley gave an overview of an incident involving New Town Police Officer Peter Brown. On January 11, 2016, Mr. Brown was in a heated argument with his girlfriend and girlfriend's daughter. Mr. Brown's girlfriend's daughter attempted to leave on a 4-wheeler located outside the residence. The mother pulled the daughter off of the 4-wheeler and the daughter left the premises. Mr. Brown discharged both of his department issued weapons, a .45 caliber hand gun and a .223 caliber rifle for a combined total of 45 total rounds at the 4-wheeler. Mr. Brown had been consuming alcoholic beverages and upon initial investigation did not disclose he had fired his duty weapons. The New Town PD and Three Affiliated Tribes Police department both responded to the call at the residence.

In review of the paperwork submitted to the POST Board, New Town Police Chief James Johns recommended that Mr. Brown be given three weeks administrative leave with pay that would allow him sufficient time to get mandatory stress management counseling and get his personal issues in order.

The City Commissioners overruled Chief Johns' decision and Mr. Brown was terminated. Mr. Brown was terminated from the New Town PD for violation of department policy. At this time, no charges have been filed by either agency.

There was intense discussion as to the behavior of this officer and possible consequences. There was lengthy detailed discussion and review of the current wording of the code of conduct by Board members.

Motion

Dan Haugen made a motion that Mr. Brown did not in fact violate any code of conduct rule. Chad Kaiser seconded the motion. The vote was taken. Paul Lies voted no, Sarah Warner voted yes, John Klug voted no, Jack Nybakken voted no, Lyn James voted yes, Scott Thorsteinson voted yes, Dan Haugen voted yes, Chad Kaiser voted yes, Steve Engen voted yes. Motion was carried six yes, three no.

There was continued discussion regarding this incident and that the way the Code of Conduct is currently written there were no violations. It was also discussed how to fix this situation.

There was continued discussion regarding all five POST Board reviews and when the Board should or should not start adverse action. There was discussion on whether to

start adverse license action prior to or after the court's decision. The consensus was to always look at whether or not the officers' actions put the public at risk.

Chairman Engen conducted a short round table with Board members and administrative staff.

At 4:04 p.m., John Klug made a motion to adjourn. Lyn James seconded the motion. All in favor, motion carried.