

DEPUTY SHERIFFS' EDUCATION AND TRAINING BOARD

Minutes of the May 22, 2009 Meeting

Members Present

Carmen C. DeLuca
Harry E. Forbes
Roger S. Gunesch
Kurt E. Montz
Jody S. Smith

Members Absent

Judge Michael J. Barrassé
Chester A. Hawkins
Judge D. Webster Keogh
Dr. William G. Pettigrew Jr.
William H. Romine, Jr.

Commission Staff Present

Doug Hummel
Don Numer

Others Present

Pennsylvania State University
Bob Stonis
Don Zettlemyer

Temple University
Anthony Luongo
Christie Willard

Cumberland County Sheriff's Office
Sheriff R. Thomas Kline
Chief Deputy Ron Anderson

Montgomery County Sheriff's Office
Thomas Speers, Solicitor

York County Sheriff's Office
Lt. David M. Godfrey

PA Sheriffs' Association
Beth Appleby

The May 22, 2009 meeting of the Deputy Sheriffs' Education and Training Board (DSETB) was called to order at 8:02 a.m., in the Nittany Lion Inn, State College, Pennsylvania.

Chairman Carmen DeLuca introduced the first agenda item. He asked if the Board had an opportunity to review the minutes of the February 6, 2009 meeting and asked for a motion.

Mr. Kurt E. Montz made a motion to approve the February 6, 2009 DSETB minutes. Deputy Roger Gunesch seconded the motion and it passed with the following votes:

Voting Aye: Board Members DeLuca, Forbes, Gunesch, Montz and Smith

Voting Nay: None

Mr. Donald Numer reviewed the DSETB fiscal report for state fiscal year 2008-2009, ending March 31, 2009. The balance from the previous year is \$10,424,627.90. Fee collections from July 1, 2008 through March 31, 2009 are \$4,567,045.25. The total estimated available funds at March 31, 2009 are \$15,424,627.90. The expenditures and commitments at March 31, 2009 is \$8,654,585.80. The estimated balance at March 31, 2009 is \$6,770,042.10. Mr. Numer stated that the Board does not always expend all of its commitments. Mr. Numer stated that as we approach the end of the fiscal year, he will be asking the fiscal personnel to provide a report that projects the future fee collections and expenditures. Mr. Numer stated that he expects to have the report for the next Board meeting. Mr. Numer expressed concern as to when the expenditures would begin to exceed the collections. If this were to occur, the Board would need to seek a fee increase. Commissioner Harry E. Forbes asked if we could track the number of deputies that have completed training during the last three years. He also asked if there are any trends in the fee collections. Mr. Numer stated that we could track this information. Mr. Numer explained that our data system currently does not allow us to track employment turnover rates, but that our information technology contractor has been tasked with reviewing the system and creating the ability track this information.

Mr. Montz made a motion to approve the fiscal report. Deputy Gunesch seconded the motion and it passed with the following votes:

Voting Aye: Board Members DeLuca, Forbes, Gunesch, Montz and Smith

Voting Nay: None

Mr. Numer provided the Training Supervisor's Report. Mr. Numer stated that he attended the Pennsylvania Commission on Crime and Delinquency's (PCCD) meeting on March 10, 2009 and presented the DSETB's policy that was approved at the February 6, 2009 meeting. The PCCD approved the DSETB policy. Mr. Numer mailed copies of the new policy to all sheriffs.

Mr. Numer stated that the Firearms Instructor Train the Trainer Program is being developed. He met with Mr. Randy Smith, the Basic Training Academy lead firearms instructor, to discuss the course requirements and content. Mr. Numer stated that an entrance range qualification score will be required to be admitted to the Firearms Instructor Train the Trainer Program. The entrance score will be 90%. Mr. Numer stated that all information regarding this training course will be provided to the sheriffs. Mr. Numer added that no date for this course has been set, due to the shortage of ammunition. He stated that Basic Training is the priority.

Mr. Numer stated that the Request for Proposal process is continuing for the Curriculum Development Contract that will be awarded and scheduled to begin July 1, 2009. Mr. Numer explained that the Continuing Education Contract is expiring September 30, 2009 and the process has begun to issue a Request for Proposal. Mr. Numer requested a contract extension until December 31, 2009 for the continuing education contract with Temple University. Mr. Numer explained that the process to obtain an extension has been difficult. Prior to the Board meeting, fiscal personnel asked Mr. Numer if the Board could grant time waivers or amend the training requirements so the training that is to be provided from October 1, 2009 to December 31, 2009 is scheduled after January 1, 2010 when a new contract is activated. Mr. Numer asked the Board to take a stance that would support obtaining a contract extension. Mr. Numer explained that not obtaining a contract extension would be detrimental to numerous deputies, sheriffs and county court systems. An extension would allow sufficient time to select a vendor and implement a new contract.

Commissioner Forbes made a motion to support staff's request for obtaining an extension of the continuing education training delivery contract to be effective until December 31, 2009. Deputy Gunesch seconded the motion and it passed with the following votes:

Voting Aye: Board Members DeLuca, Forbes, Gunesch, Montz and Smith

Voting Nay: None

Mr. Doug Hummel reviewed the instructor applications for the Pennsylvania State University for Mr. Paul F. Banach, Ms. Mozelle E. Daniels and Daniel T. Miltenberger. Mr. Hummel explained that Mr. Banach and Mr. Miltenberger are current employees of the Penn State Justice and Safety Institute and are assigned to the Deputy Sheriffs Training Program. The request is for Mr. Banach to become certified to instruct: Defensive Tactics, Officer Safety, Security, Investigations, and Professional Development. The request is for Mr. Miltenberger to become certified to instruct: Officer Safety, Physical Conditioning, Crisis Intervention and Professional Development. The request is for Ms. Daniels to instruct: Criminal Law, Officer Safety and Crisis Intervention.

Commissioner Forbes made a motion to certify Mr. Banach, Mr. Miltenberger and Ms. Daniels as instructors for the Basic Training Program in the above listed subjects. Mr. Montz seconded the motion and it passed with the following votes:

Voting Aye: Board Members DeLuca, Forbes, Gunesch, Montz and Smith

Voting Nay: None

Mr. Numer introduced Mr. Thomas Speers, Solicitor for the Montgomery County Sheriff's Office. Mr. Numer stated that the Board was not planning to enter into an executive session but could if desired by the Board or Attorney Speers. Mr. Speers stated that he intended to have the deputy present with him at today's meeting, but due to a death in the deputy's family, he was unable to attend. Mr. Speers stated that he did not know if he could waive the deputy's privilege in this personnel matter, but without mentioning his name, we all know that he is a Montgomery County Deputy. Mr. Numer explained that the deputy in question attended basic training and completed everything but the physical fitness standards. Attorney Speers stated that the Montgomery County Sheriff's Office uses the academy standards for physical fitness as part of their hiring process. He explained that they implemented the pre-employment physical training testing due to having had deputies fail the physical training standards in previous classes. Attorney Speers stated that they experienced problems with the younger deputies failing the test, not deputies above 50 years old. Attorney Speers stated that because of the training cycle, it might be close to a year from a deputies pre-employment physical training test until they attend the academy. Mr. Numer stated that the deputy in question failed the academy pre-test, the first for record test in week nine and failed the second for record test in week 13. Mr. Numer stated that prior to the week 19 test, the deputy apparently injured himself during defensive tactics training. Mr. Numer stated that the deputy did not report the injury until after defensive tactics ended and before the week 19 final test. The deputy submitted a medical excuse exempting him from the week 19 final physical training test. Mr. Numer referred to the Board packet and explained that the Montgomery County Sheriff's Office was contacted regarding the next available test and it was reported that the deputy was not yet medically cleared to take the test. Mr. Numer stated that another test date was made available and the Sheriff's Office notified the academy that the deputy was ready to take the test. The deputy appeared for the test and failed. Mr. Numer stated that the dates are in the Board packet. Commissioner Forbes asked what part of the test the deputy failed. Mr. Bob Stonis, Penn State Justice and Safety Institute, stated that the deputy failed the 300 meter run. Mr. Numer stated that his test results are in the Board packet. Mr. Numer stated that he failed the first for record test by failing the sit-ups and chose not to attempt the other exercises. In the second for record test during week 13, the deputy failed the 1.5 mile run. During his final test in February 2009, the deputy failed the 300 meter run and declined to attempt the push-ups and 1.5 mile run. Mr. Numer stated that he had been communicating with Mr. Speers since the deputy failed in February. Mr. Numer explained the policy to Attorney Speers. Mr. Numer also explained that in addition to this deputy's failure of the physical fitness test, he is no longer eligible to serve as a deputy due being beyond his one year of employment that is allowed by law. Mr. Speers communicated to Mr. Numer that Sheriff Durante is requesting the DSETB to grant this deputy one additional opportunity to take the physical fitness test. Attorney Speers notified Mr. Numer that the deputy was going to continue to work in a clerical capacity until this matter is addressed by the DSETB.

Mr. Numer stated that he notified Attorney Speers and suggested that prior to the May Board meeting, that they administer a physical fitness test. Mr. Numer stated that it would be support for his request if the sheriff could state at the DSETB meeting that the deputy recently passed the physical fitness test administered by the sheriff's office. Mr. Numer stated that the sheriff's office recently tested the deputy and he failed the 1.5 mile run by approximately 40 to 45 seconds. Attorney Speers stated that the test was administered on this past Tuesday (May 19, 2009). Attorney Speers thanked the DSETB for allowing him to attend the meeting and address this matter. Attorney Speers referred to the Board packet, which include the deputy's grades, and stated that this deputy did very well, with the exception of the physical fitness test, during his attendance at the academy. Attorney Speers stated that the deputy had a severe injury to his elbow. The injury was treated for several months upon his return from the academy and required surgery in the Fall of 2008. Due to his surgery, he was unable to train. Attorney Speers stated that he is requesting a waiver to allow this deputy to return to work as a deputy, since he is now medically cleared, and to grant him an additional opportunity to take the physical fitness test since he is now able to train. Attorney Speers stated that the deputy tested Tuesday and failed the 1.5 mile run. However, Attorney Speers stated that the deputy decreased his time in the event by over one minute from when he was last test at the academy in February. Attorney Speers stated that he would have liked to been able to tell the DSETB that the deputy recently passed the test, however, the deputy is now within the range that he could pass the test. Attorney Speers stated that the deputy was injured at the academy and surgery was required. He stated that the deputy was cleared for duty on January 20, 2009. Attorney Speers stated that the deputy should have objected to taking the test in February due to not having enough time to train. Attorney Speers stated that the deputy did as he was instructed. Attorney Speers stated that the policy allows the deputy up to one year to return and take the physical fitness test. Attorney Speers referred to the deputy as an "excellent deputy" and has done well. Attorney Speers stated that if another test is not granted that it would be a waste to the sheriff for all the time devoted to the deputy and his training and injury. Attorney Speers stressed that the deputy did very well at the academy except the physical fitness test and that he is seeking this additional opportunity. Attorney Speers stated that the deputy is close to the required standard. Attorney Speers stated that he understands the policy, but that it is not part of the DSETB regulations or statute. Being that it is a DSETB policy, Attorney Speers stated that the Board has the discretion to allow the deputy this opportunity. Attorney Speers stated that the fact sheet that was submitted to the sheriff's office indicated that the deputy is afforded three attempts at the physical fitness test. If you do not count the test that the deputy did not take in May 2008, he would still have one opportunity to take the test. Mr. Numer stated that the policy allows three tests and the deputy failed all three testing opportunities. Attorney Speers questioned the policy that is applicable to the deputy. Mr. Numer stated that under a previous policy, the deputy would have had a fourth opportunity, but this deputy is covered under the current policy. Attorney Speers stated that the policy was adopted after the deputy had his injury. Attorney Speers stated that despite the policy, he is still asking for a waiver of the policy. Mr. Hummel stated that in the past, the academy "bank rolled" tests. That practice stopped and deputies are only given one opportunity (post graduation) to pass the test. Attorney Speers stated that if the deputy would fail to pass the test, then it is his

responsibility due to having several months to train. It would be a fair opportunity. Attorney Speers stated that the elbow injury affects running due to the need for balance. Deputy Gunesch stated at the beginning of the academy the deputy submitted a voluntary medical history report that he indicated having a prior elbow injury. Deputy Gunesch asked why the sheriff forced the deputy to return to the academy for the February test if he was not ready. Deputy Gunesch stated that if this deputy was a municipal police officer, he would be dismissed. Attorney Speers stated that Act 120 standards are different in that they are part of a regulation. Attorney Speers stated that the DSETB has discretion with this policy. Deputy Gunesch stated that the Board is being asked to grant an exception and why did the sheriff send the deputy back for the test if he was not ready. Attorney Speers stated that the deputy wanted to try the test. Commissioner Forbes stated that he supported a deputy from his county that was in a similar situation and the DSETB could not grant an exception to the policy. Commissioner Forbes stated that the responsibility was on the deputy and he knew the required standards and failed to pass the test. Commissioner Forbes stated that the deputy had three weeks to prepare for the final test. Commissioner Forbes stated that he needs to support the DSETB policy. Mr. Montz stated that we are being asked to grant an exception to the policy and the deputy was tested on Tuesday and failed. Mr. Montz stated that we have no reason to grant an additional test. Attorney Speers stated that the deputy reduced his 1.5 mile run time by one minute since he was last tested at the academy. Attorney Speers stated that the DSETB invested much time and money into training this deputy and it would be wasted. This deputy did excellent in the training academy and that he had an injury that required surgery. He claims that the deputy did not have sufficient time to train. Attorney Speers stated that we are talking about the “death penalty” for this deputy’s career. This deputy would be let go based on the Board’s decision. Attorney Speers stated that “whether or not someone has animosity toward Sheriff Durante for this decision or animosity for me for coming here,” it does not change the issue. Deputy Gunesch stated, “no, that’s not it.” Mr. Montz stated, “what we need is deputies on the street that can pass all the standards that are set by the Board.” Attorney Speers stated that Pennsylvania has an equal rights amendment. He stated that the deputy passed the standards that are set for other age groups and gender. Attorney Speers stated that if the deputy was a female, he would have passed the physical fitness test. Attorney Speers stated that the DSETB wants physical fit deputies on the street, but the standards are not part of the recertification training. He stated that not all the active deputies could pass the physical fitness standards. Attorney Speers stated that the standards need to be “job related.” Attorney Speers recognized the need for standards but asked how different standards for gender and age are “job related.” Attorney Speers stated that this issue is for a different day or challenge. Mr. Numer stated that he believes we are getting beyond the scope of the request. Mr. Numer stated the standards are the industry standard for other law enforcement training, such as State Police and the Municipal Police Officers Education and Training Commission (MPOETC). Mr. Numer stated that he agrees that this is a serious decision affecting the deputy’s career and the expenditure of training funds. Mr. Numer stated that he would have supported the request if the deputy would have passed the fitness test that was administered by the sheriff. Mr. Numer stated that the deputy has had numerous tests that he failed. Mr. Numer stated that 40 to 45 seconds over the required time for the 1.5 mile run is not close. Mr. Numer stated that he agrees that this

is a decision based on a policy, but there needs to be a finite limit where the Board considers these issues and where the Board says, "no." Attorney Speers stated that he is not here to argue the policy, but to ask for an exception. Attorney Speers stated that the deputy would have been here today if not for a death in his family. Attorney Speers stated that the deputy was tested after he learned of the family tragedy. Attorney Speers stated the death could have affected his performance. Attorney Speers stated that the deputy did pass the standard when he was hired. Attorney Speers stated he did not know the date of the pre-employment test.

Commissioner Forbes made a motion to deny the request for Deputy Richard Kelly to have one additional physical fitness test. Mr. Montz seconded the motion and the request was denied with the following votes:

Voting Aye: Board Members DeLuca, Forbes, Gunesch, Montz and Smith

Voting Nay: None

Mr. Numer explained that the policy allows the Sheriff the ability to request the DSETB to grant the deputy another opportunity to complete the entire 19 week academy. Mr. Numer explained that there are no tuition costs for training, however, the Sheriff or Deputy would be responsible for lodging, meals, travel and salary costs. Attorney Speers asked that if the deputy would return for the academy and pass the physical fitness test, could a request be made for a waiver due to his previous training. Mr. Numer stated that anything is possible. Mr. Numer stated that the DSETB meets quarterly. Mr. Numer stated that the Sheriff could request that the DSETB cover the costs for room and meals. Attorney Speers stated that for the record, "we are going to take the position that it was an arbitrary decision and abuse of discretion in the decision that was made here today and ask the Board to reconsider the decision in fairness to this deputy." Attorney Speers stated that this decision is not only the decision of the Sheriff, but includes the County Commissioners. The County Commissioners never paid to send someone to training. The Commissioners are cutting budgets and telling us what is needed. Attorney Speers stated that his County Commissioners are going to tell him and the Sheriff to hire someone else and send that person to training because there would be no costs involved. Commissioner Forbes stated that it is the Sheriff's responsibility to manage his training budget. It is the Sheriff's decision if he wants to spend his training funds on sending a deputy to basic training. Attorney Speers stated that the Sheriff does not have training funds for basic training. Mr. Numer stated that the deputy has the responsibility and failed. Attorney Speers thanked the DSETB for hearing his request. Chairman Deluca thanked Attorney Speers for attending the meeting.

Mr. Numer presented the time waiver requests. Sheriff Walter Hoke, Crawford County, requested a time waiver for recertification training for Chief Deputy Dale A. Collins. Chief Collins's training due date was April 11, 2009. The request is made due to Chief Collins's retirement on June 30, 2009. Sheriff Hoke assigned Chief Collins to primarily administrative duties to assist in the training and transfer of duties to the new Chief Deputy. The request would be an exception to Board policy.

Commissioner Forbes made a motion to approve the time waiver request for Dale A. Collins. Sergeant Jody Smith seconded the motion and the request passed with the following votes:

Voting Aye: Board Members DeLuca, Forbes, Gunesch, Montz and Smith

Voting Nay: None

Sheriff Ronald W. Rossi, Lehigh County, requested a time waiver for recertification training for Deputy Richard Griffith. Deputy Griffith's training due date was November 23, 2007. Deputy Griffith was on medical leave of absence from October 2007 through January 2008 and was unable to attend Continuing Education in Allentown. The sheriff's office neglected to reschedule Deputy Griffith to attend the continuing education training at another location. The sheriff requested a time extension until June 17, 2009 so Deputy Griffith can attend class C-09-57 in Reading. Deputy Griffith is currently registered for the class.

Commissioner Forbes made a motion to deny the time waiver request for Deputy Richard Griffith. Deputy Gunesch seconded the motion and the request was denied with the following votes:

Voting Aye: Board Members DeLuca, Forbes, Gunesch, Montz and Smith

Voting Nay: None

Sheriff Richard P. Keuerleber, York County, requested a time waiver for Basic Training for Deputy Michael J. Reese. Deputy Reese's training due date was March 17, 2009. Deputy Reese was scheduled to attend Basic Training with class B-08-03, beginning August 4, 2008 and ending December 12, 2008. During the registration meeting, the night prior to the first day of class, Deputy Reese returned home, due to a tragic family emergency. Due to the nature of the tragedy, Deputy Reese was rescheduled to attend the academy with class B-09-01. During his attendance at the academy, Deputy Reese failed the Firearms Qualification. As per the DSETB policy, Sheriff Keuerleber is allowing Deputy Reese to return to the academy to repeat the Firearms class. Sheriff Keuerleber requested the time waiver for Deputy Reese to continue serving as a Deputy Sheriff in an un-armed clerical status with the York County Central Booking Center, pending his successful completion of the Firearms class on August 6, 2009.

Mr. Montz made a motion to deny the time waiver request for Deputy Michael Reese. Commissioner Forbes seconded the motion and the request was denied with the following votes:

Voting Aye: Board Members DeLuca, Forbes, Gunesch, Montz and Smith

Voting Nay: None

Sheriff George J. David requested an exception to the DSETB policy regarding training failures. Deputy Erica Bacon was dismissed from the Basic Training Academy class B-09-01 on May 6, 2009 for failing the Firearms Qualification. Deputy Bacon previously failed the AED course. The DSETB Policy requires the dismissal of any Deputy that fails two training modules. Sheriff David requests an exemption to allow Deputy Bacon to return to Basic Training to retest the Firearms Qualification and retake the AED course.

Mr. Montz made a motion to deny the training request for Deputy Erica Bacon. Deputy Gunesch seconded the motion and the request was denied with the following votes:

Voting Aye: Board Members DeLuca, Forbes, Gunesch, Montz and Smith

Voting Nay: None

Mr. Numer reviewed the list of Time Waivers approved by the Training Supervisor. Mr. Numer reviewed the list of Training Waivers approved by the Training Supervisor. Both are for informational purposes and do not require DSETB action.

Mr. Donald Zettlemoyer, Penn State University, provided the report on Basic Training and Waiver Training. Graduation for the current class is at 11 a.m. Mr. Robert Stonis recognized the efforts of academy instructor Timothy A. Stringer. Mr. Stringer was named the NRA Law Enforcement Officer of the Year for 2008.

Ms. Christine Willard provided the report on Continuing Education. Ms. Willard stated that six classes remain until the end of the training cycle on June 30, 2009.

Commissioner Forbes requested that a letter of accommodation be sent to Mr. Stringer.

Sergeant Smith asked that the legal updates portion of continuing education be updated more frequently. Ms. Willard stated that one problem is that the curriculum is written for the course which is offered for a two year period. Mr. Numer stated that the legal update training offered on-line is updated yearly.

Mr. Luongo provided a report on the distance learning program. Since 2004 the number of enrollment increased from 20 deputies in 2004 to 86 deputies in 2009. Legal Update training has been the most popular course. Deputies from 31 counties have participated in distance learning courses.

Mr. Numer stated that the next meeting of the DSETB will be held at the PCCD on Thursday, September 10, 2009, at 9:00 a.m.

Deputy Gunesch made a motion to adjourn. Commissioner Forbes seconded the motion and it passed with the following votes:

Voting Aye: Board Members DeLuca, Forbes, Gunesch, Montz and Smith

Voting Nay: None