

Board on Public Safety Standards and Training

Minutes

April 20, 2006

The Board on Public Safety Standards and Training held a regular meeting at 9:00 a.m. on Thursday, April 20, 2006 at Salem Fire Department, Airport Fire Station and Training Center, 2742 25th Street SE, Salem, Oregon. Chair Bob Tardiff called the meeting to order at 9:05 a.m.

Attendees

Board Members:

Bob Tardiff, Chair, Oregon Association Chiefs of Police
Bob Wolfe, Vice-Chair, Corrections recommended by the Oregon State Sheriffs' Association
Kelly Bach, Oregon State Firefighters' Council
Andrew Bentz, Oregon State Sheriffs' Association
Harold Burke-Sivers, Private Security Industry
Larry Goff, Oregon Fire District Directors' Association
Robert King, Non-Management Law Enforcement
William Lafferty, Forest Protection Agencies
Eric Meyer, Private Security Industry
Steven Piper, Non-Management Law Enforcement
Mark Prince, Oregon Fire Chiefs' Association
Lane Roberts, Oregon Association Chiefs of Police
David Schutt, Oregon District Attorneys' Association
David Sprando, Chief, Portland Fire and Rescue
James Whelan, Oregon Volunteer Firefighters' Association
Thomas Wright, Department of Corrections Bargaining Unit Representative

Board Members Absent:

Derrick Foxworth, Portland Police Bureau
Robert Jordan, SAIC, FBI, Oregon
Erik Kvarsten, League of Oregon Cities
Nancy Orr, Oregon State Fire Marshal
Ron Ruecker, Superintendent, Oregon State Police
Wanda Sorenson, Public Member
Eric Swanson, Public Safety Telecommunicators
Max Williams, Department of Corrections

DPSST Staff:

John Minnis, Director
Eriks Gabliks, Deputy Director

Chris Brodniak, PI Compliance Investigator
Brian Henson, Private Security/Private Investigation Supervisor
Tammera Hinshaw, Executive Assistant
Marilyn Lorange, Certification and Records Supervisor
Theresa King, Professional Standards Coordinator
Rosemary Neal, Executive Assistant
Bonnie Salle, Certification Coordinator

Guests:

Derek Bliss, Private Security Policy Committee, Armed Security
Nicole Braman, Hatfield School of Government, Portland State University
Jerry Giger, Molalla Police Department
Linda Gilbert, DAS Budget and Management
Mike Leloff, Portland Police Bureau
Mitch Morrow, Department of Corrections
Sharon Noone, Hatfield School of Government, Portland State University
Mike Palmer, Portland Police Bureau
Rosie Sizer, Portland Police Bureau



1. Chair's Report and Administrative Announcements

Chair Bob Tardiff announced that this is a public meeting, subject to the public meeting laws and will be recorded.

Requests were made to remove Item B (Ronald Lister) and Item D (Brent A. Mulford) from the Consent Agenda and to designate them as separate Agenda items.

2. CONSENT AGENDA (The following items were ratified by one vote*)

A. *Minutes

Approve minutes from January 19, 2006 Board meeting.

C. *Mitchell, Edgar (DPSST #22419)

Uphold recommendation of the Police Policy Committee not to revoke the certification of Edgar Mitchell for violation of discretionary disqualifying convictions defined in OAR 259-008-0070(3) (a) (B).

E. *Schabert, Stephen M. (DPSST #19427)

Uphold recommendation of the Police Policy Committee to revoke the certification of Stephen Schabert for violation of the moral fitness standards defined in OAR 259-008-0010.

F. *West, James (DPSST #24028)

Uphold recommendation of the Police Policy Committee to revoke the certification of James West for violation of the moral fitness standards defined in OAR 259-008-0010.

G. *Williver, Sterling T. (DPSST #27916)

Uphold recommendation of the Police Policy Committee to revoke the certification of Sterling Williver for violation of the moral fitness standards defined in OAR 259-008-0010.

H. *NFPA Fire Fighter - OAR 259-009-0062(2) (a)

Uphold recommendation of the Fire Policy Committee to file proposed changes to OAR 259-009-0062(2)(a) as a proposed rule with the Secretary of State and if no comments are received during the public comment period, file rule with Secretary of State as permanent rule.

I. *NFPA Driver - OAR 259-009-0062(2) (b)

Uphold recommendation of the Fire Policy Committee to file proposed language for OAR 259-009-0062(2) (b) as a proposed rule with the Secretary of State and open public comment period.

J. *NFPA Airport Fire Fighter – OAR 259-009-0005 and OAR 259-009-0062(c)

Uphold recommendation of the Fire Policy Committee to file proposed language for OAR 259-009-0005 and OAR 259-009-0062(c) as proposed rules with the Secretary of State and if no comments are received during the public comment period, file rules with Secretary of State as permanent rules.

K. *NFPA Fire Officer – OAR 259-009-0062(2) (h)

Uphold recommendation of the Fire Policy Committee to file proposed language for OAR 259-009-0062(2) (h) as a proposed rule with the Secretary of State and if no comments are received during the public comment period, file rule with Secretary of State as permanent rule.

L. *OAR 259-008-0070 – Denial Revocation

Uphold recommendations of the Police Policy Committee, Corrections Policy Committee and Telecommunications Policy Committee to file proposed language for OAR 259-008-0070 as a proposed rule with the Secretary of State and if no comments are received during the public comment period, file rule with Secretary of State as permanent rule.

M. *Police Policy Committee Appointment

- Gruby, Ray, Oregon Council of Police Associations (OCPA).

N. *Corrections Policy Committee Appointment

- Hagey, Shane, Oregon Association of Community Corrections Directors (OACCD).

O. *Fire Policy Committee Appointment

- Stein, Joel, Oregon Fire Marshal's Association (OFMA).

P. *Private Security and Investigators Policy Committee Reappointment

- Randall Woolard, Private Business/Government Entity Utilizing PS.

Q. *Director's Annual Evaluation Report

Chair Tardiff expressed the Board's appreciation for the outstanding job John Minnis, Director is doing with constituents as well as the staff at the Department of Public Safety Standards and Training.

With the exclusion of Items B and D, Andy Bentz moved to approve the Consent Agenda. Larry Goff seconded the motion. The motion carried in a unanimous vote.

B. *Lister, Ronald (DPSST #22562)

Theresa King reviewed the case before the Board. This case came before the Police Policy Committee on February 8, 2006 and this issue focused on whether or not to revoke Mr. Lister's certification based on the violation of the moral fitness standards defined in OAR 259-008-0010.

Mr. Lister was employed with the Molalla Police Department and DPSST initially received this case as a discharge for cause. The case went to arbitration and DPSST did stay the matter at the request of Mr. Lister through his attorney. Ultimately Mr. Lister was re-employed. DPSST reviewed the underlying facts of the case. The case was brought before the Police Policy Committee and after discussion the Police Policy Committee recommended revocation based on the violation of the moral fitness standards.

Robert King provided the following salient points:

- Arbitrator's decisions for officers in the State of Oregon should be final and binding.
- The arbitrator for Mr. Lister indicated in his Opinion that Mr. Lister lacked training, experience and supervision and he was not intentionally untruthful.

- Mr. Lister should not be decertified.
- Mr. King objects and disagrees with the fact that the Board can override the decision made by an arbitrator in a case such as this.

Bob Wolfe moved to uphold the recommendation of the Police Policy Committee and that the certification of Ronald Lister be revoked for violation of the moral fitness standards defined in OAR 259-008-0010. Lane Roberts seconded the motion. The motion carried 12-3. Bob Wolfe, Andy Bentz, Harold Burke-Sivers, Larry Goff, Bill Lafferty, Eric Meyer, Steve Piper, Mark Prince, Lane Roberts, David Schutt, Jim Whelan, and Bob Tardiff voted aye. Kelly Bach, Robert King and Tom Wright voted nay.

D. *Mulford, Brent A.

Theresa King reviewed the case before the Board. This matter was brought before the Police Policy Committee on whether or not Mr. Mulford's certifications should be revoked based on violation of the moral fitness standards defined in OAR 259-008-0010. The Committee met and considered the matter and held a unanimous vote to recommend revoking Mr. Mulford's certification.

Mr. Mulford had been terminated by his employer. DPSST sent out a notice to revoke Mr. Mulford's certifications based on the discharge. The case went to arbitration and as a result Mr. Mulford returned to work. DPSST referred to the impact of arbitration on licensing issues and referred to a case law *Huesties vs. BPST* where the licensing issues are dealt with and not employment rights.

Kelly Bach provided the Board with the following salient points:

- There are two issues with regard to Mr. Mulford. One incident occurred in 1994 which, according to Mr. Bach, was resolved and closed. The second incident occurred in 2005 and Mr. Mulford was terminated by his employer. The case went to arbitration and Mr. Mulford was eventually re-employed.
- Mr. Bach believes that the issues surrounding Mr. Mulford do not provide substantial doubt about his honesty. Mr. Mulford made a couple of mistakes under stressful situations but immediately rectified them.
- Employers need to follow the Collective Bargaining Agreement and follow due process.
- Mr. Mulford should not be decertified.

Discussion was held with regard to police officers' credibility, integrity and honesty.

Clarification was sought as to whether this case is a discretionary disqualifier and whether decertification would be for a four year disqualification period. It was reported that the 2005 Legislature removed the four year minimum reapplication provision and through an Administrative

Rule, moved the discretion for determining what conduct should be lifetime and what conduct should permit reapplication to the Policy Committees and the Board. Therefore, it is no longer an established four year reapplication period for every type of conduct.

With regard to Mr. Mulford's case, there are established rules that identifies what constitutes the moral fitness criteria. The Police Policy Committee criteria were the moral fitness standards and they did not look at the matter of a recommended period ineligibility. The prior statutory recommendation had been a minimum of 4 years and was not a mandatory 4 year application. The prior recommendations of the discretionary disqualifying convictions workgroup that had been previously in place had established recommended periods of ineligibility for certain types of convictions. Currently, DPSST are undergoing a transition phase of needing to implement the new guidelines from the Legislature. Therefore policy committees and the Board will be establishing, through rules, general guidelines for the reapplication for various types of conduct. Workgroups were established last year by the Police, Corrections and Telecommunications Policy Committees to evaluate discretionary disqualifying convictions and determine which types of convictions should be discretionary and which should be mandatory. An additional workgroup has been established with representatives from every policy committee. One of the tasks of this workgroup will be to evaluate work eligibility recommendations based on whether it is related to criminal or moral fitness conduct issues.

Robert King expressed that for officers in the State of Oregon, arbitration is an opportunity for fairness and an opportunity at a process that is final and binding. Mr. King believes that Mr. Mulford should not have been terminated from his employer and expressed his concern regarding the ability of DPSST to set aside the arbitrator's decision and revoke Mr. Mulford's certifications.

Lane Roberts moved to uphold the recommendation of the Police Policy Committee and that the certification of Brent A. Mulford be revoked for violation of the moral fitness standards defined in OAR 259-008-0010. Bill Lafferty seconded the motion. The motion carried 9-5. Andy Bentz, Harold Burke-Sivers, Bill Lafferty, Eric Meyer, Steve Piper, Lane Roberts, David Schutt, Jim Whelan and Bob Tardiff voted aye. Kelly Bach, Larry Goff, Robert King, Mark Prince and Tom Wright voted nay. Bob Wolfe and Dave Sprando abstained from voting.

3. Director's Report

John Minnis presented the Board with a handout relating to a number of projects that the Department of Public Safety Standards and Training (DPSST) have been working on. He reported on the following items:

Legislative Concepts: DPSST has three legislative concepts for the 2007-2009 legislative session. They are as follows:

- ***Polygraph Examiners Reporting Responsibilities:***
This concept removes the requirement that polygraph examiners register with the county clerk of each county in which they maintain a business address. This issue has been shared with the County Clerks' Association and they support the concept.

- **DPSST Staff - Fallen Officers Benefit:**
DPSST staff who are killed or permanently injured in the line of duty currently do not qualify under this statute. This legislative change would recognize certified DPSST staff that may be killed or permanently injured in the line of duty.

- **Private Security - Private Investigators:**
 - (i) **Differentiate Between Board and Department Processes**
When HB 2117 was drafted, effectively moving the duties, powers, and functions of the Oregon Board of Investigators to DPSST, all reference in ORS 703 to the “Board of Investigators” was replaced with reference to the Department of Public Safety Standards and Training. This was done without consideration of whether or not the reference was to The Board of Investigators, the state agency or the Board of Investigators, the state board. As a result, the board processes have been removed from the current statute. This concept would reinstate the desired board processes.

 - (ii) **Consolidation of Program Fees**
Currently, the private security and private investigator programs are administered under DPSST in one program area, The Private Security/Investigators Program. Both program areas are under the purview of the Private Security Policy Committee. Under current statute, the fees collected for the administration of these two program areas must remain separate. This creates inefficiencies in the administration of the program as resources cannot be pooled. The concept would pool the fee revenues under the Police Standards and Training Account. This pooling would allow greater flexibility in the administration of the program areas and benefit the constituents as the residual benefits of an economy of scale result from a combining of their constituent base and available resources.

 - (iii) **Clarification of “An Act of Fitness”**
Current language broadly defines the behaviors that an investigator must not exhibit, or face disciplinary action or civil penalty. The legislative concept further defines ‘an act’, narrowing the scope of the statute and bringing it in line with the Moral fitness and criminal disqualifier provisions found in other program areas administered by DPSST and as defined by the Board.

Academy Training:

John Minnis noted the following:

- There has been ongoing review of the curriculum for police training.

- Other policy committees are reviewing their own curriculum for potential expansion or improvement within their curriculum.

- A tour of the new facility will be provided to the Board members. The facility has been designed and developed to enhance DPSST’s ability to deliver the training that is envisaged. DPSST has been moving towards the integration of their training both

in terms of the integration of a multi-disciplinary approach to training and also developing scenarios. In addition, DPSST has gathered information from individuals who have reviewed DPSST's curriculum and the new facility. These individuals believe that DPSST is about 10 years ahead of most jurisdictions around the world.

- The annual Law Enforcement Memorial Ceremony, held in honor of those who have given their lives in the performance of their duties, will be held on Thursday, May 11, 2006 at 1:00pm.
- The Ribbon Cutting ceremony to officially open the new training academy will be held on July 17, 2006 at 1:00 p.m.
- A Fallen Firefighters Memorial for fallen career and volunteer firefighters is currently being constructed at the new facility. A memorial dedication and ceremony will be held on Saturday, September 9, 2006 at 1:00pm.
- Oregon Physical Abilities Test (ORPAT) – The Department of Justice has advised DPSST that it may recommend that the Board establish the ORPAT as a pre-academy minimum standard for physical fitness because DPSST would be acting within its statutory authority and because the ORPAT is defensible from a disparate impact perspective.

4. Committee Reports

- Corrections Policy Committee: Bob Wolfe, Chair reported that the Corrections Policy Committee will have their first meeting with the Corrections Curriculum Advisory Committee in the very near future. Captain Ruth Jenkins from the Deschutes County Sheriff's Office has been named as Chair of the Corrections Curriculum Advisory Committee. The committee is made up of seven members including Ruth Jenkins, three members from the Department of Corrections and three members from the County Jail environment.
- Fire Policy Committee: Jim Whelan, Chair. Recently a workgroup was appointed to review discretionary disqualifying convictions.
- Police Policy Committee: Bob Tardiff, Chair. A Police Policy Committee meeting is scheduled for May 10, 2006. Agenda items include ORPAT and certification of law enforcement agencies.
- Private Security and Investigators Policy Committee: Harold Burkner-Sivers, Chair provided an overview of current work being carried out by the Committee. In the last legislative session there was a mandate to add accreditation as part of training. The Committee is developing administrative rules, accreditation agreement and accreditation applications. Additionally, the Committee is still continuing to incorporate investigators into Private Security.

- Telecommunications Policy Committee: Eriks Gabliks reported that the Telecommunications Policy Committee is looking at physical standards for employment similar to Police, Corrections, and Parole and Probation.

There being no further business to come before the Board the meeting adjourned at 10:10 a.m.