

**MADISON DEPARTMENT OF
POLICE SERVICES
REGULAR MEETING – February 9, 2006
9 CAMPUS DRIVE, MADISON– 7:00 PM**

Attendees: Commissioner Emile Geisenheimer, Commissioner Thomas Cartledge; Commissioner David Smith, Commissioner Michael Rollinson, Commissioner Michael Heaney; Chief Paul Jakobson.

Also Present: Attorney Judith Ravel; members of the community; press; department officers; Charles Walz, Board of Selectmen Liaison; Peter Pardo, Board of Finance representative for Liaison James Deephouse; Kathi Traub, Board of Selectmen.

CALL TO ORDER

Meeting was called to order at 7:04 PM by Commissioner Geisenheimer, at which point Commissioner Heaney called a point of order. The Pledge was led by Commissioner Heaney, after which he continued with his comments.

Commissioner Heaney said his point was the integrity of the Commission as to the office of chairman, specifically; he said he would make his remarks brief, but feels as a minority member of the Commission, he should stand up for his principles. His concern, specifically, is the propriety of certain actions taken at the January 12, 2006 meeting, in particular any action that the act was questionable, which is now argued to have formed the basis for ousting him as elected chairman and electing Mr. Geisenheimer in his stead.

The fundamental reason of his concern is there was nothing on the public agenda to reasonably alert anyone to the prospect of what happened at that meeting, just the contrary. As he understands it, the only possible basis to do what was done at that meeting, and that act would have been questionable, would have been a formal action by this Commission and a vote to declare unlawful and nullity the preexisting policy cast by the former Commission last year or what was attempted was a formal vote to rescind the vote of the prior Commission to adopt that policy. Neither of those two actions or proposed actions was set forth in the agenda. As you know, that issue has become the subject of a formal FOI complaint filed by the NH Register; the FOI complaint is pending and an officer has been assigned to the case by the FOI Commission. As he said at the regular January meeting he conducted, he has no wish, although he could insist, to frustrate what seems to be the will of his colleagues to elect Mr. Geisenheimer chairman and has made a very specific settlement offer to the Board publicly that he would resign as chair under certain circumstances and conditions. Apparently, it presented a problem and the offer has not been accepted given that fact, and while he will not impede the progress of this Commission or obstruct its business, he cannot acknowledge the Chairmanship of Mr. Geisenheimer unless or until the offer is accepted or the FOI proceeding is terminated, clears the ground and removes the cloud that now exists over this body.

He will participate fully in any discussion that the Board has, but his objection and grounds will remain – he will not repeat them every time there is a vote or formal action, but they remain his position until he publicly changes it. That is the point of order he wishes to raise.

Commissioner Geisenheimer said it makes sense to rearrange the agenda and deal with the issue that is on the agenda called election of officers and close this matter out once and for all. It is interesting that one who is an attorney (Heaney) would make such statements as made twice in public and in writing at least once, and completely ignore the impropriety of the election. He wrote with respect to that as soon as he returned from a family vacation; you ignored the substance of the letter and wrote back with a proposal, for the record, that requires that this Commission acknowledge that it erred in interpreting the failure of the prior commission to properly change its policy. What we did was look at what was done at the September 8, 2005 meeting; the policy existed as of January 12 and that policy exists today in our view and that of Town Counsel; therefore the January election is valid.

Commissioner Geisenheimer then distributed an opinion letter from counsel to the commissioners and for the record, read the letter into the minutes:

Re: Requirements for Change in The Police Commission Policy and Procedure Manual

Dear Emile:

You asked me to review the Commission's Policy and Procedure Manual in respect to the steps required to revise these policies. In addition you asked me to consider what policy was in effect on January 12, 2006 in respect to Election of Officers.

I find that both these questions are addressed clearly in the Policy and Procedure Manual issued August 19, 2004 which provides in relevant part:

Three steps shall be required for adopting or revising policies and procedures as follows:

- 1. Draft of new or revised policy shall be presented at a regular meeting.*
- 2. Any revision and changes discussed and recommended at the subsequent meeting.*
- 3. Final policy adopted by majority vote at the next regular meeting. (See attached.)*

I also reviewed the minutes of the meetings in 2005 when the Commission attempted to change its procedures for election of officers. Unfortunately, the first reading of the proposed change took place at a Special Meeting on July 28, 2005. Therefore, in my opinion, subsequent actions taken to change the procedures or in reliance on such changes are invalid. Specifically the attempt to elect officers in December rather than January, as required by the effective Policies and Procedures, was invalid.

On January 12, 2006, which was the first meeting in January after the Town election, the Board of Police Commissioners was required to elect officers pursuant to Section VII COMMISSION OFFICERS AND ELECTION OF OFFICERS, subsection A. (See attached.)

If you have further questions about this matter or wish to discuss it further, please do not hesitate to contact me.

Very truly yours,

*Judith A. Ravel
Town Attorney
Town of Madison*

Commissioner Geisenheimer continued, he has a packet to include resolutions that he would like to introduce and commented that each commissioner received copies of these resolutions by email yesterday, in addition to an amended agenda which was also sent to the Town Clerk. When Commissioner Geisenheimer said he would like to place a motion to adopt each of the resolutions and began to read the document, Commissioner Heaney said he would respond to the legal arguments in his confidence as a lawyer and asked, if Commissioner Geisenheimer was stepping aside as chair because it is for one of the commissioners to move to introduce the resolution in accord parliamentary rules? Commissioner Heaney continued, the chair does not introduce the resolutions. It is for one of us to move on that, not the Chair. With that, Commissioner Geisenheimer asked the Vice Chair to read the resolution

MOTION by Rollinson, second by Smith for the two resolutions to be read for the record. All in favor. None opposed. So moved.

Vice Chairman Smith read:

Whereas Paragraph IX (D.) Adoption of Commission Policies of the Police Commission Policy and Procedure Manual provides that "Three steps shall be required for adopting or revising policies and procedures as follows:

1. Draft of new or revised policy shall be presented a regular meeting
2. Any revision and changes discussed and recommended at the subsequent meeting
3. Final policy adopted by majority vote at next regular meeting

Whereas a clear and material distinction is made between "Regular" and "Special" meetings in Paragraph VIII (A) and VIII (B) of the Policy Manual. In defining a Regular meeting Paragraph VIII (A)(6) sets forth the voting requirement "to change, alter, amend, pass or enact regulations, practices and procedures". No such provision is found in Paragraph VIII (B), which defines a Special meeting.

Whereas the public record shows that the first reading of the proposed change to paragraph VII Commission Officers and Election of Officers occurred at the Special Meeting of July 28th; that the second reading took place at the regular meeting of August 11th and that the third reading and vote on a motion to adopt the proposed changed policy took place at the September 8th regular meeting.

RESOLVED *therefore that the September 8, 2005 vote on the motion to approve the change to paragraph VII was and is invalid because the first reading of the proposed change took place at a special meeting rather than a regular meeting as required by Paragraph IX (D).*

FURTHER RESOLVED *that the provisions of Paragraph VII governing the election of officers remained unchanged following the vote of September 8, 2005 and were in full force and effect on January 12, 2006 and remain so today.*

Whereas the January 12, 2006 election of the officers of the Board of Police Commissioners took place at a duly called meeting and was conducted fully in accordance with the provisions of the policy governing the election of officers then effect.

RESOLVED *that the resulting election of Emile Geisenheimer as Chairman, David Smith as Vice Chairman and Thomas Cartledge as Clerk is hereby ratified.*

Commissioner Heaney asked to discuss each item separately; Commissioner Geisenheimer said it is in the public's interest that the fact raised FOI and they will deal with that issue. Commissioner Heaney said the Commission could not move on another motion until there was a vote on the first one. Commissioner Geisenheimer stated that these are not conflicting motions and could be read together. Commissioner Heaney reiterated, one motion has to be voted on at a time. If you want to make up the rules as you go along, fine. Atty. Ravel interjected, it hasn't been moved yet.

MOTION by Rollinson second by Cartledge to name Smith as Acting Chair to be enabled to read the two resolutions for the record All in favor. None opposed. So moved.

Whereas a duly-called Special Meeting of the Board of Police Commissioners was held on January 12, 2006 to conduct business as set forth on the agenda contained in the notice of the meeting filed with the town clerk.

Whereas a motion to rescind the vote of September 8, 2005 to amend Paragraph VII of the Police Commission Policy and Procedure Manual governing the election of officers was made, seconded and approved by a vote of 4 to 0.

Whereas the members of the Board of Police Commissioners present at the January 12, 2006 special meeting considered the vote of September 8, 2005 to amend Paragraph VII to have been invalid because the Commission had not followed its Policies and Procedures when it attempted to amend them. Therefore the provisions of Paragraph VII were not changed as a result of the September 8, 2005 vote.

Whereas no action has been taken by the Commission that is dependent on the January 12, 2006 vote to rescind the invalid vote of September 8, 2005; nor was that vote needed to accomplish the business of the Commission on January 12, 2006.

Whereas a complaint has been filed alleging that the Commission violated the FOI law by its vote to rescind.

Whereas the Commission does not believe that a violation occurred but always wishes to fully comply with both the spirit and the letter of the FOI laws and wishes to eliminate any basis for controversy.

RESOLVED *therefore that the vote of the Commission on January 12, 2006 to rescind the September 8 vote to amend Paragraph VII is hereby nullified.*

Commissioner Geisenheimer said there was a second resolution to be read to discuss at the same time. Commissioner Heaney said he feels this whole exercise only distracts us from our business; he didn't create this problem and is caught in the middle and put on the horns of a dilemma. First, because town counsel gives us an opinion does not make it so, because you, Mr. Geisenheimer have your views, specifically the validity of an action taken last year by the Commission does not make it so; he has a different view about the validity of the Commission's actions last year, as a lawyer who has done some research he noted that Town counsel's thin opinion cites no CT law, just her judgment. He said he finds the objection to the action taken last year to be based on a very finite technical ground – a mere technicality; he feels there was substantial compliance following of procedures rules and substantial compliance – if so, the policy of September stands. The time to make an objection to that technically was in July when it was introduced at a special meeting, in August when reiterated at a regular meeting and then again in September when reiterated at a regular meeting - not about 6 months after the fact when it is too late for the Commission who made the policy to vote to take curative action. Thinks there is a great untimeliness in raising this technicality. Connecticut case law places a very strong presumption in favor of any formal act taken by a Commission and a high burden of proof of those seeking to undo the formal actions of a Commission. There are numerous cases that can be cited for that and the other propositions – he researched them today. He said he didn't want to get into a discussion with Mr. Geisenheimer because neither he nor the public wants that. He offered, from the get-go, a complete situation to allow settlement in what he thought was a win-win solution

Chairman Geisenheimer asked Commissioner Heaney to comment on the resolution. Commissioner Heaney said the he doesn't accept that, even if the September action of the former Commission, because of a technicality which normally reinstates the preceding policy, does not act as a revocation of a prior policy. With respect to ratifying your election, Mr. Geisenheimer, he said he doesn't think you are the best qualified person to lead this Commission; now we are asked to ratify an election with some questions. Commissioner Cartledge asked, at that point, "we are being asked?" Commissioner Heaney said that is what he is reading in the resolution for the election of the chairman, not the other officers as there were none, but there was a chair. Thinks his comments are in order and asked to continue. Commissioner Heaney continued, he has great respect for Commissioner Geisenheimer's career areas of competence but in his association with him on the Commission there is a particular insensitivity to the parliamentary and procedural requirements of a democratic and parliamentary organization. Commissioner Heaney said, in Mr. Geisenheimer's first two years of tenure, he was not committed to attending the meetings; he appreciates Mr. Geisenheimer was a minority in terms of Commission orientation. Still, Commissioner Heaney feels it very difficult to get him to contribute constructively and positively to issues they were trying to address; our attendance record was poor. What ever you may think of his (Heaney's) orientation, he is very substantially experienced in working with local governments and working with police officers. He would have thought, given that comparison, that his chairmanship would have been given greater consideration than it was.

Commissioner Geisenheimer responded, he doesn't want to get into an argument with Commissioner Heaney and pointed out some would find the expression of the pot calling the kettle black; it seems to him, to cite parliamentary procedures to say you didn't cause this problem. For Commissioner Heaney to suggest the fault lies somewhere, forgetting the personal attack, is to want to dismiss out of hand the failure of the prior Commission to follow its own rules. We are a body to regulate a law enforcement agency. How can we ask the police to enforce the law when we don't follow the law? The rules say what they say; it is not just his option. There is a reason for calling special Vs. regular meetings. One of the things that

regular meetings talk about is the necessary number of votes to change a procedure; it doesn't say the same for a special meeting; the Commissioner erred. It is fair-minded that the rule was never changed. If the rule didn't change, there must be a rule from before. Commissioner Geisenheimer thinks the common man, without being knowledgeable in parliamentary procedures, FOI or police policy, knows when you and the former commissioners decided to preempt the election of the new officers of the new commission, it was never done in this town. How is it democratic to try to appoint someone like the former commissioner to be chair to control the agenda without even knowing who the new commissioners will be? It is just wrong. Fortunately, he continued, you screwed up in the process. You tried to steal the chairmanship in an improper manner and it doesn't stand.

Acting Chairman David Smith asked for a discussion.

MOTION by Rollinson, second by Cartledge to accept the ratifications as read.

Commissioner Heaney asked if it is the motion to adopt the entire packet? All in favor. None opposed. So moved.

MOTION by Cartledge, second by Rollinson to accept the second page in its entirety as read by Commissioner Smith as presented in a written statement by Town Counsel. Vote carried: 4-1-0 (Heaney).

Commissioner Heaney questioned that on page two, paragraph 3, there was no vote to consider the vote of September 8 to amend Article VII in the minutes; this body acts by voting. He read, "*Whereas the members of the Board of Police Commissioners present at the January 12, 2006 special meeting considered the vote of September 8, 2005 to amend Paragraph VII to have been invalid because the Commission had not followed its Policies and Procedures when it attempted to amend them. Therefore the provisions of Paragraph VII were not changed as a result of the September 8, 2005 vote.*"

Commissioner Geisenheimer answered, the minutes are not transcripts – there was a discussion and you were not at the meeting. The resolution that was just voted substantiates that the members present were of that opinion.

Commissioner Heaney replied, it is a small point, but he doesn't like the motion that states something that isn't true. Yes, you ratified actions of the past.

Commissioner Geisenheimer then re-read paragraph three of resolution two. Commissioner Heaney asked where was it expressed and continued, he watched the tape, read the minutes – the only person to express that opinion was you (Commissioner Geisenheimer). Commissioner Heaney continued, then you moved quickly to a rescission.

Commissioner Cartledge read the first sentence under "Election of Officers" and asked if it was it necessary for everyone to express an opinion? Commissioner Heaney – when you propose to make that the basis of a very significant action, you need to do that. Commissioner Geisenheimer: that's your opinion. Commissioner Heaney said, no that is the law and then withdrew his comments.

Atty. Ravel commented, it is her job by state statutes to interpret your charter, policies, procedures. Commissioner Heaney asked if that means we didn't need to have a resolution to change that which never existed? Atty. Ravel answered, you don't need a vote to rescind something that was invalid. Commissioner Heaney questioned, how else would you rescind something that is invalid, other than declare it invalid? Atty. Ravel said the way this resolution was done was to rescind rather than nullify. Commissioner Geisenheimer added, opinions can arise without expressly voting an opinion of something not in dispute. His feeling was the votes to rescind were proper, but to remove the controversy was to nullify. The vote to nullify will put it to rest. No action was taken based on the motion to rescind.

MOTION by Rollinson, second by Cartledge that the resolution of the Commission on January 12, 2006 to rescind the vote of September 9, 2005 vote thereby be nullified. 4-1-0 (Heaney)

With that vote, Acting Chairman David Smith turned the chairmanship over to Commissioner Geisenheimer.

PUBLIC COMMENTS: Chairman Geisenheimer announced that the public comments would be at the beginning of the meeting and he would like to try to keep a reasonable schedule. Invited public comments and asked each person to limit to 3 minutes; the duration of this meeting component will be held to a reasonable amount of time:

Sgt. Heiden, President of IBPO commented that he submitted a copy of a letter written to the Board of Police Commission regarding changes to minimum staffing requirements. In the beginning of the chief's memo to department personnel, he spoke with the present Police Commission regarding minimum staffing levels. Sgt. Heiden's question, as a point of discussion, is what was the forum for the discussion, with individuals, was there a consensus for a change, was there a vote taken, should there be a vote taken to change a minimum, can each commissioner identify if they are in favor of the staffing changes? Chairman Geisenheimer answered, they will discuss this later in the meeting and asked to defer to that time adding, they are mindful of its importance.

Officer Hedges commented, today he had two medicals – a senior with difficulty breathing and a child with difficulty breathing. He had to choose which call to go to.

CONSENT AGENDA

MOTION by Cartledge, second by Rollinson to accept the minutes of the special meeting of January 12, 2006. All in favor. None opposed. So moved.

Chairman Geisenheimer asked to table the minutes; he said there was a duly called meeting in accordance with Town and Commission policies on January 12, 2006, at which the duly appointed Commission changed the date and cancelled the meeting of January 19, 2006 and yet a single commissioner decided there would be a meeting. Chairman Geisenheimer continued, it struck him as more of a press conference. Commissioner Heaney answered, the meeting of January 19, 2006 was properly noticed and an agenda was properly published; we are obligated by Charter to have 12 meetings per year. The meeting went forward without objection with one other commissioner present; no business was conducted because there was no quorum. He thinks any member who watched the video can then vote on the minutes. Commissioner Cartledge asked if that has ever been done before, i.e., to vote on a meeting that should not have taken place and vote based on the video? Commissioner Heaney said, in his experience, yes it happens frequently but he is not aware of it happening in this town or with this Commission. We still have the minutes and the videotape. Atty. Ravel suggested to move to accept the minutes by the people who were present; vote or abstain if you've studied the tape.

Commissioner Heaney asked if anyone looked at the tape? The commissioners answered no (excluding Commissioner Rollinson who was present at the meeting). Commissioner Rollinson added, there was no business conducted. Commissioner Heaney agreed, right – there was no formal business. Commissioner Rollinson felt the minutes would be inconsequential. Atty. Ravel said, the two of you can vote:

MOTION by Rollinson, second by Heaney to accept the minutes of the January 19, 2006 meeting. The minutes were accepted by the two commissioners who attended that meeting. 2-0-3 (Cartledge, Geisenheimer, Smith abstained).

Board of Finance member Peter Pardo commented, relative to the conversation at the January 19, 2006 meeting regarding who should attend the meeting, and said it was discussed that the First Selectman should be here; he said he clearly pointed out at that time that the First Selectman is not required to be here; he has power by the charter to appoint a selectman to be here in his stead.

MOTION by Heaney, second by Rollinson to accept the minutes of the January 19, 2006 meeting as amended. 2-0-3

Chairman Geisenheimer asked if any commissioners would like segments of the Chief's Report/Consent Agenda pulled out for discussion.

MOTION by Heaney, second by Rollinson to accept the Consent Agenda as presented. All in favor. None opposed. So moved.

Chairman Geisenheimer said he feels the commissioners are all sensitive to the current staffing that manifests itself in overtime, which is expensive and involuntary service. There are cases with officers working multiple shifts; we are down 2 officers from the authorized strength and are very concerned. On January 12, the Commission formed two committees to study staffing levels and the budget. He is very mindful of the OT costs. To have both officers taken up by a call with another call occurring without any backup is an awful situation. Regarding OT and its costs, we are diligently working to find the right staffing level.

OLD BUSINESS

- Overtime Results
 - Hours
 - Dollars

Chief Jakobson said the overtime results are better discussed when we get to the staffing committee; he has compiled OT for the past three years. There is a request to try to project the amount of OT for the balance of the fiscal year; there are several line items transfers pending on several accounts. Assuming the line item transfers are approved, the department is still at a dangerous low for replacement OT. He is working with Commissioner Smith in trying to determine a reasonable projection by shifting monies within the budget or by a special appropriation.

- **Election of Officers:** Discuss and take action on resolutions concerning policies and procedures for such election
- **Manual of Conduct Policy – Status**

Chief Jakobson: This is an issue to bring forward once staffing and budget concerns are addressed; it needs to be addressed in cooperation with the union. Commissioner Heaney said he has worked on this in the past, there was a prior agreement between the Commission and the union related to this policy that the union claims we need to observe. Sgt. Heiden replied, there is an MPP. Atty. Ravel added, the union filed a prohibitive practice change; the state sent a rep (Atty. Walsh represented the union) based on an agreement between Atty. Mike Devlin (her predecessor) and Atty. Walsh that the manual was finished and could be implemented. When the Chief attempted to do that, the union filed against it. The state rep indicated that this is not a prohibitive practice but he would try to work with us; most of the document was not an issue. They met 3 times with Mr. Ken Hampton of the State Labor Dept.; worked out almost everything and the draft was in Atty. Walsh's possession to be sent to Atty. Ravel; it has been lost; Atty. Walsh no longer represents the union and the successors do not have the notes. It was not a prohibitive practice.

Sgt. Heiden said it was a settlement agreement, to which Atty. Ravel responded no, there was no agreement on the manual. Sgt. Heiden corrected Atty. Ravel and said he signed the document himself. Commissioner Heaney added, he worked on this last year, with out knowing there was this effort to reach an agreement. Atty. Ravel said the Atty. Devlin letter was very clear to Atty. Walsh. She continued, we don't have the work of the three sessions with Ken Hampton to meet the concerns brought up after Atty. Devlin. No one can recover this. We can start with the original document, because we went into negotiations, it is simply lying there. Chief Jakobson feels we need to resurrect this. Chairman Heaney added, we need the document with the most advanced rendering. Atty. Ravel answered, we don't have it, the union does. Commissioner Heaney said, we need to get it and cannot proceed without it. Atty. Ravel continued, the present union rep can't get it from the former union rep. Commissioner Heaney said, Sgt. Heiden seems to think there is something controlling this. Atty. Ravel: we agreed to NOT distribute the manual; we never

got through the process. The next step is to go to the present union and look for the document. They were writing versions as the meetings were going on.

Chief Jakobson added, the changes were not electronic. Commissioner Heaney went through the drafts and sent a proposal to the union with an effort to restart; Atty. Ravel asked if he has gotten it back? Sgt. Heiden answered, we are currently in negotiations. Atty. Ravel: the backup plan is to take the agreement and ask the union what they want changed. Chairman Geisenheimer suggested to try to recover the documentation and work papers within a time limit. If we can't, we need to start over. Chief Jakobson advised that the boxes of documents were turned over to IBPO by Atty. Walsh. Commissioner Heaney asked if the document sent to the old rep be sent to the new rep? Chief Jakobson answered, we don't now if they have been able to go through all the documentation; they are in the middle of active negotiations. Commissioner Smith asked if Commissioner Heaney can be asked to follow though? Chairman Geisenheimer commented, this has been on every agenda. Atty. Ravel said this can't be put to rest in the middle of negotiations.

Sgt. Heiden responded, the changes for negotiation are our working conditions; you can't implement them until negotiated and we are in the process for working conditions (contract); those changes were not proposed by either side for discussion. They cannot be negotiated. Atty. Ravel answered, the manual is not a topic for negotiation - at the last negotiation with attorneys Devlin and Walsh, they agreed on a new policy manual and they were to sign off; subsequently there was a prohibitive practice. There have been meetings with the state which is satisfied that the union did not engage in a prohibitive practice. The town thought it was resolved, the union changed its mind. They agreed in 3 meetings to language changes; nothing substantive. Chief Jakobson added, it is policy outside the guise of a contract, which is subject to negotiations as it is a change in conditions. It can be negotiated outside the contract.

Commissioner Heaney suggested that by the next meeting he will get a handle on the status of the matter, where the missing documents are and come back to report as to the status. Atty. Ravel doesn't think it was ever an attempt by the town to impose any change in working conditions not discussed.

Intervention Process: Chairman Geisenheimer feels this may very useful for us to engage in, however not until we get to the point that the Commission has a position on issues discussed in the past. Commissioner Heaney thinks the intervention process is a mediation process agreed to last year suggested by a resident, Ed Kritzman, who has agreed to act as a moderator of the process. It involves police, the police commission, and boards of selectmen and finance representatives in confidential discussions around key issues that impact the police. The most important issues deal with services, department policies, number of cops to provide services and what will it cost. This was one of the few forums where all four entities were represented to talk frankly with each other and it has been of some value. He agrees with Chairman Geisenheimer that the Commission's transition cannot now state a position. Now, the process is on hold because the first selectman would like to see union negotiations further along or concluded before we try to finalize our process. Thinks everyone else also wishes this process to continue.

First Selectman Scarpati said he concurs, while beneficial negotiations between union and town are ongoing, it would be proper not to have these meetings; there is no point in confusing what is going on. Atty. Ravel added, we have been in binding arbitration and should not discuss this now. Mr. Scarpati reiterated, the intervention process should not continue at this time; when it is over the Commission can decide if it wants to continue.

- **Accreditation Process – Status**

Chief Jakobson reported, meetings are held weekly; they continue to review and update policies which are submitted for the Chief's review. At one point they will bring in the state to review the policies for the first tier. The process will continue for the remainder of this year.

NEW BUSINESS

Chairman Geisenheimer said we will follow the policy for the readings. In these matters, the Chief is empowered to make interim decisions and at his first meeting with him, it was brought up. It was

emphasized that these policies on minimum staffing are just that – minimums. It is the staffing that the Chief must do, no matter what. He cannot staff below that. Sgt. Heiden commented, previous staffing was higher than it is now. Chief Jakubson answered, it is his right under the contract, bearing in mind the Commission's policy. He believes he has the right considering the circumstances faced now, and looked at a number of areas, one of which was activity. This is not the ideal by any means and is certainly not what he wanted to do but felt he had to address it for the remaining fiscal year. He put this into place, immediately, and it has been in place for one week. The Commission has a policy amended once; he asked that the Commission amend this a second time. It will be reconsidered in May.

Chairman Geisenheimer said this gets into the staffing study that is ongoing. They formed a group at the first meeting to dig into this area; there are a lot of opinions. We have not yet done an analysis to know what the right answer is. He has no preconceived notion. First impression is, when a situation arises such as multiple calls with understaffing, that is a problem. Last week when he did a ride along, there had been a DUI accident the night before which impacted the shift for that night with roads tied up and backup. We are studying that right now with commissioners Smith and Cartledge.

Commissioner Cartledge added, it was presented to us as an ongoing problem; concern for safety of the townspeople and officers and the dollars spent to find an equation. Dave Smith and he are appointed to find a resolution that makes sense. He understands short staff and is trying to tie it into budgetary restraints and make recommendations. Commissioner Smith advised he has met with a number of people and is taking a look at as many parameters as possible; this is very complex. He is working with Tom Cartledge to quantify this and present it objectively. His guess for a timeline is probably within 3-4 weeks.

Officer Dan Hedges welcomed new board members – he said, not to oversimplify, and he doesn't want to complicate matters but the answer is – hire more officers. Commissioner Smith said he felt this is not the forum to discuss this; he will talk to Officer Hedges. Chairman Geisenheimer is taking this very seriously; with no preconceived notions. They are doing their fact finding and analysis in an open manner.

Officer Mulhern commented, this is the problem with Public Comments in the beginning of the meeting. If you say you are in the fact finding stages, he applauds them. In the meantime, levels are being reduced; wouldn't it be prudent to maintain the levels until the missions are done?

Chief Jakubson said, like his officers, he is not happy reducing minimums staffing levels which are the same as when he first started here three decades ago. He has a duty to the department and town to live within the budget but with the current expenditures, he cannot. Suffice to say, we will make our best effort, with his input, to bring the staffing to where it should be. He cannot go ahead, based on the current budget and the analysis for calls for service of the past 6 months and levels of activity; you cannot base staffing strictly on public calls for service, given the size of the town. On the record, they are making their very best effort to arrive at a proper staffing level and attempt to get the proper funding for the remainder of this fiscal year and the coming budget year.

Commissioner Heaney applauded the efforts of his new colleagues to look into staffing and draw their conclusions. He has observed, for the past 2 years, that we have been sounding like a rusty drum beating the same message to the Board of Selectmen and Board of Finance who have been deaf. We don't have enough staff. The reason we are at this level is due to the decisions of those boards two years ago. This was predicted and stated by the former Commission whose rationale for more staff was prepared. While he applauds what is being done, with respect to the OT now, we are on the horns of a dilemma. Too much OT is both expensive and is dangerous to the cops. What will we pick? He is frustrated, but we have seen it coming and have not been listened to.

Commissioner Heaney continued, regarding committee work, official committees of any board need to meet FOI requirements. If committees meet, an agenda has to be published and the public needs to be invited. The public is entitled to know what precedes actions taken by the Commission. The FOI act proceeding in the case of Pantaleo Vs. the Branford Police Commission is one in which these requirements are spelled out in no uncertain terms. Chairman Geisenheimer asked if this is an issue in contention? Commissioner Heaney answered that he is trying to be above board by saying it now. Chairman

Geisenheimer replied, we know this. Commissioner Heaney responded, this is violated all the time. He is making it a matter of record to bring transparency to all actions taken in town - certainly we can start with us. Commissioner Cartledge advised that he and Commissioner Smith are studying staffing, ride alongs, etc. Atty. Ravel interjected, it might be useful to have her conduct a comprehensive workshop on FOI as it is not helpful in bits and pieces. It is comprehensive. Commissioner Cartledge said that was the basis of the statement: Chairman Geisenheimer asked if Kathi Traub sent her an email? She did not take the effort to question her. There have not been any unscheduled or scheduled meetings. They are individually doing their fact finding; any meetings where they come together will be under the law. Doesn't appreciate being lectured.

Chairman Geisenheimer continued, they need to discuss this policy amendment; wishes they had completed the study before this policy is reviewed.

Commissioner Rollinson pointed out, the Chief indicates this staffing is through May; is it necessary to vote on anything until the staffing issues are completed? Sooner than May, if possible. Chairman Geisenheimer advised, this is a first reading.

First Selectman Scarpato commented, in the absence of doing this (minimum staffing), what else can the Chief do to control OT? Chairman Geisenheimer answered, the Chief is doing this under management powers. We are trying to get the policy before the Commission in order to ratify the minimum staffing.

Chief Jakubson said he requested it of the Commission as there has been one amendment made; he asked that the second amendment be endorsed. By the third reading, in April, if the fact finding determines otherwise, we can enact that. If we need to go back to the previously amended policy we can do so. Regarding the previous policy of 1 supervisor and 2 officers; 1 supervisor and 3 officers; 1 supervisor and 3 officers, his proposed amendment is 1 supervisor and 2 officers for each shift. By the third reading, you either endorse it or not.

Commissioner Rollinson feels that although this is the Chief's prerogative, does that open the doors for grievances? Atty. Ravel said the Chief has a right to do this, it is a limited time. Chief Jakubson added, what is not specified is, for any supervisor predetermined on events that occur on a shift, they can call personnel in or hold personnel over. This is a minimum; staffing can be above if necessary with justification.

MOTION by Heaney, second by Smith to introduce a first reading for minimum manpower level policy contained in the Chief's January 30, 2006 memo for manpower. All in favor. None opposed. So moved.

- First Reading of Policy Amendment: **XIV. Operations – Manpower**
- Budget Committee
- and*
- Staffing Committee: Chairman Geisenheimer reported these two studies are happening in parallels. Hope to be in the conclusion stage soon. He has asked for the January 14 Budget Workshop deferral because we will not be ready; there is no new date at this time. He is hoping for the second week in March. First Selectman Scarpato said that is a little too far out and suggested the Commission be prepared to discuss the submitted budget with the Board of Finance or get the Board of Finance to give a week or two extension. Chairman Geisenheimer said it would be very useful; he would rather the budget that is finalized be approvable with adjustments that would be made by others who are not as steeped in police details.

Chairman Geisenheimer said the Chief's benefit statement would be discussed in Executive Session, as it is a personnel matter.

- **Leave of Absence Requests**

Chief Jakubson advised there are two requests: one request is from the part-time records clerk who is not entitled to FMLA because she is part-time; she has required 16 weeks without pay. He suggests, per the Human Resource Director's recommendation a guideline of up to 12 weeks. As she is part-time we can use her salary to hire a temp. The Chief recommended a 3 month unpaid leave (12 weeks) absent any complications as opposed to 16 weeks.

Commissioner Heaney asked if twelve weeks is the FMLA standard? The Chief said the typical leave under State of CT rulings for FMLA is 12 weeks. Because she is part-time she can request a leave through him. He recommends 12 weeks as opposed to 16 weeks. She can request additional time if necessary. Chairman Geisenheimer asked if he looked at this with the HR Director? He answered, the HR Director advised the leave could be what he wants to grant. Chief Jakubson advised the second leave request is for a full-time employee who is also requesting child rearing time, although her letter has not been received by his office or HR at this time.

MOTION by Heaney, second by Cartledge to approve the Chief's proposed leave of absence of twelve weeks for the part-time records clerk. All in favor. None opposed. So moved.

Commissioner Heaney asked to urge the appointment of the other committees, specifically provided for in the Commission's policy manual, such as personnel, publicity, long-range planning. Chairman Geisenheimer thought about postponing these committee assignments until March.

MISCELLANEOUS CORRESPONDENCE

Chief Jakubson mentioned letter of appreciation from the FBI regarding the cooperation received by CID, specifically Officer Fox, for his involvement in the Obara case which is pending at both the federal and local levels. Chairman Geisenheimer added his congratulations.

First Selectman Scarpati commented that as *ex officio* to all the boards and commissions, he found that he likes to go to some meetings, not others. The problem is, things are said in the normal conduct of business that he can't and shouldn't comment on, depending on circumstances. It puts him at a disadvantage; if he says nothing, there is a presumption of assent; if he dissents, everything he says will be counterproductive. He learned that when he first attended Board of Ed meetings a few years ago as *ex officio*. Commissioner Heaney has taken him to task for not attending meetings. It is his intent to come to these meetings, but there are many times he cannot comment; the Town is in negotiations with the union; many things are being discussed and he cannot comment; he has thoughts that can be expressed later. Regarding the safety of the officers and the town, to not speak is a problem. They are not meaningless to him; they are a concern with the overall responsibility. He has to departmentalize. To those who watch, to the citizens and officers, he cannot always comment; that doesn't mean he agrees if he doesn't speak.

Chairman Geisenheimer said he hopes that we can conduct ourselves to move forward in a fact finding way and limit this body to be using this forum to criticize other boards of town or individuals; everyone serves as a volunteer. It is unfortunate when time is wasted to criticize others who are doing the best they can. He hopes to tone that down.

Commissioner Heaney said he applauds Chairman Geisenheimer's suggestion to urge us to conduct ourselves civilly and factually without arguments to criticize; that is uncalled for. However, as a party minority, he will be not told that because he does not agree he is not patriotic. He will be critical, as he has been, and will be factual and objective. He appreciates the service of all the commissioners, but he will speak up and call them as he sees them when another board has let the Commission or the town down. He concluded, he understands the spirit of Chairman Geisenheimer's remarks and will try to honor them.

Executive Session

MOTION by Rollinson, second by Heaney at 9:14 PM to enter Executive Session to discuss FOI complaint regarding the election of officers; FOI complaint regarding promotion, the status of arbitration,

the Chief's Benefit Statement, the investigative report and legal issues. All in favor. None opposed. So moved.

Present: Chief Jakubson; Atty. Judith Ravel; First Selectman Scarpati;
Commissioners Geisenheimer, Heaney, Smith, Rollinson and Cartledge.

MOTION by Geisenheimer, second by Rollinson, to adjourn Regular Session at 10:11 PM. All in favor. None opposed. So moved.

Minutes accepted: March 9, 2006