



the plaintiff has been discriminated against by reason of his epilepsy. In the circumstances of this case the only issue is whether the Rhode Island Municipal Police Academy had the legal authority to reject the plaintiff's application for admission to the training program for municipal police officers for any reason whatsoever, and if it did not, whether the plaintiff is entitled . to a preliminary injunction to prevent the Academy from refusing .to admit him to the next training session due to start on April 4, 1982.

The plaintiff is a police officer with the City of Woonsocket, and he seeks injunctive relief against the City, and against the Executive Director of the Academy and the Chairman of the Commission on Standards and Training. The City of Woonsocket, though nominally a respondent, has throughout this case, in its Answer to the plaintiff's Complaint, in its Affidavit, in the Agreed Statement of Facts and in its Memorandum supported the plaintiff's position.<sup>1</sup>

The plaintiff was rejected by the Academy which provides special training for municipal police officers, The Commission rejected the plaintiff on the basis of his history of epilepsy. The facts giving rise to that rejection should be set out in full.

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<sup>1</sup> Throughout the opinion, "respondent" is used to designate all parties except the City of Woonsocket and its officials.

The plaintiff, who is now twenty one years of age, suffers from a minor sleeptime phenomenon, usually of brief duration, characterized in some instances by sleepwalking or by his eyes being wide open and staring during periods of sleep. These episodes have never occurred while he is awake.

On November 25, 1979, the plaintiff completed an application for employment with the City of Woonsocket, and on January 30, 1980 he applied for appointment to the Woonsocket Police Department. Plaintiff fully disclosed on his application his sleeptime seizure disorder. On April 14, 1981 and on April 21, 1981, plaintiff was given pre-employment medical examinations by Dr. Warren Francis. The parties in their Agreed Statement of Facts state these examinations were intended to establish not only his medical qualifications to be appointed to the Woonsocket Police Department but also for enrollment at the Rhode Island Municipal Police Academy.

Plaintiff also submitted the written opinion of his treating neurologist, Dr. Taranath Shetty, dated April 12, 1981, that plaintiff had had "total seizure control while on Dilantin and Phenobarbitol during the past three years" and that in Dr. Shetty's words, "I see no contraindication to his working as a policeman."

On April 17, 1981 Dr. Warren Francis stated in his written report of plaintiff's physical examination that he found the applicant physically qualified as a candidate for training at the Police Academy. Dr. Francis was-aware of plaintiff's history.<sup>2</sup>

On April 21, 1981 Dr. Francis added to his certification of April 17, 1981 the following handwritten note:

"In view of the accompanying report<sup>3</sup> from the applicant's qualified neurologist and in the absence of any written standards prohibiting applicants with history of epilepsy I have found him (Dyndur) qualified."

The Woonsocket Public Safety Director, John R. Reynolds, then requested an opinion from the Woonsocket Board of Medical Review, consisting of three physicians. That Board in May of 1981 recommended plaintiff's appointment as a police officer.

On July 20, 1981, Dyndur was appointed as a probationary police officer on the Woonsocket Police Force. An

<sup>2</sup> Dr. Francis has examined between 400 and 500 applicants for the Academy's training sessions. Plaintiff's rejection by the Commission marks the first time the Commission has overruled a certification of medical qualification by Dr. Francis. (Agreed Statement of Facts, para. 18.)

<sup>3</sup> This is a reference to the letter of April 12, 1981 from Dr. Shetty.

appointee must undergo training at the Municipal Police School and serve a probationary period of one year before becoming a permanent member of the police department. On November 2, 1981, Dyndur applied for admission to the Police Academy training session due to start on December 14, 1981. Plaintiff was denied admission owing to his medical history of epilepsy.

The medical evidence presented to the Court is that epilepsy is not a single disease, either from the point of view of its cause or from the point of view of its manifestations. There are different classifications of epilepsy and each classification produces different kinds of seizures. Some seizures are major, generally characterized by a distortion of posture, a fall, and convulsions. Some seizures result in brief periods of unconsciousness or unresponsiveness.

Plaintiff's seizures are called temporal lobe seizures. They are not major, they do not occur while he is awake and they are characterized by what is called inappropriate behavior. In plaintiff's case, that behavior was sleepwalking. Such a seizure may last from 15 seconds to 2 or 3 minutes duration. In general, this type of temporal lobe seizure most often occurs during sleep. In plaintiff's case, they have all occurred while he was asleep, and did not occur at all for the three year period

prior to April 12, 1981. Plaintiff was classified as a controlled epileptic, which means that while he takes his medication on a prescribed regimen, he experiences no seizures.

The respondent argues in its Memorandum that an epileptic can suffer grand mal seizures with convulsions and "myclonic jerks" which are described as sudden contractions of a group of muscles in any part of the body. The respondent argues that fatigue, flashing lights, foot chases, high speed vehicular chases, pain, discomfort, sunshots, loud noises, emotional distress (all of which are elements of a police officer's work) can produce seizures in the plaintiff which "may not only put his co-workers in jeopardy . . . (but also) . . . be a danger to the people of Rhode Island". (Memorandum, pp. 8, 9.) For this proposition, the respondent presented no evidence whatsoever. Instead it relies in its Memorandum principally on a practice manual, Am. Jur. Proof of Facts, to establish its medical evidence.

Not one shred of evidence, either by way of testimony or affidavit, puts the plaintiff in that category of epileptic seizures so vividly described in the Memorandum. But all of the medical testimony, including the testimony of the respondent's own medical witness, Dr. Shetty, is absolutely uncontroverted on this point, and based on solid clinical findings.

There are objective tests to determine whether a person has epilepsy and, if so, into which category of epilepsy that condition falls. The patient's history is also significant to the diagnosis, although there are some phenomena which mimic seizures and may not in fact be seizures, such as sleepwalking. An electroencephalogram is useful in resolving whether a sleepwalking episode is or is not a seizure.

Temporal lobe seizures of the kind Plaintiff has experienced are not triggered by stimuli. An entire series of EEG's with light (Photic) stimulation was performed upon the plaintiff, using, for example, intermittent lights, and flickering lights such as the blue flashing lights on a police cruiser. There was no epileptogenic response in the plaintiff to any of those stimuli, that is to say a seizure was not provoked.

(Deposition of Dr. Barlow, p. 46).<sup>4</sup>

Dr. Barlow testified that there is no evidence of stress triggering a seizure in the plaintiff, and that it is highly unlikely that the stimuli of sound, pain or discomfort, would trigger a seizure. Under cross-examination by counsel for the Academy, Dr. Barlow stated that a lengthy foot chase would not

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<sup>4</sup> The parties stipulated that the deposition of Dr. Charles F. Barlow may be treated by the Court as an affidavit.

trigger a seizure, that there is no reason why the plaintiff cannot operate a motor vehicle, that a high speed auto chase would not trigger a seizure, that not even the stress of a "particularly dramatic or horrible crime scene-or . . . auto accident" would trigger an episode in the plaintiff.

The facts clearly show that plaintiff's seizures, infrequent in occurrence, have only been triggered by something that occurs when he is asleep. There is no reason, according to Dr. Barlow, for the plaintiff not to carry a firearm, not to swim, not to climb heights or not to work at night. In fact, it was the opinion of Dr. Barlow, based upon reasonable medical certainty, that the plaintiff can perform the duties of a police officer (duties fully described in the Exhibit shown to Dr. Barlow and appended to the Barlow Deposition) without the threat of injury to himself or to others. Indeed, the likelihood of the plaintiff having a seizure while asleep (which is the only kind the plaintiff experiences), if he continues his present course of medication is "close to zero," according to Dr. Barlow.<sup>5</sup>

The Commission on Standards and Training, in rejecting plaintiff on the basis of his epilepsy, had in its possession the report of Dr. Shetty, which stated that there was

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<sup>5</sup> The dosage and side effects of plaintiff's medication present no medical problems.

no contraindication to the plaintiff's working as a police officer, the certification of its own physician Dr. Francis that the plaintiff was physically qualified, and the opinion of the Medical Review Board that the plaintiff, despite his particular seizure disorder, was qualified to perform the duties of a police officer. The Commission was apparently concerned because a staff member had spoken by telephone with Dr. Shetty who stated that "if Mr. Dyndur (the plaintiff) failed to take his medication, he could have a seizure." (Agreed Statement of Facts, Par. 12.). The record does not disclose over what period of time Dr. Shetty feels that the failure to take medication would result in a seizure. Dr. Barlow testified that "missing one dose and making it up the next day is not sufficient (to trigger a seizure.) Being irregular about the exact time it is taken is totally unimportant. Irregular, missing two or three doses in a row and not making them up, that could trigger a seizure." (Barlow Deposition, p. 42; Agreed Statement of Facts, par. 20.)

The Commission, though it held "a lengthy discussion of the application of plaintiff" (Agreed Statement of Facts, par. 14.), had before it only a minimal amount of information concerning the plaintiff's particular-disorder and the time and character of his seizures. There is no indication that the Commission received any medical information concerning the precise disorder of the

plaintiff, nor was the plaintiff afforded an opportunity to present additional evidence to the Commission concerning his seizure disorder. While it is true that the plaintiff did not request a hearing he was not advised that he could. There is no provision in any regulation concerning a pre-rejection hearing. (Agreed Statement, par. 15.) 'Moreover, there is no record that any representative of the Academy or the Commission contacted or attempted to contact Dr. Francis before rejecting the plaintiff. (Agreed Statement.)

Although none of the parties have focused on the legislative history of police training schools in Rhode Island, that history is the key to the issue in this case.

LEGISLATIVE HISTORY OF POLICE TRAINING SCHOOLS

The General Assembly has in fact twice created a school for the training of municipal police officers. In 1955, the General Assembly by P.L. 1955, ch. 3459, created a "municipal police training school" within the Rhode Island State Police. R.I.G.L. 1956, §42-28-25. For purposes of clarity, the "municipal police training school" created by the legislature in 1955 will be referred to as the 1955 police training school. Supervision of the 1955 school vested in the superintendent of the State Police who was given power to establish a course of training and to "make all necessary rules and regulations relative to the education, physical standards and

personal character of the candidates and trainees and such other regulations as shall not be inconsistent with law."

R.I.G.L. 1956, . §42-28-27. No evidence has been submitted to the Court that any rules and regulations have ever been filed by the superintendent of State Police with the Secretary of State under the provisions of the Administrative Procedures Act, Title 42, Chapter 35 of the General Laws. The State Police are not listed as exempted from the provisions of the Act in the exempting section, §42-35-18.

No evidence has been presented to the Court that any rules and regulations relative to entry standards of candidates for the 1955 municipal Police training school were ever adopted by the superintendant, as he has the power to do under R.I.G.L. 1956, §42-28-27. The Act creating the police training school within the State Police also set out some criteria for admission to the 1955 school:

542-28-28: Persons admissible to school.  
No person shall be admitted as a candidate to the school unless he is a citizen of the United States and a resident of the state of Rhode Island and shall have reached the age of twenty-one (21) years, nor shall any person be admitted who shall not have first been certified by a physician as being physically and mentally sound on an examination made within one (1) month prior to the acceptance of his candidacy.

Under the 1955 Act, "candidates meeting the physical, mental and educational requirements of this chapter" are admitted to the school only upon the request of the municipal appointing authority. The 1955 Act creating the school has not been repealed, and was amended only once in 1960 when the maximum age for admission to the 1955 police training school was deleted.  
P.L. 1960, Ch. 23.

In 1969, the legislature again addressed the issue of a municipal police training school by the enactment of P.L. 1969, ch. 215, which added Chapter 28.2 to Title 42 of the General Laws. This Act created another "municipal police training school", which will be called the 1969 police training school.

The legislature set out its legislative intent in passing P.L. 1969, ch. 215 as follows:

§42-28.2-1 Legislative declaration of intent.--

The legislature hereby finds and declares that police work, a basic adjunct of law enforcement is professional in nature, requiring proper educational and clinical training in a state as densely populated as Rhode Island; that in our free society better law enforcement can be achieved through higher standards of efficiency in police work than in retributive measures against those who commit crime: that the protection of the health, safety and welfare of our citizens, can best be met by the creation of an educational training and recruitment program for persons who seek careers as police officers in order that such persons while serving in a probationary capacity prior to permanent appointment will receive training at approved recruit and in-service training facilities; and that by qualifying and becoming

proficient in the field of law enforcement such persons will individually and collectively better insure the health, safety and welfare of the citizens of this state in their respective communities.

Clearly the orientation of the legislature was to provide a greater degree of educational and clinical training to law enforcement personnel in recognition of the need for increased professionalism in police work, which in turn will enhance the health, safety and welfare of the public.

That portion of the legislation creating the 1969 police training school is set out in §42-28.2-2:

School established. There is hereby created and established a municipal police training school, for the use of all municipal police departments, the division of enforcement of the department of natural resources and the board of regents except (the) Providence police department, which shall be maintained by the state and located at the Rhode Island state police academy in Foster, Rhode Island. The school may utilize other state property for special courses of instruction when deemed necessary by the commission with the consent of the governor.

The 1969 Act never refers to the 1055 police training school established within the department of State Police.

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6 The "Commission" created by the 1969 act is nowhere referred to as the "Commission on Standards and Training" in the text of the act. That full title appears only in the caption to Chapter 28.2, which, in the original 1969 Act reads "POLICE OFFICERS: COMMISSION ON STANDARDS AND TRAINING", and is referred to in the general laws again only in the title, where it here reads "POLICE OFFICERS-- COMMISSION ON STANDARDS AND TRAINING."

It is important to note that in the 1969 legislation creating the "Commission", and the school, the "Commission" was given only limited power to establish-standards :

42-28.2-8. Establishment of Standards. The commission shall prepare and publish advisory training standards with due consideration to varying factors and special requirements of local police agencies relative to:

(a) Minimum standards of physical, educational, mental and moral fitness which shall govern the recruitment, selection and appointment of police officers.

(b) The commission with the approval of the governor will establish the courses of training, and set rules and regulations relative to the education, physical standards and personal character of candidates and trainees.

(c) Minimum courses of study, attendance requirements, equipment and facilities required at the municipal police training school.

(d) Minimum qualifications for instructors at the municipal training school.

(e) Minimum basic training requirements which police officers appointed to probationary terms shall complete before being eligible for continued or permanent employment, and the term within which such basic training must be completed following such appointment to a probationary term.

(f) \* \* \*

(g) \* \* \*

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(Emphasis supplied.)

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The Commission was **also** given certain discretionary powers :

42-28.2-10. Discretionary powers of commission.--  
The Commission may:

(a) Visit and inspect the police training school . . . for which application for approval has been made.

(b) Authorize the issuance of certificates of graduation or diplomas by the approved police training school to police officers who have satisfactorily completed minimum course of study.

(c) Cooperate with state, federal and local police agencies . . .

(d) Adopt such regulations as are necessary to carry out the purpose of this chapter.

(Emphasis supplied.)

The 1969 Act creating a second police training school and establishing a "Commission" has been amended in three legislative sessions in 1971, 1972 and 1974.

The 1971 amendment to the 1969 Police Training School Act dealt with appointment of a commission member, gave the Commission the power to certify the training school of any municipality with facilities and a program comparable to the 1969 school established by §42-28.2-2, and amended the section concerning preparation and publication of advisory standards so as to permit approval of such standards for such other schools as may be operated by a municipality. One of the 1971 amendments also enlarged the area in which advisory standards could be issued

by including a minimum number of sessions-per year for the school. (P.L. 1971, ch. 291; ch. 17.)

The 1972 amendments amended §42-28,2-2 so as to include the Division of Enforcement of the Department of Natural Resources and the Board of Regents as municipal police departments. (P.L. 1972, ch. 83; ch. 280).

It was not until 1974 that the most significant amendment of all was passed by the General Assembly. Its date of passage May 8, 1974, is also significant. Under the provisions of P.L. 1974, ch. 108, which amended the section on "Establishment of Standards", 542-28.2-8, the Commission was given the power to prepare and publish mandatory, as opposed to advisory, training standards. Other changes effected by the 1974 amendment gave the governor the power to appoint a chairman and vice-chairman, and gave the chairman the duty of appointing a staff necessary to carry out the purpose of the legislation.<sup>7</sup>

The respondent Commission and Executive Director argue in their memorandum in opposition to the issuance of a preliminary injunction that the Commission "established Entry

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<sup>7</sup> Respondent William P. Tocco, Jr., admits in his answer that he is "Chairman of the Rhode Island Police Officers Commission on Standards and Training." Respondent Raymond J. Shannon admits that he is "Executive Director of the Rhode Island Municipal Police Academy". It is not clear when the municipal police training school changed its designation from "school" to "academy."

Standards to the Rhode Island Municipal Police Academy as it relates to physical fitness". The memorandum then sets out a purported "Entry Standard" concerning physical examination as follows:

"Physical Examination.

A comprehensive physical examination (conducted no more than six months prior to the date of entry to the Academy). The examination to be performed by a licensed physician selected by the Commission, is to reflect that the candidate is free of any disease or disability which would interfere with his physical performance at the Academy. The physician's report must state that the candidate is physically capable of undergoing a rigorous physical exercise program which has been set up by the Academy." (Memorandum in Opposition to Motion for Preliminary Injunction. p. 3).

The record is devoid of any evidence to support the assertion in the memorandum that this "standard" was ever promulgated or published in any way whatsoever by the Commission.

The record does disclose, however, that the Commission first made a "filing" with the Secretary of State under the Administrative Procedures Act on April 14, 1971. (Plaintiff's Exhibit 1.) It must be noted that this filing occurred at a time when the Commission had the power to publish only advisory standards. An examination of the rules and regulations filed by the Commission in 1971 shows that two sets of standards were filed by the Commission: one relating to standards for the hiring of police

officers by a municipality and one relating to standards for applicants to the 1969 "Municipal Police Training School."<sup>8</sup>

A second "filing" was made on February 22, 1974. Again, the standards were in two parts, one relating to standards for the hiring of police officers by a municipality and one relating to standards for applicants to the 1969 "Municipal Police Training Academy (Sic)".

These February 22, 1974 "standards" were filed with the Secretary of State three months before the effective date of the 1974 amendment which authorized the Commission to establish mandatory as opposed to advisory standards.

The only filing made after the effective date of the 1974 amendment is a one page filing made on June 2, 1976. (The 1974 filing and the 1976 filing are both contained in Plaintiff's Exhibit 2.) The 1976 filing is entitled NOTICE OF, PROPOSED AMENDMENT AND ADOPTION OF RULES AND STANDARDS. It recites:

"Pursuant to Chapter 35, Title 42 and Chapter 28.2, Title 42 of the General Laws of Rhode Island, notice is hereby given by the Commission of the Municipal Police Training School

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<sup>8</sup> These applicants are municipal police officers who are seeking admission to the training school. Standards for admission set out in the filing relate principally to certain physical tests of strength, agility and endurance which candidates must pass for admission, such as sit-ups, push-ups, bar-chins, etc.

of its intention to amend and adopt rules and standards under the authority granted to the Commission of the Municipal Police Training School by Section 42-28.2-8(a) of the General Laws of Rhode Island.

The said rules and standards will define the minimum visual acuity required of applicants for appointment to the Municipal Police Training School.

EYES :

VISUAL ACUITY (CLEARNESS OF VISION)

APPLICANTS MUST HAVE A CORRECTED VISUAL ACUITY OF AT LEAST 20/30 IN EACH EYE."

Other than an explanatory note of the meaning of "20/30" vision, this is the sum total of all rules and regulations filed by the Commission after the 1974 grant of legislative power to set mandatory standards governing both the hiring of police by municipalities and the admission requirements of the 1969 Police Training School.<sup>9</sup>

While the Commission certainly has the power to do so, it has to date failed to adopt and promulgate a full set of rules and regulations governing the hiring of police officers by municipalities, and governing the acceptance or rejection of

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<sup>9</sup> The legislature has separately provided in RIGL 1956, §42-28.3-1 for psychological testing as a pre-condition for appointment as a state or municipal police officer, effective May 8, 1973.

police officers who apply for admission to the 1969 police training school.

The Commission, moreover, cannot rely on the statute governing the 1955 police training school. First, the Answer of the Executive Director of the 1969 police training school admits that plaintiff was rejected by that school.

(Answer to Plaintiff's Complaint admitting portions of Par. 12 and all of Par. 13). He also states that in rejecting the plaintiff he was "acting pursuant to the directives and applying standards established by the Rhode Island Police Officers Commission on Standards and Training." (Answer to Par. 13 of Plaintiff's Complaint). Further, in one of the two affidavits filed by the Executive Director of the 1969 police training school, the certificate received by a trainee upon completion of the session at the 1969 school is set out. That certificate of satisfactory completion of the course is signed by the Executive Director of the 1969 police training school and the Chairman of the Commission created by the 1969 legislation and not by the superintendent of the State Police under the 1955 provisions of §42-28-30.

Nothing in the record suggests that the 1969 school is operating under any of the statutory provisions which created

the 1955 police training school. That school, as set out in an earlier portion of this decision, is under the supervision of the superintendent of state police.<sup>10</sup> This Court can find no valid legal reason, and none has been suggested, to conclude that the 1955 statute, more particularly R.I.G.L. 1956 §42-28-28, governs the physical standards to be met by applicants to the 1969 school.

It is clehr then that the respondent has, without lawful authority, rejected the plaintiff police officer as a candidate for admission to the 1969 police training school. The reason advanced for that rejection, namely plaintiff's epileptic condition thus becomes immaterial.

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THE PRELIMINARY INJUNCTION

This application for a preliminary injunction is addressed to the sound discretion of the Court, a discretion that is not to be exercised unless the plaintiff has met his burden of showing a probability of success on the merits, that he will suffer irreparable injury unless an injunction issues pending hearing on the merits, and that the balance of equities and the public interest weigh in favor of issuance of the preliminary injunction.

<sup>10</sup> Nothing in the record even suggests that the 1955 municipal police training school is in fact still operating.

The plaintiff, who has argued that application of the rules and regulations of the Commission violate his right to due process and equal protection, asks this Court in effect to compel the respondent to admit him to the training class.

When an injunction, mandatory in its nature is requested, a stricter rule obtains:

"Owing to the extraordinary character of the remedy, it should be granted on preliminary application only in cases of great urgency and when the right of the complainant is very clear, Giacomini v. Bevilacqua, R.I. \_\_\_, 372 A.2d 66, 67, cited with approval in Industrial National Bank v. Searles, R.I. \_\_\_, \_\_\_ A.2d \_\_\_. (Decided March 5, 1982).

If the plaintiff does not attend the next session of the police training school, he will not be appointed to permanent status and will be terminated immediately from employment in the Woonsocket Police Department. The City has admitted this in its Answer to Paragraph 14 of the plaintiff's Complaint. The plaintiff must complete his training before the expiration of his probationary period on July 20, 1982. The April 4, 1982 session is the only session he can attend before his probationary period ends. If he is terminated, he will lose seniority, valuable training and experience. There is no indication that plaintiff's position on the Woonsocket Police Force will be held open for him until the

hearing of this matter on the request for permanent relief.

The Court holds that the Commission and the Executive Director have no lawful authority, for reasons set out previously, to reject a person such as the plaintiff, who is already a municipal police officer, for an alleged failure to meet physical standards that have no legal force and effect. The Court agrees with that portion of plaintiff's argument that the respondent "has no discretion to refuse plaintiff admittance." (Plaintiff's Memorandum, p. 15).

The injury to the plaintiff is irreparable and there is no adequate remedy at law. In balancing the equities and the public interest, the medical evidence previously cited overwhelmingly supports the conclusion that admitting the plaintiff to the municipal police training school poses no threat to the plaintiff, to other trainees or to the public at large. The respondent Executive Director of the Rhode Island Municipal Police Training Academy (School), and the Chairman of the Commission on Standards and Training are preliminarily enjoined from refusing to admit the plaintiff to the April 1982 training session of the school.

The respondent City of Woonsocket and the Public Safety Director of the City of Woonsocket are preliminarily

enjoined from terminating plaintiff's employment by reason of the December, 1981 rejection of the plaintiff's application to be admitted to the municipal police training school,

Nothing in this order is to be construed to prevent the Public Safety Director of the City of Woonsocket from terminating plaintiff's employment for reasons other than the December, 1981 rejection of plaintiff's application to the Municipal Police Training School.

Counsel for the plaintiff will present an Order for entry in accordance with this decision.