COURT OF APPEALS
DECISION
DATED AND FILED

September 12, 2017

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2016AP1573 **Cir. Ct. No. 2015CV21**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

MILWAUKEE POLICE ASSOCIATION AND DANIEL J. VIDMAR,

PLAINTIFFS-APPELLANTS,

V.

CITY OF MILWAUKEE,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County: JOHN J. DiMOTTO, Judge. *Affirmed.*

Before Kessler, Brash and Dugan, JJ.

¶1 DUGAN, J. The Milwaukee Police Association (the "Association") and Daniel Vidmar (collectively the "MPA") appeal the order dismissing their declaratory judgment action. The MPA asserts that we should reverse the circuit court's order and declare as follows: (1) the City of Milwaukee (the "City") has

not complied with the political party requirement of WIS. STAT. § 62.50(1h)(2015-16);[1] (2) the training "time limits" of § 62.50(1h) and MILWAUKEE CODE OF ORDINANCES § 314 (2008) ("MCO")[2] are mandatory; (3) the current members of the Board of Fire and Police Commissioners (the "Board") are not in compliance with the training requirements of § 62.50(1h) and MCO § 314; and (4) the circuit court improperly limited the scope of discovery.

¶2 We disagree and conclude that (1) the Board is in compliance with the political party requirement of WIS. STAT. § 62.50(1h); (2) the training is mandatory under § 62.50(1h) and MCO § 314, however, the timing of that training is directory; (3) the Board is in compliance with the training requirements; and (4) the circuit court's limits on discovery were a proper exercise of its discretion. Therefore, we affirm the circuit court.

BACKGROUND

¶3 The following background facts provide helpful context. We provide additional relevant facts in our discussion.

¶4 The Association is a labor organization that is the exclusive bargaining organization for non-supervisory police officers of the Milwaukee Police Department ("MPD"). Vidmar was a MPD police officer until June 26, 2014, when the Board upheld his discharge by the MPD Chief of Police.

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

[2] All citations to the MCO § 314 are to the 2008 version.

¶5 The MPA commenced this declaratory judgment action in January 2015, seeking declarations that the Board was not in compliance with the political party and the training requirements of WIS. STAT. § 62.50(1h) and that, as a consequence of the noncompliance with each of those requirements, any disciplinary decisions made by the Board, including its decision on Vidmar's appeal, were unlawful.

¶6 At the time this action was filed, the Board was comprised of the following six members: Marisabel Cabrera; Steven DeVougas; Kathryn Hein; Sarah Morgan; Michael O'Hear; and Anna Wilson. In May 2015, a seventh member, Pastor Fred Crouther, was sworn into office.

¶7 After conferring with the parties, the circuit court issued a scheduling order specifying matters relating to the political party requirement pursuant to which the MPA could depose current Board members and propound interrogatories to the Milwaukee mayor. The order also specified matters on which the MPA could depose Michael Tobin, who was the Board's executive director from November 2007 until November 2014.

¶8 The parties filed cross-motions for summary judgment.[3] After reviewing the parties' summary judgment filings, the circuit court conducted a second scheduling conference and issued an amended scheduling order that allowed the MPA to obtain discovery from the current Board members regarding (1) whether the training and political party requirements of WIS. STAT. § 62.50(1h)

[3] The City sought summary judgment dismissing the action on the following grounds: (1) the complaint did not set forth a justiciable controversy; (2) claim preclusion barred Vidmar's claim that his discharge was unlawful; or, alternatively, (3) the only justiciable claim that the circuit court could decide was the interpretation and application of WIS. STAT. § 62.50(1h).

were satisfied at the time of Vidmar's appeal; and (2) whether they currently satisfied the training requirements of WIS. STAT. § 62.50(1h). That order also provided for the parties to supplement their summary judgment filings, based on that discovery.

¶9 Thereafter, the circuit court granted the MPA's motion to file an Amended Complaint that added allegations that the City had failed to comply with the training requirements of MCO § 314. The circuit court also entered a second amended scheduling order extending the time for discovery, expanding the discovery of Board members and Tobin to allow deposition questions relating to training that the members received with respect to their service on the Board, allowing member Cabrera to be questioned regarding her political party affiliation, and allowing the parties to supplement their summary judgment filings.

¶10 Subsequently, the circuit court issued a detailed oral decision denying the parties' summary judgment motions.[4] It determined that the term "belong to" in WIS. STAT. § 62.50(1h) is "not ambiguous," that belonging to a political party equates with membership, and that the Board was in compliance with § 62.50(1h) because only one Board member, Cabrera, is a member of a political party.[5]

¶11 With respect to the training provisions of WIS. STAT. § 62.50(1h) and MCO § 314, the circuit court determined that the training component is

[4] The City did not appeal the denial of its summary judgment motion.

[5] Milwaukee has a Board of seven members, thus the statute requires that "not more than [three] … shall at any time belong to the same political party." WIS. STAT. § 62.50(1h).

mandatory, however, the time frame for starting and completing the training is directory. It found that all the current Board members had completed the training.

¶12 The circuit court noted that the MPA sought relief from all the Board's disciplinary determinations since 2008. However, it held that any issues arising from past disciplinary hearings of police officers, other than Vidmar, had been forfeited or waived and were not before it. With respect to Vidmar, the circuit court found that at the time of Vidmar's appeal the entire Board, including the three-person Board panel consisting of Cabrera, DeVougas, and O'Hear that was responsible for hearing the appeal, was in compliance with the training requirement. Therefore, the MPA had not established a basis for overturning the determination regarding Vidmar's discharge. It also found that MCO § 314 afforded the Board's executive director with discretion to modify the training and ride along, required by the ordinance.

¶13 The circuit court noted that O'Hear did not complete the training within twelve months of his initial appointment. However, when O'Hear was reconfirmed ten months later, he completed both the training and the ride along within twelve months and before he participated in the Vidmar appeal.

¶14 The circuit court also found that DeVougas completed the citizen academy and the ride along within twelve months. Although noting that the time frame for DeVougas' enrollment and completion of the citizen academy was unknown, the circuit court held that, based on its determination that the timing requirement is merely directory, those facts were not material.

¶15 The circuit court also found that Wilson completed the training class before she became a commissioner. Tobin approved that training and also waived

the ride along due to Wilson's disability. Additionally, Wilson did a SUV (sports utility vehicle) ride along that was not part of the official ride along program,

¶16 Subsequently, the circuit court issued a short written order denying the City's summary judgment motions and dismissed the MPA's declaratory judgment action with prejudice. This appeal followed.

DISCUSSION

I. The MPA's Interpretation of the Political Party Provision of WIS. STAT. § 62.50(1h) Conflicts with its Plain Language and Prior Construction.

¶17 The MPA contends that the City has not complied with the political party requirements of WIS. STAT. § 62.50(1h). The MPA concedes that only one Board member, Cabrera, is a dues paying member of a political party and that "on paper" it appears that the Board has satisfied the statute's political party requirement. However, it argues that all the Board's "political allegiances are not a mystery" and "Board members share the same political beliefs and ideals" as Milwaukee's current mayor. It says this is readily apparent by examining Board members' political contributions, attendance at political meetings and events, and current and past employment. It also quotes ***State ex rel. Pieritz v. Hartwig***, 201 Wis. 450, 230 N.W. 42 (1930), and asserts that limiting analysis to the statute's plain language would ignore the stated purpose of the Board, to eliminate politics from public safety, by allowing for paper compliance rather than actual compliance.

¶18 The City counters that it has complied with the statute because only one member of the Board is a member of a political party. It also argues that the MPA cites ***Hartwig*** out of context. The City suggests that we consider ***Conway v.***

Board of the Police and Fire Commission of the City of Madison, 2003 WI 53, ¶41, 262 Wis. 2d 1, 662 N.W.2d 335, which, citing ***Hartwig***, states that one of the primary purposes for creation of the Board was to remove the administration of fire and police departments from city politics and "place it in the hands of impartial and nonpolitical citizen boards."

A. Standard of Review and Law Regarding Statutory Construction.

¶19 We review a summary judgment determination *de novo*, using the same methodology as the circuit court. *See* ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). Summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." WIS. STAT. § 802.08(2). This issue involves the interpretation of a statute which we also review *de novo*. *See* ***State v. Turnpaugh***, 2007 WI App 222, ¶2, 305 Wis. 2d 722, 741 N.W.2d 488.

¶20 We "faithfully give effect to the laws enacted by the legislature." *See* ***State ex rel. Kalal v. Circuit Court***, 2004 WI 58, ¶44, 271 Wis. 2d 633, 681 N.W.2d 110. In doing so, "[w]e assume that the legislature's intent is expressed in the statutory language." *See* ***id.*** If that language is clear, we apply it as it reads because the words used by the legislature are the best evidence of its intent. *See* ***id.***, ¶45. Unless ambiguous, statutes must, of course, be applied as they stand. ***Id.***, ¶44.

¶21 The statutory interpretation must begin with the language of the statute. *See* ***id.***, ¶45. If the meaning of the statute is plain, then the inquiry stops.

See ***id.*** Language is given its ordinary, plain meaning, "except that technical or specially-defined words or phrases are given their technical or special definitional meaning." ***Id.*** We may use a dictionary in ascertaining the common, ordinary meaning of words. *See* ***Noffke ex rel. Swenson v. Bakke***, 2009 WI 10, ¶10, 315 Wis. 2d 350, 760 N.W.2d 156. Context is also important to meaning, as well as the structure of the statute in which the language at issue appears, which is all interpreted reasonably by the court to avoid "absurd or unreasonable results." *See* ***Kalal***, 271 Wis. 2d 633, ¶46. If this process of analysis yields a clear statutory meaning (one that is not capable of being understood by reasonably well-informed people in two or more senses), then it is not ambiguous, and the statute is applied according to this ascertainment of its single meaning. ***Id.***, ¶¶46-47.

B. In WIS. STAT. § 62.50(1h), "Belong to" Means Being a Member of a Political Party.

¶22 WISCONSIN STAT. § 62.50(1h) describes the organization of police and fire departments in first-class cities,[6] and provides, in pertinent part, that: "[i]n all [first-]class cities, … *there shall be a board of fire and police commissioners*, consisting of either [seven] or [nine] citizens, not more than [three], if the board has [seven] members, or [four], if the board has [nine] members, *of whom shall at any time belong to the same political party*." *See* ***id.*** (emphasis added). Milwaukee has a Board of seven members, thus, "not more than [three] … shall at any time belong to the same political party." *See* ***id.***

¶23 WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 201 (1961) includes the following relevant definition of "belong": "to be a member of a club

[6] The police department in Milwaukee, a first-class city, is the subject of WIS. STAT. § 62.50.

or similar association." This definition is consistent with the circuit court's determination:

> [T]his political party prohibition is a prohibition that applies to members of a political party. Not whether you have a connection to the party. Not whether you have some type of affiliation or affinity for a party. But you have to belong to a political party, and belonging to a political party means you are a member of that party.

¶24 In addition, the language "belong to" was included in the law enacted by the Wisconsin Legislature in 1885 when the legislature created the City of Milwaukee Fire and Police Commission. *See* 1885 Wis. Laws, ch. 378, § 1. The law required that the Board consist of "four citizens, *not more than two of whom shall belong to the same political party*, when appointed." *See* ***id.*** (emphasis added). In 1911, the membership of the Board was increased to five citizens and the statute was revised to provide that "*not more than two of whom shall at any time belong to the same political party.*" *See* 1911 Wis. Laws, ch. 586, § 1 (emphasis added). The Wisconsin Supreme Court interpreted the phrase "belong to the same political party" in the 1911 version of the statute as a limitation on the number of commissioners who have membership in the same political party, equating "belong to" with being a member of a political party. *See* ***State ex rel. Kleinsteuber v. Kotecki***, 155 Wis. 66, 69-70, 144 N.W. 200 (1913).

¶25 In ***Kleinsteuber***, the City of Milwaukee Comptroller challenged an order compelling him to pay several months of outstanding salary payments to the superintendent of the police and fire alarm system. ***Id.*** at 67. The comptroller argued that the law under which the superintendent was appointed, 1911 Wis. Laws, ch. 586, § 1, was unconstitutional because it provided that with respect to the appointment of commissioners "[n]ot more than two of whom shall at any time *belong to* the same political party." ***Id***. at 68-69. The court concluded that the

provision limiting the number of commissioners of the board that could be members of a political party was constitutional because "in the case at bar, there is no requirement that any member shall be chosen from any political party, nor does the provision in question disqualify one who belongs to *no* political party or make [one] ineligible." ***Id.*** at 69-70 (brackets added).

¶26 Because the statute is, in essence, the same statute interpreted by the supreme court in ***Kleinsteuber***, we are bound to follow its interpretation. "[W]e are bound by supreme court precedent, even if it is over a century old." ***Walberg v. St. Francis Home, Inc.***, 2004 WI App 120, ¶7 n.4, 274 Wis. 2d 414, 683 N.W.2d 518.

¶27 Finally, we note that it is presumed that the legislature has full knowledge of existing law. *See* ***Peters v. Menard, Inc.***, 224 Wis. 2d 174, 187, 589 N.W.2d 395 (1999). The legislature's approval of the ***Kleinsteuber*** court's interpretation of the predecessor statute can be inferred from the fact that in over one hundred years, it has never expressed its disapproval by amending the statute to specify that "belong to the same political party" has a broader meaning than being an actual member of the political party. *See* ***State v. Eichman***, 155 Wis. 2d 552, 566, 456 N.W.2d 143 (1990). "Legislative inaction following judicial construction of a statute, while not conclusive, evinces legislative approval of the interpretation." ***Id.***

¶28 The plain meaning of "belong to" and ***Kleinsteuber***'s interpretation of the phrase establish that in WIS. STAT. § 62.50(1h), "belong to" a political party means that a person is an actual member of a political party. It does not mean that a person has some type of general allegiance to, or that a person generally affiliates with a political party; neither constitutes membership in a political party.

¶29 Thus, we hold that "belong to" a political party means being a member of the political party. Only one Board member was a member of a political party when the Vidmar appeal was before the Board, and that was still the case when the circuit court rendered its decision. We conclude that, for all times relevant to this action, the City has been in compliance with the political party requirement of WIS. STAT. § 62.50(1h), and we therefore affirm the circuit court's determination on the political party issue.

II. The MPA's Interpretation of WIS. STAT. § 62.50(1h) and MCO §§ 314-1-2-b and 314-1-2-b-2 as Mandating that Training be Completed within a Specific Time Frame is not Supported by Principles of Statutory Construction.

¶30 The MPA contends that the circuit court incorrectly concluded that the time frame for training in WIS. STAT. § 62.50(1h) and MCO § 314-1-2-b is not mandatory because the conclusion violates the legislature's intent, misinterprets the pertinent law, and minimizes the undisputed facts of this case. The MPA relies on the word "shall" and maintains that the statutory time frame for the completion of the training is mandatory, citing ***Karow v. Milwaukee County Civil Service Commission***, 82 Wis. 2d 565, 570, 263 N.W.2d 214 (1978).

¶31 The City counters that the circuit court correctly held that the time limits were directory, also citing ***Karow***. Additionally, as an independent basis for affirming the court's ruling regarding the City's compliance with the training provisions, the City maintains that declaratory judgment actions can only provide prospective relief.

A. Standard of Review and Law Regarding Statutory Construction.

¶32 The issue of whether the training limits are mandatory or directory is a matter of statutory construction. "[T]he rules of construction for statutes have been long held applicable to the construction of municipal ordinances." ***State ex rel. B'nai B'rith Found. of U. S. v. Walworth Cty. Bd. of Adjustment***, 59 Wis. 2d 296, 308, 208 N.W.2d 113 (1973). As we previously stated, our review of summary judgment and statutory construction determinations is *de novo*. *See* ***Green Spring Farms***, 136 Wis. 2d at 315 (summary judgment); ***Turnpaugh***, 305 Wis. 2d 722, ¶2 (statutory interpretation).

B. WISCONSIN STAT. § 62.50(1h) and MCO § 314-1-2-b Mandate Training for Board Members, However, the Time Frame is Directory.

¶33 WISCONSIN STAT. § 62.50(1h) includes the following training requirement:

> Not later than the first day of the [seventh] month beginning after a member appointed by the mayor is confirmed by the common council, the member *shall* enroll in a training class that is related to the mission of the board and, not later than the first day of the [thirteenth] month beginning after a member appointed by the mayor is confirmed by the common council, the member *shall* complete the class. The training class *shall* be conducted by the city.

(Emphasis added.)

¶34 Two MCO ordinance provisions are also involved. The first is very similar to the statute with respect to the training. MILWAUKEE CODE OF ORDINANCES § 314-1-2-b states as follows:

> Each newly appointed commissioner *shall* register for training related to the missions of the fire department and

> the police department within [six] months of the date of confirmation of their appointment by the common council, and *shall* complete said training within [twe1ve] months of the date of confirmation of their appointment by the common council.

(Emphasis added.) The second provision states the nature of the training. MILWAUKEE CODE OF ORDINANCES § 314-1-2-b-2 states:

> Police department training *shall* include attending the Milwaukee police citizen academy and participating in the police department ride along programs, as *may* be recommended by the executive director of the fire and police commission. Newly appointed commissioners who have professional experience as a law enforcement officer are exempt from the police department training requirement.

(Emphasis added.)

¶35 The parties are in agreement that ***Karow*** is instructive; however, they differ on its application in this case. In ***Karow***, the court noted the "general rule is that the word 'shall' is presumed mandatory when it appears in a statute," and that when the words "shall" and "may" appear in the same section of a statute, one can infer the author was aware of the different denotations and intended the words' precise meanings. *See* ***id***., 82 Wis. 2d at 570-71. WISCONSIN STAT. § 62.50(1h) includes both "shall" and "may."

¶36 Nonetheless, ***Karow*** further states that the word "shall" can be held to be directory if required to effectuate the intent of the legislature. ***Id.***, 82 Wis. 2d at 570-71. The ***Karow*** court noted that "[s]tatutes setting time limits on various activities have often been held to be directory despite the use of the mandatory 'shall,' where such a construction is intended by the legislature." ***Id.*** at 571. In particular, the court pointed out it had stated that "'*a statute prescribing the time within which public officers are required to perform an official act is merely*

directory, unless it denies the exercise of power after such time, or the nature of the act, or the statutory language, shows that the time was intended to be a limitation.'" ***Id.*** (emphasis added; citation omitted). *See also*, ***State ex rel. St. Michael's Evangelical Lutheran Church v. DOA***, 137 Wis. 2d 326, 336, 404 N.W.2d 114 (Ct. App. 1987).

¶37 The Milwaukee Police Citizen Academy teaches about the organization and operation of the MPD, including the training police officers receive, and MPD's code of conduct. It also teaches about the types of interactions that a police officer may encounter on a regular basis, including statutes that are frequently violated and are often involved in police investigations, principles of arrest, vehicle contacts, and defense and arrest tactics. Board members also may participate in a "scenario-based firearms training" and a ride along. Board members also receive course materials. Given the nature of the training, the court concludes the purpose of the training requirement is to educate Board members about the jobs and duties of police officers so that the members can intelligently address the issues presented to them, including officer conduct. The ordinance provides for the City to determine the training because it conducts the class. The City decided that the training would include the Milwaukee Police Citizen Academy and the ride along with both of these training components being subject to the recommendations of the Board's executive director.

¶38 In applying ***Karow***, we note that the parties are in apparent agreement that the members of the Board fall within the ambit of a "public official." Thus, we may construe the time provisions as being merely directory. Furthermore, although providing a time for a Board member to begin and complete the training, neither the statute nor the ordinance deny a member's exercise of power if the member has not started or completed training within the

time frame. Additionally, although the MPA stresses the use of the word "shall" regarding the training, we know from ***Karow*** that using "shall" in this context is not dispositive of the issue of whether the provision is mandatory or directory.

¶39 ***Koenig v. Pierce County Department of Human Services*** cites four factors that we should also consider in determining whether a statutory time limit is mandatory or directory: (1) the purpose of the statute; (2) the statute's history; (3) whether a penalty or prohibition is imposed for the violation of the time limit; and (4) the consequences of interpreting the statutory time limit as either mandatory or directory, including whether the failure to act within the time limit works an injury or wrong. *See* ***id.***, 2016 WI App 23, ¶45, 367 Wis. 2d 633, 877 N.W.2d 632.

¶40 Citing ***Koenig***, the MPA states that each factor confirms that the training time limits are mandatory. It addresses the first two factors together; we will also do so.

The Objectives and the History of Statute and Ordinance

¶41 The MPA states that there is no proof that it is necessary to construe the word "shall" as directory to carry out the legislative intent, and that there is no evidence that the legislature specifically intended for the time limits to be anything less than mandatory. It also argues that the legislature's "clear intent" was for all Board members to receive training within a specific time frame and that nothing in WIS. STAT. § 62.50(1h) and MCO § 314 demonstrates a purpose or intent to treat the time frame as directory. The problem is that the MPA has not tied these contentions with the objectives or the legislative history of these provisions. These conclusory arguments are undeveloped and we decline to address them. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

¶42 The MPA also asserts that the time limits must be mandatory; otherwise why create time limits in the first place. It also argues the time frame sets time "limits" not time "guidelines." The MPA purports to rely on legislative intent; however, it does not direct us to any legislative history. Also, despite its emphasis on the importance of the word "limit," neither the statute nor ordinance include any form of the word "limit." This conclusory, unsupported argument is not persuasive. *See* ***id.***

The Consequences of an Alternative Interpretation

¶43 The MPA suggests that, because Board members are making decisions that affect officers' jobs, income, and livelihoods without the requisite knowledge or background, the officers will be harmed by Board members who have not been trained within the time frame.

¶44 However, given that neither the statute nor the ordinance limit a member from participating in Board decision making before being directed to start training, the argument is not convincing. Without any training at all, members may actively participate in the Board's work. We find it highly significant that a Board member can participate in Board proceedings immediately after being sworn in. The lack of any retraining requirement or any requirement that past law enforcement experience be recent also diminishes the persuasiveness of the claimed harm.

¶45 The MPA also argues that the circuit court failed to address whether noncompliance with the training time frame would wrong anyone and asserts that failing to comply with the time limits "wrongs everyone." This general, conclusory statement of harm is nebulous and will not be addressed. *See* ***id.***

Penalty

¶46 While the MPA concedes there is no penalty for non-compliance with the statute or ordinance, it argues that this is just one factor and, despite the circuit court's reasoning to the contrary, the absence of the penalty is not given more weight than any of the other factors.

¶47 As conceded by the MPA, neither the statute nor the ordinance prohibit a Board member from exercising power before or after the training time frame regardless of the member's training status. Additionally, neither the statute nor the ordinance limit action by a Board member, based on training status.

¶48 The MPA also argues that there is no penalty because the legislature did not anticipate noncompliance with the mandatory training. This conclusory statement is unsupported by any authority and we decline to address it. *See* ***id.***

Our Construction

¶49 Based on the foregoing, we conclude that the statute and the ordinance require training that is related to the mission of the Board. The statute and MCO § 314-1-2-b provide for mandatory training. The training must be done. No discretion is afforded with respect to a Board member being trained.

¶50 However, the time frame for the completion of that training is directory, not mandatory. The time frame for the ride along component is also not mandatory. The time frame for beginning and completing the training gives the City some discretion. Additionally, neither the statute nor the ordinance state that a Board member does not have the power to take action or cannot participate in any Board proceedings until the member starts or completes the training. In other words, there is no penalty for delayed completion of the training.

¶51 Upon becoming a Board member, the member is authorized to conduct a hearing. The member has the power to vote for or against an issue before the Board. For example, after a month, a member can vote to uphold a disciplinary firing or suspension without any training. That fact provides key support for the conclusion that the time frame for completing the training is directory, not mandatory. The absence of a penalty for delayed completion of the training and the member's power to act in all capacities after being sworn in as a Board member are indicative of the directory nature of the time frame.

¶52 Given the foregoing conclusion, we do not reach the City's assertion that declaratory relief is prospective only. *See* ***Maryland Arms Ltd. P'ship v. Connell***, 2010 WI 64, ¶48, 326 Wis. 2d 300, 786 N.W.2d 15 (only dispositive issues need be addressed).

¶53 In sum, we agree with the circuit court's determination that the training requirement is mandatory, but the time frame is directory. We further conclude that the training for Milwaukee's citizen academy and the ride along is subject to the discretion of the Board's executive director.

III. The Current Board Members are in Compliance with the Training Requirements Set Forth in WIS. STAT. § 62.50(1h) and MCO § 314.

¶54 The MPA asserts that regardless of whether or not the training time limits are mandatory, the City has not complied with the training requirements relying upon the City's letter response to the MPA's open records request for a list of dates and attendance records for every "training class" that the City conducted pursuant to WIS. STAT. § 62.50(1h), since January 1, 2004. Based on that

response, which indicates that Milwaukee's citizen's academy was completed by Cabrera, DeVougas, Hein, Morgan, and O'Hear,[7] but lists only Cabrera as completing the ride along, the MPA maintains that "Cabrera is the only Board member to have 'timely' completed *all* of the required training." (Underline omitted.)

¶55 The City counters that the MPA's claim is misleading "because [the MPA has cited] certain documents [that] do not state whether the [member] attended the [c]itizen [a]cademy and a ride-a-long, [and asserts] that the ride-a-long must have been omitted." The City states that all five members completed the ride along relying upon the affidavits of members Hein, Morgan, and O'Hear filed in response to the MPA's summary judgment motion, wherein each avers that he or she participated in the ride along as a part of the citizen academy. It also relies upon the more recent deposition testimony of DeVougas, Hein, Morgan, and O'Hear, filed with its brief regarding the training requirements, during which each member stated that he or she had completed the ride along.

A. The Record Establishes that the Board has Complied with Applicable Training Requirements.

¶56 The MPA's training argument is broadly phrased; however, the actual focus of the argument is on the lack of evidence that some members completed the ride along. This is so because the MPA concedes that all board members completed the citizen academy although asserting that some did not do so in a timely manner.

[7] The MPA also argues O'Hear failed to complete the citizen academy in a timely manner.

¶57 Furthermore, with respect to the City's open records response—the basis for MPA's argument—we observe that the introductory clause explains that the Board "does not maintain attendance records, but from [the Board program assistant III's] ... notes, the following list has been compiled." The document establishes that the City does not keep records regarding attendance. The open records response does not purport to be complete.

¶58 Regardless, the record establishes that not only Cabrera, but also DeVougas, Hein, O'Hear, and Morgan completed the ride along. Wilson had an exemption from the ride along from the Board's executive director, and participated in a modified ride along. This unrefuted evidence establishes that the ride along component of the training was satisfied by five of the Board members and excused for the sixth member, Wilson. The record also establishes that the seventh board member Crouther, who was not on the Board at the time of Vidmar's appeal, completed both the citizen academy and the ride along. We find, as did the circuit court, that each member completed all the required training; perhaps, not all started or completed the training within the time frame of the statute or ordinance, but each member obtained the required training.

¶59 Because the time frame is directory and not mandatory, and is subject to modification by the executive director, we agree with the circuit court's determination that the MPA did not establish that the three-member panel that heard Vidmar's appeal and that the current Board members are not in compliance with the training requirement. We note that the circuit court made specific findings as to the training of each individual member and find those findings are supported by the record. Furthermore, even if it was determined that the time frame was mandatory, Vidmar's three-member panel was lawful because all the members had completed training and, although Cabrera and DeVougas had not

done the ride along at the time of Vidmar's hearing, the hearing occurred when both had additional time under the statute and ordinance to complete it. Therefore, we affirm the circuit court's determination that the current Board members are in compliance with the training requirements of WIS. STAT. § 62.50(1h) and MCO § 314.

IV. The Circuit Court's Limit on Discovery was not an Erroneous Exercise of Discretion.

¶60 The MPA asserts that the circuit court "improperly limited discovery" and further states "[a] primary objective of discovery is to reveal the unknown," citing ***State ex rel. Dudek v. Circuit Court***, 34 Wis. 2d 559, 576, 150 N.W.2d 387 (1967). It cites ***Albert v. Waelti***, 133 Wis. 2d 142, 147-48, 394 N.W.2d 752 (Ct. App. 1986), and states that another primary discovery objective is to give each party the opportunity to be informed of the facts and issues in controversy. It also cites ***Jessup v. Luther***, 277 F.3d 926 (7th Cir. 2002), stating that courts are not supposed to limit discovery absent a motion for a protective order. It requests that the action be remanded to give them an opportunity to conduct meaningful discovery.

¶61 None of the cases the MPA cites address a circuit court's power to limit the discovery in a situation analogous to that presented here. ***Dudek*** actually restricted discovery ordered by the circuit court because the discovery included work product, unless on remand the movant was able to show good cause for its disclosure. *See* ***id.***, 34 Wis. 2d at 604-05.

¶62 ***Albert*** involved an appeal from the dismissal of a dental malpractice action for lack of expert testimony. There, the plaintiff asserted that he should have been allowed to proceed to trial and call several dentists to testify without

having provided any discovery about the substance of their testimony. ***Id.***, 133 Wis. 2d at 146. This court upheld the dismissal, noting the importance of providing discovery regarding that testimony. ***Id.*** at 146-47.

¶63 ***Jessup*** involved an attempt by an intervenor newspaper to obtain a settlement agreement that the court had sealed. ***Id.***, 277 F.3d at 927. The court of appeals ordered that the agreement be unsealed because it was part of the public record. ***Id.*** at 929-30.

¶64 Rather, "Wisconsin circuit courts have discretion to control their dockets." ***Hefty v. Strickhouser***, 2008 WI 96, ¶31, 312 Wis. 2d 530, 752 N.W.2d 820. "This power is inherent to their function … [and] is also granted by statute." ***Id.*** (footnote omitted). Specifically, WIS. STAT. § 802.10(3)(f) provides as follows:

> the circuit court may enter a scheduling order on the court's own motion or on the motion of a party. The order shall be entered after the court consults with the attorneys for the parties and any unrepresented party. The scheduling order may address any of the following:
>
> ….
>
> (f) The limitation, control and scheduling of depositions and discovery, including the identification and disclosures of expert witnesses, the limitation of the number of expert witnesses and the exchange of the names of expert witnesses.

The circuit court entered the scheduling orders after consulting with the parties. *See* ***Hefty***, 312 Wis. 2d 530, ¶51. Given the issues presented, the limitations on discovery imposed by the circuit court, which it later expanded, were an appropriate exercise of its discretion.

¶65 The MPA has not established that the circuit court erroneously exercised its discretion with respect to the limitations it imposed on discovery.

CONCLUSION

¶66 We conclude that (1) the Board is in compliance with the political party membership requirement of WIS. STAT. § 62.50(1h); (2) the training is mandatory, however, the timing of that training is directory; (3) the Board is in compliance with the training requirements; and (4) the limits on discovery that the circuit court imposed were a proper exercise of discretion. Therefore, we affirm the circuit court's order dismissing the declaratory judgment action.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.