COURT OF APPEALS
DECISION
DATED AND FILED

December 6, 2017

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2016AP2113

Cir. Ct. Nos. 2015CV6824
2015CV9211

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT II

RODOLFO GOMEZ, JR.,

PETITIONER-RESPONDENT,

V.

THE BOARD OF FIRE AND POLICE COMMISSIONERS FOR THE CITY OF MILWAUKEE,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: GLENN H. YAMAHIRO, Judge. *Affirmed and cause remanded*.

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

¶1 NEUBAUER, C.J. The Board of Fire and Police Commissioners for the City of Milwaukee (Board) appeals an order setting aside the Board's decision to sustain the discharge of Milwaukee Police Detective Rodolfo Gomez,

Jr. Because the Board failed to conduct a trial on Gomez's appeal of his discharge within the time required by statute, the Board lost authority to exercise its jurisdiction, and thus, to hold the trial after which it sustained the discharge. We therefore affirm.[1]

BACKGROUND

¶2 On December 3, 2013, Milwaukee Police Chief Edward Flynn discharged Gomez for violating departmental rules stemming from his use of force during an interrogation. The next day, Gomez filed a notice of appeal of his discharge with the Board. On December 6, the Board issued a scheduling notice requiring the parties to identify witnesses and exhibits and stating that the time of trial was "[t]o be determined."

¶3 For more than a year, no significant activity on the appeal took place. On April 10, 2015, the Board issued another scheduling notice, which set a trial for July 14, 2015. To accommodate the schedules of witnesses, the Board moved the trial to July 22. After a two-day trial, the Board issued a written decision finding that the "just cause" standards for a discharge were satisfied and upheld Gomez's discharge.[2]

[1] Gomez moved to strike the Board's reply brief, asserting that it lacked citations and contained various other errors. We deny the motion as its resolution would not affect our analysis or mandate.

[2] In October 2013, Gomez was charged with misconduct in public office and was later also charged with abuse of residents of penal facilities for the same incident. In February 2015, a jury acquitted Gomez of the charges. Although neither party explains why the Board did not conduct the trial until July 2015, it appears that the pending criminal charges were a reason. *See* ***Milwaukee Police Ass'n v. Flynn***, 213 F. Supp. 3d 1113, 1115 (E.D. Wis. 2016) (Gomez's "trial before the Board was adjourned pending resolution of criminal charges against him"), *aff'd*, 863 F.3d 636, 638 n.1 (7th Cir. 2017) ("Gomez's appeal before the Board was delayed because Gomez faced criminal charges ….").

¶4 On November 5, 2015, Gomez filed a complaint for certiorari, alleging that the Board exceeded its jurisdiction by holding the trial more than 120 days after the Board's December 6 scheduling notice, contrary to WIS. STAT. § 62.50(14) (2015-16).[3] The circuit court agreed, set aside the Board's decision, and remanded for further proceedings.[4] The Board appeals.

DISCUSSION

Standard of Review

¶5 On certiorari, we review the decision of the Board, not the decision of the circuit court. ***Schoen v. Board of Fire & Police Comm'rs***, 2015 WI App 95, ¶14, 366 Wis. 2d 279, 873 N.W.2d 232. In this appeal, our review by certiorari is limited to whether the Board kept within its jurisdiction and whether it proceeded on the correct theory of law. ***State ex rel. Kaczkowski v. Board of Fire & Police Comm'rs***, 33 Wis. 2d 488, 501-02, 148 N.W.2d 44 (1967). "We review the extent of the Board's authority under the statutory scheme *de novo*." ***Schoen***, 366 Wis. 2d 279, ¶14.

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

[4] Gomez had also filed a notice seeking review of the Board's decision by the circuit court pursuant to WIS. STAT. § 62.50(20). This statutory review was consolidated with the certiorari action. Because the circuit court granted relief on jurisdictional grounds via the certiorari action, it did not consider the other claims and issues.

The 120-Day Limit for Conducting a Trial Is Mandatory

¶6 We begin by noting that the parties address this case in terms of the board's "authority," rather than the board's competency to exercise its jurisdiction. A quasi-judicial body's subject matter jurisdiction (power to hear matters in general) is conferred by the statute under which it operates; its competency (authority to exercise its jurisdiction in a given case) is typically limited by the same enabling statutory provisions. *See* ***Stern v. WERC***, 2006 WI App 193, ¶24, 296 Wis. 2d 306, 722 N.W.2d 594; ***Ledger v. City of Waupaca Bd. of Appeals***, 146 Wis. 2d 256, 263, 430 N.W.2d 370 (Ct. App. 1988). More narrow than jurisdiction, competency pertains to the "statutory conditions imposed on the exercise" of jurisdiction in a particular case.[5] ***Stern***, 296 Wis. 2d 306, ¶24.

¶7 As presented by the parties, this appeal turns on the interpretation of WIS. STAT. § 62.50(14) and whether it requires, or merely advises, the Board to

[5] For circuit courts, subject matter jurisdiction is granted by the Wisconsin Constitution, is plenary, and is not affected by statutes, whereas a court's competency can be affected by statutory requirements and a failure to meet them. ***Stern v. WERC***, 2006 WI App 193, ¶24, 296 Wis. 2d 306, 722 N.W.2d 594. For administrative agencies and quasi-judicial boards, the concepts of jurisdiction and competency tend to be aligned more closely because those entities are creatures of statute. *See* ***Ledger v. City of Waupaca Bd. of Appeals***, 146 Wis. 2d 256, 263, 430 N.W.2d 370 (Ct. App. 1988) ("[B]oards are creatures of the legislature …. [T]heir powers are limited by the statutes creating them and defining their authority."); ***State (Dept. of Admin.) v. DIHLR***, 77 Wis. 2d 126, 136, 252 N.W.2d 353 (1977) (agency powers are limited to those expressly authorized or fairly implied by the statute under which the agency operates). Even so, the jurisdiction and competency distinction with regard to such agencies and boards is real and "parallels the counterpart distinction" with regard to circuit courts. ***Stern***, 296 Wis. 2d 306, ¶24. Statutes that establish the nature of the matters an agency or board are permitted to hear define subject matter jurisdiction, whereas statutory provisions that relate to the use of that jurisdiction in a particular case may affect the agency's or board's competency to act. ***Id.***

conduct the trial within 120 days, i.e., whether the 120-day statutory limit is mandatory or directory.[6] It states in full:

> The board, after receiving the notice of appeal [of a discharge or suspension] shall, within 5 days, serve the appellant with a copy of the complaint [of the charges] and a notice fixing the time and place of trial, which time of trial may not be less than 60 days nor more than 120 days after service of the notice and a copy of the complaint.

Id. As noted, the Board served its scheduling notice on December 6, 2013, and the trial began on July 22, 2015, which is 594 days later.

¶8 "Whether a statute is mandatory or directory is a question of statutory interpretation." ***Eby v. Kozarek***, 153 Wis. 2d 75, 79, 450 N.W.2d 249 (1990). The primary source of statutory interpretation is the language of the statute itself. ***Grace Episcopal Church v. City of Madison***, 129 Wis. 2d 331, 336, 385 N.W.2d 200 (Ct. App. 1986). We use the common, ordinary, and accepted meaning of statutory language, except for words or phrases that are specially-defined or technical. ***State ex rel. Kalal v. Circuit Court for Dane Cty.***, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110.

¶9 In support of its argument that WIS. STAT. § 62.50(14) is directory only, the Board cites the general rule of statutory interpretation to construe "shall" as mandatory and "may" as directory, unless the intent of the legislature demands a different construction. ***City of Wauwatosa v. Milwaukee Cty.***, 22 Wis. 2d 184,

[6] In ***Village of Trempealeau v. Mikrut***, 2004 WI 79, ¶10, 273 Wis. 2d 76, 681 N.W.2d 190 (citations omitted), which was concerned with a circuit court's competency, the supreme court stated that not all statutory mandates implicate a circuit court's competency, only those that are "'central to the statutory scheme' of which it is a part." The Board does not argue that the time limit in WIS. STAT. § 62.50(14) is not central to the statutory scheme, only that it is not mandatory. *See* ***Stern***, 296 Wis. 2d 306, ¶24 n.10.

191, 125 N.W.2d 386 (1963). The Board further notes that, "[w]hen the words 'shall' and 'may' are used in the same section of a statute, one can infer that the legislature was aware of the different denotations and intended the words to have their precise meanings." ***Karow v. Milwaukee Cty. Civil Serv. Comm'n***, 82 Wis. 2d 565, 571, 263 N.W.2d 214 (1978). Because both words are used in subsec. (14), the Board asserts that "may" used in conjunction with the 120-day limit makes the limit directory.

¶10 This argument fails because it overlooks key words and focuses on the wrong distinction. The pertinent distinction is not "shall" versus "may," but rather "may" versus "may not" ("time of trial *may not* be less than"). WIS. STAT. § 62.50(14) (emphasis added); *see* ***Brookhouse v. State Farm Mut. Auto. Ins. Co.***, 130 Wis. 2d 166, 170, 387 N.W.2d 82 (Ct. App. 1986). While "may" itself usually denotes permission or discretion, coupling it with "not" inverts its meaning, thereby denoting *lack* of permission or *lack* of discretion. We explained in ***Brookhouse***:

> "May not" is a negative term. Where statutory restrictions are couched in negative terms, they are usually held to be mandatory. 2A Sutherland, Statutory Construction § 57.09 (4th ed. 1984). Negative words in a grant of power should never be construed as directory. *Id.* Where an affirmative direction is followed by a negative or limiting provision, it becomes mandatory. *Id.*

Brookhouse, 130 Wis. 2d at 170; *see also* ***Scholten Pattern Works, Inc., v. Roadway Express, Inc.***, 152 Wis. 2d 253, 258, 448 N.W.2d 670 (Ct. App. 1989). The statute then uses "nor," another negative term, to apply the mandatory effect

of "may not" to the 120-day limit.[7] Thus, the plain language of subsec. (14) requires the Board to hold the trial within 120 days after service of the scheduling notice.

¶11 Moreover, the statute uses mandatory language for promptly setting a trial date within a specified time frame, further confirming a mandatory interpretation of the 120-day limit. The Board "shall" serve a notice "fixing" the time and place of the trial not less than sixty days nor more than 120 days after service of the notice. WIS. STAT. § 62.50(14). Use of "shall" for providing a notice fixing a trial date within that time frame matches and reinforces the mandatory effect of "may not" for the timing of the trial. "Fixing" is defined as follows: "to make … firm, stable, or stationary … to implant firmly … make permanent … to give a final or permanent form to: make definite and settled." *Fixing*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1993). The word choice comports with a legislative intent to have a trial date within the identified time period firmly in place. ***State ex rel. Krueger v. Appleton Area Sch. Dist. Bd. of Educ.***, 2017 WI 70, ¶42, 376 Wis. 2d 239, 898 N.W.2d 35 (we "presum[e] that the legislature chose its terms carefully and precisely to express its meaning" (citation omitted)).

[7] In its own rules, the Board effectively incorporates the 120-day limit and dispenses with the use of "may" relative to fixing the trial date: "[T]he Board shall serve appellant with … notification of a trial date scheduled pursuant to Wis. Stat. § 62.50(14)…. The Board shall serve appellant ... with a Scheduling Order fixing the time and place of the trial not less than sixty (60) days nor more than one hundred and twenty (120) days after" service of the scheduling order. Rules of the Board of Fire and Police Commissioners, City of Milwaukee, §§ 5-6 (revised ed. July 26, 2001). Given our disposition, we need not address the effect, if any, of the Board's rules on the interpretation of § 62.50.

¶12 Interpreting the 120-day limit as mandatory is further supported by other appeal-related provisions of WIS. STAT. § 62.50. Statutory language should be interpreted in the context in which it is used and in relation to the language of neighboring or associated provisions. ***Operton v. LIRC***, 2017 WI 46, ¶28, 375 Wis. 2d 1, 894 N.W.2d 426. One such provision is the adjournment provision. Sec. 62.50(16). It provides that the Board "may grant the accused or the chief [of police] an adjournment of the trial or investigation of the charges, for cause, not to exceed 15 days." ***Id.***

¶13 It is difficult to square the adjournment provision with a directory construction of the 120-day limit. The adjournment provision grants the Board authority, with certain conditions, to postpone the trial. Its existence strongly implies that the date that is cited in the Board's scheduling notice is fixed and definitive, absent an adjournment as statutorily specified. Indeed, the length of an adjournment is short and limited—"not to exceed 15 days." Interpreting the 120-day limit otherwise—as directory, giving the Board unchecked scheduling discretion—would leave the adjournment provision without much, if any, effect. We should aim to give effect and meaning to every statutory term and provision. ***Belding v. Demoulin***, 2014 WI 8, ¶17, 352 Wis. 2d 359, 843 N.W.2d 373 (statutory provisions that are related should be read in harmony such that each has force and effect and not rendered meaningless).[8]

[8] As noted, once the Board set a trial date for July 14, 2015, it was discovered that certain witnesses were unavailable. The Board moved the trial to the following week. Although no one claims that this adjournment was undertaken pursuant to WIS. STAT. § 62.50(16), it illustrates how the provision would provide relief, when needed, from an otherwise mandatory trial date. The Board in effect granted an adjournment "for cause" (witness availability) and kept it within fifteen days (an eight-day adjournment). The provision does not expressly limit the number of adjournments.

(continued)

¶14 We also note that not long ago the time limit was only fifteen days. WIS. STAT. § 62.50(14) (2005-06) ("trial may not be less than 5 days nor more than 15 days."). The legislature increased the limit to 120 days per 2007 Wis. Act 114. That the legislature undertook to consider and amend the time limit is suggestive of an expectation that the limit be followed. *Cf.* ***Schoen***, 366 Wis. 2d 279, ¶17 ("[C]ompliance with the specific standards imposed on the Board by [§ 62.50] is certainly expected by the legislature."). In this same regard, the legislature also reviewed and amended the adjournment provision, making it more restrictive. The prior version gave an automatic right of an adjournment to both the employee and the chief. Sec. 62.50(16) (2005-06). The current version added the required showing of "cause," while retaining the fifteen-day cap, indicating an intent to limit delays. Sec. 62.50(16). All of this statutory history supports our conclusion that the language is mandatory.[9]

¶15 The Board asserts that, because WIS. STAT. § 62.50 does not prescribe a consequence or level a penalty for failing to conduct a trial within 120 days, the 120-day limit is directory. The Board is correct that the lack of a consequence for noncompliance is a factor to consider when determining whether a statute is mandatory or directory. *See* ***Karow***, 82 Wis. 2d at 571-72.

The Board does not contend that adjournments were requested or granted under WIS. STAT. § 62.50(16). Indeed, as the circuit court noted, the Board allowed the appeal to be stayed for over one year without establishing a record—no reason or evidence—as to why the trial was being delayed. The Board's suggestion that "delays derailed the timely scheduling of a trial by the Board" finds no support in the record.

[9] Although the language of the statute is clear and we need not refer to legislative history, we also note that, in its review of the Act, the Wisconsin Legislative Council discussed the change using mandatory language: "Under Act 114, if the board receives a notice of appeal, it must schedule a trial between 60 and 120 days after service of the notice …. Under prior law, the time frame for scheduling a trial was within five and 15 days." WI S.B. Memo, 2007 Reg. Sess. S.B. 176 (March 27, 2008) (emphasis omitted).

Section 62.50 does not impose a consequence or otherwise explain what should happen if the 120-day limit is violated, lending support for a directory interpretation. *See* ***Karow***, 82 Wis. 2d at 571-72.

¶16 This point, however, yields to several countervailing factors. Our supreme court, in a case under a similar civil service statute, highlighted factors other than the lack of a penalty in determining whether a trial deadline was mandatory. In ***Karow***, a county deputy sheriff was suspended without pay. The suspension was governed by WIS. STAT. § 63.10 (1975-76), which provided that the civil service commission "shall appoint a time and place for the hearing of said charges, the time to be within 3 weeks after the filing of the same." Because the commission did not hold the hearing within three weeks (it was set for about six weeks), the circuit court, upon a petition by the deputy, issued a writ of mandamus ordering the charges to be dismissed and the deputy reinstated. ***Karow***, 82 Wis. 2d at 569.

¶17 The Wisconsin Supreme Court affirmed, emphasizing that the lack of a penalty was "only one factor" among many, including "the consequences resulting from one construction or the other, the nature of the statute, 'the evil to be remedied, and the general object sought to be accomplished' by the legislature." ***Id.*** at 572 (citation omitted). More significant was that the three-week limit was written with mandatory language and that noncompliance worked an injury against the deputy, i.e., he was out of work and not being paid. ***Id.*** at 572-73.

¶18 As support for construing statutory time limits as mandatory when noncompliance causes an injury or wrong, the ***Karow*** court cited to ***State v. Rosen***, 72 Wis. 2d 200, 240 N.W.2d 168 (1976), where the police seized and held a

vehicle that was allegedly connected to drug traffic. ***Karow***, 82 Wis. 2d at 572-73. A hearing on the forfeiture was not held within the prescribed sixty days. In concluding that the sixty-day limit was mandatory, the ***Rosen*** court reasoned that the initial seizure of the car sufficiently protected the public and that construing the limit as mandatory would serve to mitigate the harsh effects of an otherwise indefinite seizure. ***Rosen***, 72 Wis. 2d at 207-08.

¶19 The ***Karow*** court also reasoned that a mandatory construction comported with the legislature's balancing of the interests involved:

> The public has a legitimate interest in not being burdened with inefficient or otherwise undesirable employees. That interest is adequately protected by the statutory procedure for disciplining an employee, particularly the provision which permits suspension of the employee between the time when charges are filed and the hearing. At the same time there is a public interest—which is shared by the employee—in the employee not being wrongly deprived of his or her livelihood and not suffering injury to reputation on the basis of charges which might prove unfounded. This interest can be protected only by holding a hearing promptly.

Karow, 82 Wis. 2d at 573 (citation omitted).

¶20 ***Karow*** directly supports our conclusion here. As in that case, WIS. STAT. § 62.50(14) does not state consequences for noncompliance, suggesting a directory interpretation. But that sole factor is eclipsed by several others. As already discussed, the plain compulsory language used to establish the limit and the existence of the adjournment provision strongly favor a mandatory construction. Just as with the civil service statute in ***Karow***, the public's interest is protected because suspension or discharge is permitted pending trial. However, like the deputy in ***Karow***, Gomez has been without pay while waiting to be heard.

That works a real injury, which is exacerbated by a delayed trial.[10] The interest of a prompt trial favors, if not necessitates, a mandatory construction.[11]

¶21 On this last point, the overall framework for an appeal under WIS. STAT. § 62.50 demonstrates that the process was meant to be handled with dispatch. Consider the time allotments: After receiving a discharge notice, an employee that wishes to appeal must do so within *ten* days; after receiving an appeal, the Board must notify the employee of the trial date within *five* days; the Board may grant an adjournment of the trial, but only for cause and for no more than *fifteen* days; after the trial, the Board must decide whether to sustain the charges within *three* days; if sustained, the Board must determine the penalty "*at once*"; if the discharged employee wishes to appeal the Board's decision to the circuit court, he or she must do so within *ten* days; upon that appeal, the Board must certify to the court clerk all relevant documents within *five* days; the circuit court review "shall be given preference" and, upon application, the court shall

[10] The Board distinguishes ***Karow*** by noting that the deputy was merely suspended, whereas Gomez was discharged. It then points out that, under the current version of WIS. STAT. § 62.50, a suspended employee is now paid while an appeal is pending, but that a discharged employee is not. The Board asserts that a suspended (and therefore a less suspect) employee, like Karow under the revised statute, would not suffer a financial injury. We reject the Board's argument. We deal with the facts of this case, which involve an employee who is not being paid, a clear injury. We see no basis under § 62.50 to treat the 120-day limit as directory for discharged employees and mandatory for suspended employees. The legislature made no distinction between suspended and discharged employees, nor does the Board provide any authority for interpreting the statute in that manner.

[11] The Board asserts that a mandatory construction "could disrupt the process for disciplining police officers," citing a potential conflict between the right of the chief of police to investigate Gomez and Gomez's rights in the pending criminal matter. Because the Board's argument is hypothetical and premised on facts that did not occur here, we should not and do not address it. *See* ***Marlowe v. IDS Prop. Cas. Ins. Co***., 2013 WI 29, ¶40, 346 Wis. 2d 450, 828 N.W.2d 812 (courts resolve cases on the facts before them, not on hypotheticals). In any event, the mere possibility of such a conflict does not outweigh the multiple factors that favor a mandatory construction.

"fix" a trial within *fifteen* days (unless the parties agree to a different date); and if the charges are not sustained, the employee will be reinstated "*immediately*." Sec. 62.50(13), (14), (16), (17), (20), and (21) (emphasis added). That tight deadline framework would contrast starkly with the Board having discretion to hold a trial 594 days (or more) after service of the scheduling notice.[12] *See* ***Kaczkowski***, 33 Wis. 2d at 497 ("Every clause of [§ 62.50 (1967-68)] indicates the intention to make the entire proceeding as speedy as possible and yet give the accused person the right to fully make his defense.").

¶22 In sum, WIS. STAT. § 62.50 provides the Board with jurisdiction to consider appeals from discharged employees, but its authority to exercise that jurisdiction is restricted by the mandatory time limits set forth in that statute. As in ***Karow***, the mandatory time limit serves to deny the Board the exercise of its power or authority, after the time period has passed. *See* ***Karow***, 82 Wis. 2d at 571. The Board's competency was dependent on a timely trial, which did not happen. When the Board conducted the trial more than 120 days after serving its December 6 notice, it exceeded its statutory authority and lost its ability to sustain the discharge. *See* § 62.50(11) ("No member of the police force … may be discharged … except for cause and after trial under this section.").

[12] WISCONSIN STAT. § 62.50(14) provides that, within five days of receiving the appeal, the Board "shall" serve the notice fixing the trial date. The Board's second scheduling notice, which fixed the trial date, was not served until 491 days after receipt of the appeal, out of compliance by almost a hundredfold. The parties argue over the effect of the five-day notice provision, including whether the argument was waived. Because we rest our decision on the violation of the 120-day limit, we need not further address the effect of violating the five-day notice provision. *See* ***State v. Chew***, 2014 WI App 116, ¶5, 358 Wis. 2d 368, 856 N.W.2d 541 (appellate courts should decide cases on the narrowest of grounds).

Waiver

¶23 After concluding that the 120-day limit was mandatory, and pointing out that an employee who appeals cannot be discharged without a trial, the circuit court determined that the Board exceeded its authority to exercise jurisdiction when it sustained the discharge. On appeal, the Board argues that, even if it exceeded its jurisdiction, Gomez cannot challenge it because he had submitted to the Board's jurisdiction. Gomez did so, the Board asserts, when he exchanged various communications, beginning in February 2015, with the Board and its counsel wherein they discussed the scheduling of a pretrial conference and the trial, and when Gomez filed his motion to dismiss. The Board also asserts that Gomez filed his motion (which raised the 120-day limit issue) twenty-five days after the June 5, 2015 motion deadline.

¶24 We reject the Board's argument. The two cases relied upon by the Board deal with a circuit court's personal jurisdiction, as opposed to subject matter jurisdiction or competency. *See* ***Belcher v. State***, 42 Wis. 2d 299, 307, 166 N.W.2d 211 (1969) (pointing out that personal, but not subject matter, jurisdiction can be waived); ***State ex rel. Warrender v. Kenosha Cty. Court***, 67 Wis. 2d 333, 341, 227 N.W.2d 450 (1975). The Board's argument therefore misses the mark, as no one has suggested that the Board did not have jurisdiction over Gomez himself.

¶25 The Board does not address whether, and under what circumstances, waiver of the Board's competency is available. No case law is cited, nor any legal argument developed, that a party loses its ability to assert that a quasi-judicial board exceeded the scope of its authority when it breached a statutory condition imposed on its exercise of subject matter jurisdiction, particularly when the party has submitted the challenge to the board prior to trial. We need not develop and

then address the Board's waiver argument. *See* ***Clear Channel Outdoor, Inc.*, *v.* *City of Milwaukee***, 2017 WI App 15, ¶28, 374 Wis. 2d 348, 893 N.W.2d 24 ("[W]e do not develop arguments for parties.").

CONCLUSION

¶26 The Board has jurisdiction to handle appeals from discharged employees under WIS. STAT. § 62.50. The Board's authority to exercise that jurisdiction has limits, one of which is that the trial "may not" be held more than 120 days after a scheduling notice is served. Sec. 62.50(14). That limitation is mandatory. Because the trial in this matter did not occur until almost 600 days after the scheduling notice, the Board lost its competency, or its authority to exercise its jurisdiction, to sustain the discharge of Gomez. We therefore affirm the circuit court's order and remand for further proceedings.

By the Court.—Order affirmed and cause remanded.

Not recommended for publication in the official reports.