

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 12

MILWAUKEE COUNTY

CHARLENE ABUGHRIN,

Plaintiff,

v.

Case No. 24-CV-8072

MILWAUKEE BOARD OF SCHOOL
DIRECTORS,

Defendant.

**ORDER FOR ALTERNATIVE WRIT OF MANDAMUS**

On December 12, 2024, Plaintiff-Petitioner CHARLENE ABUGHRIN filed an application for an alternative writ of mandamus, asking that this court order that Defendant-Respondent MILWAUKEE BOARD OF SCHOOL DIRECTORS either comply with the provisions of Wis. Stat. § 62.90(8), or, in the event it cannot so comply, to show cause. Wis. Stat. § 62.90(8) provides in relevant part:

Beginning January 1, 2024, the school board of the 1st class city¹ school district that is located in the 1st class city shall ensure that not fewer than 25 school resource officers are present at schools within the school district beginning during normal school hours and that school resource officers are available during before-school and after-school care, extracurricular activities, and sporting events as needed ... The 1st class city school district and the 1st class city shall agree to an apportionment of the costs of meeting the requirements of this subsection.

Wis. Stat. § 62.90(8). Defendant filed a motion to dismiss/quash the alternative writ of mandamus on December 16, 2024. The Defendant made several arguments in support of its

¹ The City of Milwaukee is currently the only "1st class city" within the State of Wisconsin, as that term is described in Wis. Stat. § 62.05, and there is no debate as to whether this statute is meant to apply to the City of Milwaukee and its associated school district.

motion, asserting that the application for an alternative writ must be dismissed because: (1) the Plaintiff failed to join the City of Milwaukee as a necessary party; (2) the Plaintiff failed to comply with the notice of claim requirements of Wis. Stat. § 893.80; (3) mandamus was not the appropriate remedy; and (4) the board is a deliberative body that may not be ordered to come to court “explain why it cannot comply with the writ.” A hearing was held on the motion to dismiss/quash the alternative writ of mandamus on January 23, 2025. Based on the record before the court, the documents on file and the oral argument presented by the parties,

THIS COURT FINDS:

- (1) That the City of Milwaukee, regardless of whether it is truly an “indispensable” party to this action, is clearly a necessary party, and must be impleaded as a Defendant-Respondent. Wis. Stat. § 62.90(8) includes a requirement that the “1st class city school district” (herein, Milwaukee Public Schools, by the Milwaukee Board of School Directors) and the “1st class city” (herein, the City of Milwaukee) agree to an apportionment of the costs of meeting the school resource officer requirement. Therefore, complete relief cannot be had without the City of Milwaukee appearing in this case. The Plaintiff is to file an amended complaint, impleading the City of Milwaukee, forthwith.
- (2) That, regardless of whether the notice of claim requirements of Wis. Stat. § 893.80 apply to applications for alternative writs of mandamus, Plaintiff clearly substantially complied with the requirements of the statute. The purpose of the notice of claim statute is to provide notice to a governmental subdivision that a claim may be made against them, and to provide it with an opportunity to compromise or settle the claim. *See, Gillen v. City of Neenah*, 219 Wis. 2d 806, 580 N.W.2d 628 (1998); *Little Sissabagama Lake Shore Owners Ass’n, Inc. v. Town of Edgewater*, 208 Wis. 2d 259, 559 N.W.2d 914 (Ct. App. 1997). A notice of claim does not need to be given if the governmental subdivision has actual notice of the incident giving rise to the claim and the requirements of Wis. Stat. § 893.80 are satisfied. *See, Little Sissabagama*, 208 Wis. 2d 259. Here, the Defendant was given actual notice of the claim when counsel for the Plaintiff sent a them a letter on September 23, 2024 (Doc. 15:2), wherein counsel made the Defendant aware of the alleged violation of s. 62.90(8) and warned that continued noncompliance would result in legal action. Defendant acknowledged receipt of this letter on October 9, 2024 (Doc. 15:5) and stated

that “MPS will continue to work diligently to implement the SRO program as soon as qualified officers are available and funding can be agreed upon.”

Defendant has not shown that they have been prejudiced whatsoever by any alleged failure by the Plaintiff to fully comply with the notice of claim statute. Defendant was able to contact Plaintiff’s counsel and easily could have acted to settle or compromise (thereby fulfilling the purpose of the notice of claim statute) because they acknowledged receipt of Plaintiff’s counsel’s letter. Thus, there would be no need for Plaintiff to include the “address of the claimant,” as required by s. 893.80. In addition, Plaintiff is not making a claim for any sort of monetary damages, so there would be no need for an “itemized statement of the relief sought.” Finally, forcing Plaintiff to wait until the Defendant formally “disallowed” her claim would frustrate the purpose of an alternative writ of mandamus. *See, Little Sissabagama*, 208 Wis. 2d 259 (noting that requiring a notice of claim seeking review of a county board determination would frustrate policy of resolving property tax disputes promptly). For those reasons, this court finds that, regardless of whether the notice of claim requirement applies to applications for alternative writs, the statute has been substantially complied with.

(3) That an alternative writ of mandamus is an appropriate remedy in this instance. “The usual practice, if a prima facie case is made out by the petition or application, is to issue an alternative writ of mandamus, directed to the person claimed to be under a duty to act, requiring the person, either to act or to show cause why the person should not be compelled to do so.” 9 Wis. Pleading & Practice Forms, sec. 85.37 (5th Ed. 2017). Plaintiff has set forth a prima facie case in her application that the Defendant has failed to comply with the requirements of s. 62.90(8), and the court sees no reason why an alternative writ should not therefore issue to compel the Defendant to comply or to show cause why it cannot.

(4) That the Defendant, Milwaukee Board of School Directors, in the event that it finds itself unable to fully comply with the statutory requirements of s. 62.90(8) within the time for the return of the writ, will be capable of appearing in court to show cause why it is unable to comply, either through a member of its body or through counsel.

Therefore, upon the filing of the application of Plaintiff-Petitioner CHARLENE ABUGHRIN, and her accompanying declaration in support of the application, let an alternative writ of mandamus issue out of, and under the seal of, this Court, to Defendant-Respondent the MILWAUKEE BOARD OF SCHOOL DIRECTORS, commanding them to “ensure that not fewer than 25 school resource officers are present at schools within the school district during normal school hours and that school resource officers are available during before-school and after-school care, extracurricular activities, and sporting events as needed,” pursuant to Wis. Stat. § 62.90(8), or in default to show cause before this Court on February 17, 2025, at 3:00 PM, why it has not done so, by return to the writ.

This writ will hereby be served upon Defendant-Respondent through the Court’s e-filing system.

SO ORDERED.

Dated this 27th day of January, 2025, in Milwaukee, Wisconsin.



BY THE COURT:

The Honorable David L. Borowski
Milwaukee County Circuit Court, Branch 12