Circuit Court for Baltimore County
Case No. C-03-CV-21-001435

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1316

September Term, 2022

BALTIMORE COUNTY, MARYLAND

v.

THEODORE C. PRIESTER, JR.

Leahy,
Albright,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: December 17, 2024

* This is an unreported opinion. The opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

The case before us returns following a series of hearings, appeals and remands that span over a decade. Baltimore County, Maryland ("the County") appeals from the judgment entered in the Circuit Court for Baltimore County reversing a decision by the Baltimore County Personnel and Salary Advisory Board ("PSAB") in the grievance appeal of appellee, Fire Captain Theodore Priester ("Priester").[1]

This case marks the second time that Priester petitioned for a writ of mandamus in the circuit court to challenge the PSAB's decision in his appeal from his termination from employment. We addressed Priester's first petition for writ of mandamus in *Priester v. Baltimore County, Maryland*, 232 Md. App. 178 (2017) ("*Priester I*") and determined that Priester had failed to exhaust his administrative remedies by filing a petition for a writ of mandamus before the PSAB could issue a final decision. *Priester I*, 232 Md. App. at 218. Consequently, we reversed the decision and remanded the case to the circuit court with instructions to dismiss the action "because the PSAB has not yet issued a final order and plans to rehear the appeal[.]" *Id.* Following our decision, the PSAB deemed Priester's appeal moot because he had since retired from the Baltimore County Fire Department. Alternatively, in summary fashion, the PSAB also denied the appeal on the merits. Priester

[1] The "home rule" amendment of the Maryland Constitution, Article XI-A, established the Charter Board of Baltimore County in 1954. Two years later in 1956, Baltimore County voters officially adopted the Charter. Article VIII of the Baltimore County Charter authorizes the Baltimore County Council to establish merit system and the PSAB, which is given exclusive jurisdiction over "[a]ppeals . . . in case of disciplinary actions[.]" *See also* BCC § 3-3-1301 ("There is a Personnel and Salary Board as established in Article VIII of the Charter.").

then filed the second petition for a writ of administrative mandamus in the Circuit Court for Baltimore County.

On September 2, 2022, the circuit court issued the underlying Memorandum Opinion and Order by which it reversed the PSAB's decision and remanded the case for a hearing on Priester's grievance appeal. In this timely appeal, the County presents three questions for our review, which we have rephrased as follows:[2]

1. Did the circuit court err in reversing the PSAB's decision that Priester's appeal was moot?

2. Do the doctrines of administrative collateral estoppel and the law of the case preclude Priester from challenging his termination?

3. Did the PSAB properly deny Priester's grievance appeal on merits?

First, we hold that this matter is not moot despite Priester's resignation after filing his grievance. As we discuss further below, both the Baltimore County Code and the County's Memorandum of Understanding ("MOU") with Priester's union suggest that there is still a justiciable controversy for which the PSAB can provide effective relief. *Second*, we hold that the County failed to preserve the issue of whether the doctrines of

[2] The County presents the following questions for our review:

1. Did the circuit court err in failing to find Priester's retirement foreclosed reinstatement and thus, this matter is moot?

2. Did the circuit court err in failing to find the legal principles of administrative collateral estoppel and the law of the case doctrine preclude Priester from challenging his termination?

3. Did the circuit court err in failing to find the PSAB properly upheld Priester's termination?

administrative collateral estoppel and law of the case preclude Priester from challenging his termination, and even if preserved, the County's arguments have no merit. *Third*, we conclude that the PSAB's alternative ruling on the merits did not articulate its evidentiary basis, thereby precluding meaningful judicial review. Accordingly, we affirm the circuit court's judgment.

BACKGROUND

Background Facts

Most of the background facts for this case were previously discussed in *Priester I* and in a separate appeal from the County's subsequent denial of Priester's retirement benefits—*Priester v. Board of Appeals of Baltimore County*, 233 Md. App. 514 (2017) ("*Priester II*"). Accordingly, we will not recite the facts related to Priester's dismissal as a Fire Captain but summarize the relevant procedural history to provide context for the issues presented in this appeal.

In March 2013, the Baltimore County Fire Department initiated an investigation into allegations that Priester engaged in sexual misconduct and created a hostile work environment. *Priester I*, 232 Md. App. at 183-84. The Administrative Hearing Board conducted a hearing on April 30, 2013, during which Priester was found in violation of 18 departmental rules, regulations and policies, as well as three provisions of the Baltimore County Code. *Id.* at 184. On the same day, the Administrative Hearing Board unanimously recommended the termination of Priester's employment, and Fire Chief John Hohman hand-delivered to Priester a copy of the Hearing Board's recommendation, as well as a

letter that the Fire Chief had signed, indicating that he was upholding the recommendation. *Id.* Priester's employment was formally terminated on May 16, 2013. *Id.* at 185.

On May 1, 2013, the day after the Administrative Hearing Board recommended his termination, Priester exercised his grievance rights under the MOU between Baltimore County and his union, I.A.F.F. Local 1311. *Id.* at 185; *Priester II*, 233 Md. App. at 522. Pursuant to the grievance procedure outlined in the MOU, Priester appealed Fire Chief Hohman's decision upholding his termination. *Priester I*, 232 Md. App. at 185. On October 21, 2013, an Administrative Law Judge ("ALJ") for Baltimore County affirmed the termination. *Id.* at 185.

Invoking the final step of the grievance procedure, "Priester exercised his right to appeal to the PSAB on November 4, 2013." *Id.* Over three days the PSAB conducted an evidentiary hearing that concluded on May 30, 2014. *Id.* at 186. At the conclusion of the hearing, a quorum of four members voted.[3] *Id.* Two PSAB members voted in favor of Priester's termination, while two PSAB members voted to reinstate his employment without back pay. *Id.*

While awaiting a decision after the split vote, Priester applied for retirement on July 31, 2014. *Id.* at 186.

In response to the tied vote, the PSAB sent two letters to Priester. *Id.* at 186-87. The first letter, dated August 12, 2014, stated that while the PSAB's practice in the event

[3] Baltimore County Code § 4-8-1010 Rule 2.01 states that "[a]ny three (3) members [of the PSAB] shall constitute a quorum."

of a tie was to uphold the lower ruling, the Chairman had "asked the PSAB's Secretary to set the . . . Priester matter[ ] in for new hearings before the PSAB as soon as possible[.]" *Id.* at 187 (alterations in the original). The second letter, dated October 15, 2014, informed Priester that the PSAB had decided to rehear his appeal and that details about the hearing's date, time and location would be provided. *Id.* at 187. For months thereafter, however, the PSAB did not set a date for a rehearing or take any further action. *Id.*

Meanwhile, on December 9, 2014, the Board of Trustees of the Employees' Retirement System ("Trustees") voted on Priester's application for retirement benefits and denied his vestment in the system benefits. *Id.* at 186 n.5; *Priester II*, 233 Md. App. at 523. Specifically, the Trustees found that Priester's service was "not honorable and faithful[,]" and thus not creditable towards a retirement allowance. *Priester II*, 233 Md. App. at 523. Priester appealed the Trustees' decision. *Id.* at 524.

The First Mandamus Action (Priester I)

On January 15, 2015, Priester petitioned the Circuit Court for Baltimore County for a writ of administrative mandamus under Maryland Rules 7-401 through 7-403 and traditional mandamus under Maryland Rule 15-701, seeking to compel the PSAB to, among other things, issue its 2-2 decision and reinstate his employment. *Priester I*, 232 Md. App. at 187-88. On August 14, 2015, the circuit court granted the County's motion for summary judgment. *Id.* at 189. Priester appealed the grant of the summary judgment. *Id.*

We reversed the circuit court's grant of summary judgment. *Id.* at 183, 189. We explained:

> [B]because the [PSAB] has not yet issued a final order and plans to rehear the appeal, Priester has not exhausted his administrative remedies, and his action does not fall within a recognized exception to the exhaustion doctrine. Therefore, the underlying mandamus action was not properly before the circuit court and should have been simply dismissed.

Id. at 183. Our analysis began with the issue of mootness, as the County had argued that Priester's resignation and application for retirement benefits deprived the PSAB of its ability to reinstate him. *See id.* at 190-91. However, we expressly declined to reach that issue, noting that Priester's failure to exhaust his administrative remedies and to wait for the PSAB's final decision was fatal to his writ of mandamus action. *See id.* at 191. We observed that

> the issues concerning Priester's employment status, eligibility for retirement benefits, and ability to pursue a grievance are questions of law and fact that were not addressed by the PSAB because Priester had not applied for retirement benefits before the first hearing, and the PSAB has not moved forward with the second hearing, presumably, pending this appeal. Indeed, the problem we have addressing the County's mootness argument also confirms the rationale underlying the exhaustion requirement; namely, we do not have the appropriate record before us nor the appropriate expertise to decide this question presented for the first time on judicial review.

Id. (footnotes omitted). Then, turning to the issue of administrative exhaustion, we reasoned that once Priester chose to pursue a grievance under the MOU, he submitted to the PSAB's jurisdiction. *See id*. at 217. Because such jurisdiction included "the authority to interpret its own rules governing its authority to rehear [ ] appeals[,]" the PSAB could opt to rehear Priester's grievance appeal, rather than issuing the 2-2 decision. *Id.* at 210.

We further noted that the PSAB never "refused to provide him a hearing" or "treated his case as if he had no administrative remedy available." *Id*. at 216 (quoting *Coroners v. Montgomery Cnty.*, 161 Md. App. 411, 421, 428-29 (2005) (brackets omitted)). As such, we held that Priester should have awaited the rehearing and a final decision before seeking a judicial review. At the conclusion, we also noted:

> So long as the [PSAB] intends to provide Priester with a remedy—meaning a *de novo* review of the County's decision to terminate his employment—he must exhaust that remedy before complaining to the judiciary about the PSAB's procedural steps and interlocutory decisions. Thus, with no exceptions available, the exhaustion doctrine requires Priester to await a *final* decision from the PSAB, and bars him from obtaining judicial review in the meantime.

Id. at 217-18 (italics in the original). We remanded the case with instructions to dismiss the action, in the expectation that the PSAB would issue a final agency decision on Priester's appeal. *Id.* at 218.

Retirement Benefit Action (Priester II)

While Priester's first mandamus action was pending, his appeal of the Trustees' decision rose through the County's Office of Administrative Hearings (the "OAH"), the Baltimore County Board of Appeals (the "Board"), and then the Circuit Court for Baltimore County. *See generally*, *Priester II*, 233 Md. App. at 524-33 (describing the procedural history of *Priester II*). Following a four-day evidentiary hearing before the OAH, on June 12, 2015, an ALJ issued an opinion and order, holding that Priester was "entitled to receive a service retirement allowance from Baltimore County," but "'the number of years of credible [*sic*] service' . . . shall not include that period of time during

which [he] held the rank of Captain[,]" based on his finding that Priester's fourteen years as a captain until his termination in 2013 did not qualify as "creditable service." *Id.* at 532. On October 16, 2015, the Board affirmed the ALJ's finding that Priester's service was not "honorable and faithful" but reversed the decision that he was entitled to some of his pension. *Id.* Finding "no precedent allowing the ALJ to deny pension benefits for only part of [Priester's] employment with Baltimore County[,]" the Board forfeited the entirety of his pension benefits. *Id.* After the circuit court upheld the Board's decision, Priester again appealed to this Court. *Id.* at 533.

In *Priester II*, we reviewed and affirmed the Board's decision to deny Priester's entire claim for pension benefits. In reaching that conclusion, we recounted the extensive testimony offered by Priester's former colleagues and subordinates regarding his pattern of sexually harassing behaviors. *See generally, id.* at 524-32. We then addressed Priester's argument that the "honorable and faithful" standard under the Baltimore County Code should be void for vagueness, reasoning,

> "Honorable" carries a number of connotations, including: "performed or accompanied with marks of honor or respect," "attesting to creditable conduct[,]" "consistent with an untarnished reputation," "characterized by integrity: guided by a high sense of honor and duty." Merriam–Webster's Collegiate Dictionary 556 (10th ed. 2000). The definition of "faithful" includes the following: "steadfast in affection or allegiance," "firm in adherence to promises or in observance of duty," and it implies unswerving adherence to a person or thing or to the "oath or promise by which a tie was contracted."

Id. at 537 (quoting *Emps.' Ret. Sys. of Balt. Cnty. v. Brown*, 186 Md. App. 293, 301 (2009)). We also rejected Priester's argument that neither the Baltimore County Code nor the case

law gave him adequate notice of what constituted dishonorable or unfaithful service. *Id.* at 540-43. Rather, we agreed with the Board that any "average adult citizen" would have known the potential sanctions that might follow from Priester's behavior, noting that

> Captain Priester abused his status as a captain by creating a hostile and predatory environment, in which he exhibited a pattern of sexually harassing women for his amusement and the amusement of his minions. . . . He was responsible, as captain, for enforcing the very rules that he flagrantly violated.

Id. at 542. As such, we concluded that the Board's decision to forfeit his pension was supported by substantial evidence, as "a reasoning mind could conclude that [Priester's] service was not honorable or faithful . . . by violating the rules that he was obligated to enforce and sexually harassing subordinates[.]" *Id.* at 549.

The Underlying Case: Following Priester I, PSAB Decision on Remand Spawns Second Mandamus Action

PSAB Hearing

On August 28, 2019, the PSAB issued a notice of hearing, which stated:

> Following the original hearing and prior to a final decision being issued in 2013, Mr. Priester submitted his retirement. Therefore, this hearing will be for determining whether the Board will rehear a grievance from a former employee who retired prior to the Board's issuance of a "final decision."

The PSAB heard arguments on September 11, 2019, "to determine whether [it] will conduct a full re-hearing of [Priester's] Grievance[.]" The County's attorney argued that Priester was not eligible for a new hearing in the grievance process because Priester ceased being an employee after he filed paperwork to retire. The County's attorney argued:

> This case is very simple. Mr. Priester was a Fire Captain. He went through various levels of the Grievance process but, on July 31, 2014, he filed

> paperwork to retire. And, at that point, he no longer was an employee of the County.
>
> * * *
>
> [A]n employee under the M-O-U is defined as 'All uniform classes and fire department, and pay schedule of the County Classification and Compensation Plan up to and including the rank of Captain.' So, under the M-O-U, . . . only employees can file grievances.
>
> At that point that he retires, he's no longer an employee and no longer, you know, subject to the M-O-U, and is no longer allowed to make a grievance.
>
> I think it's important to know [that] when he applied for retirement, he went through the pension process. It was initially denied. It was reviewed by the Circuit Court, went up to the Court of Special Appeals and a final decision was made on his entitlement to pension. That whole case would be for naught if he hadn't retired. I mean, there would be no point for the Court to hear[] whether he's entitled to retirement benefits if he hadn't retired. The Court wouldn't have taken the case and said that it's . . . not ripe for [] judicial decision.

Priester's counsel countered that this Court initially remanded the case to the PSAB in *Priester I*, not to *decide* if there should be another hearing, but to *mandate* a hearing. Priester's counsel contended:

> There's been no exhaustion of 'Administrative Remedies' because there hasn't been a final decision in the case. . . . [T]hat's where we are, back here for you to decide . . . whether or not there should be a hearing. And it's . . . absolutely abundantly clear that that was what the Court had wanted you folks to do.

As to whether Priester's grievance appeal was rendered moot upon his retirement, Priester's counsel argued that "[t]here's nothing in the M-O-U that says that you lose your status as an employee because he retired." Counsel asserted that the County cannot say "Oh, because you've [] attempted to get retirement benefits that – that affects your status as an employee and [] all your rights to grieve[.]" Counsel also reasoned that "if you went

by the strict definition of [] employee, because you're still retained and working" then "anyone who[was] terminated" could be told, "Well, you're terminated. So, therefore, you don't have a right to grieve your termination cause you're no longer an employee."

Following this hearing, a quorum of three members voted. Two members voted "in favor of finding the matter moot because [Priester was] no longer an employee by definition of the MOU." A third member abstained from the vote. On April 13, 2021, the PSAB issued the Final Order. The Final Order reiterated that the purpose of the hearing was "for determining whether [the PSAB] will rehear a grievance from a former employee who retired prior to the . . . issuance of a 'final decision.'" The Final Order denied Priester's appeal as moot because he was "no longer an employee by definition of the MOU[,] and therefore, "no longer an employee capable of reinstatement." In addition, the Final Order also noted that if the PSAB

> were to reach the merits, two members would vote to uphold [Priester's] termination on the grounds previously reached by the non-final decision. The record was replete with instances of Appellant's misconduct and do not have to be repeated in great detail here. The instances of misconduct are incorporated by reference to the prior decision of the Board.

On May 12, 2021, Priester filed a second Petition for Administrative Mandamus in the Circuit Court for Baltimore County.

Circuit Court Hearing

The circuit court heard oral arguments on August 31, 2022. The court opened with the "critical question" related to mootness, namely if there were "any remedies . . . that could be fashioned if [Priester] w[ere] to have a de novo appeal[.]" Priester's counsel

argued that backpay from the period of time between the initial termination and his retirement "would be an appropriate remedy." The County's attorney disagreed that there were available remedies, emphasizing that Priester's resignation and application for retirement benefits made him ineligible to continue with the grievance process. The following colloquy ensued:

> THE COURT: But the question I have for you is this. How are you denying – I mean, how are defining employee such that he is foreclosed and somebody who is fired is not?
>
> [COUNTY ATTORNEY]: Okay. It's 4-5-101 of the County Code defines an employee as . . . [a] person employed by the County as a member of the classified service under Section 801 of the charter and further defined under the personnel rules.
>
> THE COURT: Yes.
>
> [COUNTY ATTORNEY]: When you're retired, you are not a member of the classified service at that point anymore.
>
> THE COURT: When you're fired are you?
>
> [COUNTY ATTORNEY]: Yes, because you still have the opportunity to be reinstated.
>
> THE COURT: Well, where is that in the plain language of the County Code?
>
> * * *
>
> [I]t seems to me that even in the County's memorandum, there's a recognition of the language in the County Code, and that is that **the definition of employee relates back to the date of filing**. Absolutely the County Code requires you to be an employee to file a grievance, but was he not an employee when he filed the grievance?
>
> [COUNTY ATTORNEY]: **He was an employee when he filed the grievance**, but he also filed for retirement and forever changed his status when that decision became final.

(Bold emphasis added). The County also argued that under the doctrine of collateral estoppel, this Court's holding in *Priester II*—whereby we upheld the Board's finding that Priester had failed to provide "honorable and faithful" service towards his retirement—would preclude him from seeking any relief in this case.

> There – so I guess I would ask the question just logically if somebody has been found to not have honorably []served the County – there is in no fashion under that fact pattern, and we've certainly briefed the administrative collateral estoppel in our briefing, where the PSAB could find that the termination was not appropriate.
>
> * * *
>
> [B]ased on the doctrine of administrative collateral estoppel, that – our – that decision itself will not allow that [Priester] is asking for in a remedy to go forward because it's the exact same fact pattern, it's the exact same – it meets all four of the criteria to establish that he is estopped from pursuing this at this point in time.

However, when the Court asked if the Board's standard for retirement benefits is "exactly the same" as the PSAB's standard for sanctioning an employee, the County's attorney was unable to give a clear answer.

> I'm not sure it's exactly apples to apples, but I would say that the standard is a stricter standard, so it's appropriate to infer that there is an -- no fact pattern that the [PSAB] would be able to -- it to decide that the termination was in any way, shape or form inappropriate.

Priester's counsel argued that the PSAB's decision to deny a rehearing on the grievance matter "cannot be reconciled with the [MOU] between the County and Mr. Priester's Fire Union . . . nor can it be reconciled with" this Court's decision in *Priester I.* Priester's counsel explained:

Section 3-3-1305(a)[(4)(i)] of the Code mandates that the [PSAB] shall hear and decide Appeals that are reviewable under Article 4 of the Personnel Rules. Article 4 of the Personnel Rules . . . authorized review of protests from employees in the County classified service who feel aggrieved by the personnel and employment practices of the County. **That same rule goes on to make clear that the [PSAB] may not decline to hear any protest of an employee in the County classified services because such protests are . . . reserved . . . to the [PSAB] by the Code**.

* * *

The Code therefore makes it clear that this, as the [Appellate Court of Maryland] recognized, that the -- the PSAB is vested with the sole authority over adjudicating these personnel matters, and therefore it has to act and . . . fulfill . . . that function, that obligation.

* * *

Section 5.7 of the Memorandum of Understanding between the County and the . . . Firefighter's union states the grievance . . . [s]hall be presented to the [PSAB]. And the very next sentence in Section 5.7 states, [t]hat the [PSAB] shall render a final and binding decision on the grievance as soon as possible.

Finally, the [PSAB] in this case, as Your Honor is aware from . . . reading the papers and – and the record, after Mr. Priester's initial hearing resulted in a 2-2 decision . . . .[t]he Board itself, on its own initiative, issued two letters to Mr. Priester indicating that it would rehear this – this grievance.

* * *

And the key holding from the [Appellate Court of Maryland's] decision is that because the [PSAB] issued Mr. Priester these two letters indicating . . . its decision to rehear his appeal, the prior decision of the PSAB was not a final decision.

* * *

[T]o deny this – this rehearing is – is just completely contrary to the [Appellate Court of Maryland's] decision in this case. . . . And as the Code, as the MOU, as the [Appellate Court of Maryland's] opinion holds, he still has not been afforded a hearing on the merits resulting in a final decision on his grievance.

At the end of the hearing, the court took the matter under advisement.

Circuit Court's Ruling

On September 2, 2022, the circuit court issued a Memorandum Opinion and Order reversing the PSAB's Final Order dated April 13, 2021, and remanding the matter to the PSAB to hold a new hearing on Priester's grievance appeal. The circuit court held that Priester's grievance appeal is not moot, stating that "even assuming arguendo that [Priester's] retirement forecloses his reinstatement, there is still a justiciable controversy between the parties for which a remedy may be effectuated."

The court emphasized that Priester was "without dispute . . . an employee at the time he filed his grievance appeal." The court reasoned that because "all terminated employees are no longer employed at the time of their grievance hearing[,] [i]t is, therefore, illogical to read the definition of 'employee' as relating to the time of the grievance hearing[,]" rather than the time the grievance was filed. The court pointed out that the Baltimore County Code's provisions on grievance procedures "relate the employment status to the time of the *filing*, not the time of the hearing." (Emphasis added). The court also stated that it found "no legal authority . . . nor any express definitional distinction in either the MOU or the Baltimore County Code" to support the County's argument that there was a meaningful "distinction between a dismissed employee and one who voluntarily resigns."

The court determined, based on the foregoing reasons, that the PSAB "incorrectly applied the provisions of [Baltimore County Code] Section 3-3-1305(a) and 4-5-202 and erred as a matter of law." Concluding that the PSAB had both the authority and the duty

to hear Priester's grievance appeal, the circuit court reversed the BSAB's decision to deny Priester's grievance as moot and remanded the matter for a new hearing. The circuit court did not address the PSAB's alternative statement on merits.

On September 12, 2022, the County filed a Motion for Reconsideration and Memorandum of Law in Support of Motion for Reconsideration. While that motion was still pending, the County filed a notice of appeal on September 30, 2022, challenging the circuit court's Memorandum Opinion and Order. On October 3, 2022, the circuit court summarily denied the County's Motion for Reconsideration.

DISCUSSION

Before this Court, the County presents three arguments: 1) the matter is moot because Priester resigned and foreclosed his opportunity to pursue a grievance hearing under the MOU; 2) the doctrines of administrative collateral estoppel and the law of the case preclude Priester from challenging his termination; and 3) there is sufficient evidence in the record for the PSAB to affirm Priester's termination on merits.

Final Judgment

As a preliminary matter, we observe that the circuit court failed to incorporate its judgment into a separate document, as required under the Maryland Rules. The "separate document rule," set forth in Maryland Rule 2-601(a)(1), mandates: "Each judgment shall be set forth on a separate document and should include a statement of an allowance of costs[.]" The Supreme Court of Maryland explained that the rule was intended to "remedy the difficulty [which] ha[d] risen, chiefly where the court has written an opinion or

memorandum containing some apparently directive or dispositive words, e.g., 'the plaintiff's motion [for summary judgment] is granted.'" *Byrum v. Horning*, 360 Md. 23, 26 (2000) (brackets in the original) (citation omitted). Indeed, the Memorandum Opinion and Order here states that the circuit court "reverses the decision of the PSAB to deny, as moot, [Priester's] appeal of the May 6, 2013 termination and remands the matter to the PSAB for a hearing[,]" but no separate judgment was issued. As such, we find that the circuit court did not strictly comply with the separate document rule.

Nevertheless, this requirement is not jurisdictional, and it may be waived "where a technical application of the separate document requirement would only result in unnecessary delay." *URS Corp. v. Fort Myer Constr. Corp.*, 452 Md. 48, 67 (2017). Specifically, waiver is appropriate when the trial court "clearly intended [the docket entry] to be a final judgment" and where "no party objected to the absence of a separate document after the appeal was noted[,]" the separate document requirement may be waived. *Id*. at 68, 70 (quoting *Suburban Hosp., Inc. v. Kirson*, 362 Md. 140, 156 (2000)). Here, the language of the Memorandum Opinion and Order reflects the circuit court's intent for it to serve as a final judgment, and neither party has objected to the absence of a separate document. Accordingly, we deem the lack of a separate judgment to be waived.

I.

Mootness

A. Parties' Contentions

The County emphasizes that Section 4-5-101(e)(1) of the Baltimore County Code defines "employee" as "a person employed by the county as a member of the classified service[,]" and argues that the grievance process is limited to *current* employees who either challenges discipline or seeks reinstatement. Because Priester is no longer a County employee and cannot be reinstated, the County claims that he has lost standing to pursue a grievance and his grievance claim is moot.

To the contrary, Priester maintains that the circuit court correctly determined his grievance appeal is not moot because, there is "'still a justiciable controversy between the parties for which a remedy may be effectuated . . . [*e.g.*,] an award of back pay[.]'" (Quoting from the circuit court's opinion) (brackets in Priester's brief). Priester urges this Court to discard the County's "tortured definition of the word 'employee'" and instead construe the definition of employee as the circuit court had – that "the grievance provisions in the County Code on grievance procedures relate the employment status to the time of the *filing*, not the time of the hearing." (Quoting from the circuit court's opinion)(Emphasis added). Priester emphasizes that he filed his grievance "more than a year *before* he submitted his retirement application." Because section 3-3-1305(a)(4)(i) of the Baltimore County Code ("BCC") provides that "the PSAB 'shall . . . hear and decide appeals . . . that have been filed by merit status employees[,]'" Priester insists that the PSAB could not take

away his right to have his grievance adjudicated since he was an employee at the time of *filing* the grievance. Priester also points out that the Maryland Supreme Court rejected Baltimore County's similar contention, in *Baltimore County v. Baltimore County. Fraternal Order of Police, Lodge No. 4* (*"Lodge No. 4")*, 429 Md. 533 (2012), "that 'retirees' are not 'employees,'" and that the County's argument in this case should be rejected for the same reasons stated in *Lodge No. 4.*

B. Legal Framework

Standard of Review

Maryland Rule 7-403 sets out the circuit court's authority to issue a writ of administrative mandamus in an agency action:

> The court may issue an order denying the writ of mandamus, or may issue the writ (1) remanding the case for further proceedings, or (2) reversing or modifying the decision if any substantial right of the plaintiff may have been prejudiced because a finding, conclusion, or decision of the agency:
>
> (A) is unconstitutional,
>
> (B) exceeds the statutory authority or jurisdiction of the agency,
>
> (C) results from an unlawful procedure,
>
> (D) is affected by any error of law,
>
> (E) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted,
>
> (F) is arbitrary or capricious, or
>
> (G) is an abuse of its discretion.

Md. Rule 7-403.

In deciding whether the circuit court correctly denied a petition for writ of administrative mandamus, we apply the same standard of review as in an action for judicial review. *Perry v. Dep't of Health and Mental Hygiene*, 201 Md. App. 633, 639-40 (2011). Employing that standard, we "look through" the decision of the circuit court and evaluate the decision of the agency directly. *W. Montgomery Cnty. Citizens Ass'n v. Montgomery Cnty. Planning Bd. of Md.-Nat'l Cap. Park & Planning Comm'n*, 248 Md. App. 314, 332-33 (2020), *cert. denied*, 474 Md. 198 (2021). Thus, in reviewing an agency's final decision, our role "is precisely same as that of the circuit court." *Dep't of Health & Mental Hygiene v. Shrieves*, 100 Md. App. 283, 303–04 (1994). "We do not consider the circuit court's findings of fact and conclusions of law." *Mid-Atl. Power Supply Ass'n v. Md. Pub. Serv. Com'n*, 143 Md. App. 419, 432 (2002).

Our standard of review for an administrative agency decision differs depending on whether the agency's factual finding or legal conclusion is under attack. *Cross v. Balt. City Police Dep't*, 213 Md. App. 294, 306 (2013). When reviewing the agency's factual findings, "substantial evidence" standard applies, "by which the court defers to the facts found and the inferences drawn by the agency when the record supports those findings and inferences." *Comptroller v. FC-GEN Operations Invs. LLC*, 482 Md. 343, 359 (2022). Under this standard, we "consider whether a reasoning mind reasonably could have reached the [agency's] factual conclusion." *Id.* (quoting *Frey v. Comptroller of Treasury*, 422 Md. 111, 137 (2011)).

On the other hand, we review the agency's conclusions of law "*de novo* for correctness." *Id.* at 360 (quoting *Schwartz v. Md. Dep't of Nat. Res.*, 385 Md. 534, 554 (2005)). That said, "we may apply a degree of deference to an administrative agency's legal conclusion . . . premised upon an interpretation of the statutes that the agency administers." *Id.* at 362 (citations omitted). Further, when determining how much weight to accord the agency's statutory interpretation, we must "keep[ ] in mind that it is 'always within [our] prerogative to determine whether an agency's conclusions of law are correct.'" *Id.* (quoting *Md. Dep't of the Env't v. Cnty. Comm'rs of Carroll Cnty.*, 465 Md. 169, 203 (2019)).

Mootness

A case becomes moot "when 'past facts and occurrences have produced a situation in which, without any future action, any judgment or decree the court might enter would be without effect.'" *La Valle v. La Valle*, 432 Md. 343, 352 (2013) (quoting *Hayman v. St. Martin's Evangelical Lutheran Church*, 227 Md. 337, 343 (1962)). Accordingly, "[t]he test for mootness . . . is whether a court can fashion *any* effective remedy to the controversy between the parties; it need not return the parties to the *status quo ante*." *Trusted Sci. & Tech., Inc. v. Evancich*, 262 Md. App. 621, 640 (2024). Generally, we dismiss a moot case without any discussion on the merits. *Mercy Hosp., Inc. v. Jackson*, 306 Md. 556, 562 (1986).[4]

[4] Maryland courts have recognized two exceptions to the mootness doctrine. The first exception is "where a controversy that becomes non-existent at the moment of judicial (Continued)

We must be careful not to conflate the doctrine of mootness with that of standing. While such confusion may be "understandable," mootness and standing are two distinct concepts. *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000). Notably, for years, the United States Supreme Court repeatedly described mootness as "the doctrine of standing set in a time frame: [t]he requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Arizonans for Official English v. Arizona*, 520 U.S. 43, 68 N.22 (1997). In *Laidlaw*, however, the Supreme Court acknowledged that such description is less than accurate, explaining:

> Standing doctrine functions to ensure, among other things, that the scarce resources of the [ ] courts are devoted to those disputes in which the parties have a concrete stake. In contrast, by the time mootness is an issue, the case has been brought and litigated, often . . . for years. To abandon the case at an advanced stage may prove more wasteful than frugal.

528 U.S. 167, 191-92 (2000) (citations and footnote omitted).

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review is capable of repetition but evading review." *Sanchez v. Potomac Abatement, Inc.*, 198 Md. App. 436, 443 (2011). This exception applies only if "(1) the challenged action was too short in its duration to be fully litigated prior to its cessation or expiration; and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again." *Powell v. Md. Dep't of Health*, 455 Md. 520, 541 (2017) (citation omitted). Under the second exception, we may address the merits of a moot case to prevent harm to the public interest, but "only where the urgency of establishing a rule of future conduct in matters of important public concern is imperative and manifest[.]" *Lloyd v. Bd. of Supervisors of Elec.*, 206 Md. 36, 43 (1954). In this appeal, parties do not claim that either of these exceptions apply.

We view *Lodge No. 4,* and related cases,[5] most apposite to the mootness issue raised in this appeal. In *Lodge No. 4*, the County unsuccessfully argued that a grievance filed by the Baltimore Fraternal Order of Police ("FOP") against Baltimore County under an expired MOU was moot and therefore not arbitrable. 429 Md. at 541. The Supreme Court of Maryland rejected this argument, holding that the FOP was entitled to arbitration of its grievance even after the MOU's expiration if "the subject of FOP's grievance vested during the MOU's term." *Id.* at 556. Citing the United States Supreme Court's decisions in *Nolde Bros. Inc. v. Local No. 358, Bakery & Confectionery Workers Union AFL-CIO*, 430 U.S. 243 (1977), and *Litton Financial Printing Div. a Div. of Litton Business Systems, Inc. v. N.LR.B.*, 501 U.S. 190 (1991), the Court reasoned:

> Before the arbitrator, the Circuit Court, and the Court of Special Appeals, the County painted a black and white picture of the arbitrability—or, rather, non-arbitrability—of FOP's grievance, arguing that the MOU's expiration rendered inapplicable the arbitration clause. As far as the County was concerned, . . . *Nolde* and *Litton* teach us that a dispute arising after the expiration of an agreement may be arbitrable if it arises under that agreement. *See Nolde*, 430 U.S. at 249, 97 S.Ct. at 1071. Such a dispute will be arbitrable if (1) the grievance 'involves facts and occurrences that arose before expiration, [2] where an action taken after expiration infringes a right that accrued or vested under the agreement, or [3] where, under normal principles of contract interpretation, the disputed contractual right survives expiration of the remainder of the agreement.'" *Litton*, 501 U.S. at 206, 111 S.Ct. at 2225.

[5] Similar to this appeal, the *Lodge No. 4* cases involved a complex history and engendered four appellate opinions, one of which was reversed, all bearing the same case name. *See Lodge No. 4*, *supra*, 429 Md. 533 (2012); *Baltimore Cnty. v. Baltimore Cnty. Fraternal Ord. of Police, Lodge No. 4*, 220 Md. App. 596 (2014); *Baltimore Cnty. v. Baltimore Cnty. Fraternal Ord. of Police, Lodge No. 4*, 449 Md. 713 (2016). In this opinion, we focus on the Supreme Court of Maryland's decision in *Lodge No. 4*, *supra*, 429 Md. 533 (2012), unless specified otherwise.

Lodge No. 4, 429 Md. at 554, 556. In other words, a grievance based on rights vested during the term of the agreement remains a "live" controversy, eligible for effective relief.

C. Analysis

Returning to the appeal before us, we conclude that the circuit court correctly determined that the PSAB erred in denying Priester's grievance appeal as moot. Priester's resignation from employment does not preclude him from pursuing a grievance that was properly filed while he was still employed. Neither the plain language of the County Code nor the MOU supports the County's claim that an employee's resignation automatically terminates an ongoing grievance process.

Before we explain our reasoning, we must clarify once more that the issue before us is not standing, *i.e.*, whether Priester could *file* a grievance as an employee. Priester was indisputably an "employee" when he filed his grievance. Article VIII, Section 802 of the Baltimore County Charter established the PSAB, and Section 803 of the Baltimore County Charter grants the PSAB with the exclusive jurisdiction to hear and decide a grievance appeal. *See Priester I*, 232 Md. App. at 185 ("Section 803 confers on the PSAB exclusive jurisdiction over a grievant's final administrative appeal[.]"). Consistent with this jurisdiction, Priester, formerly a fire captain for Baltimore County, properly invoked the grievance procedure on May 1, 2013, more than a year before he applied for retirement on July 31, 2014. Although he was no longer "employed" by Baltimore County after his termination, the County has conceded that a terminated employee may still be treated as an

"employee" for grievance purposes since the process could result in reinstatement. Therefore, there is no dispute that Priester had the standing to initiate the grievance process.

The key question here is mootness—whether Priester could *continue* to seek grievance as an employee even after resigning. To answer this, we begin with the plain language of the County Code. "A charter or an ordinance generally is read and construed in the same manner as a statute." *Howard Rsch. & Dev. Corp. v. Concerned Citizens for Columbia Concept*, 297 Md. 357, 364 (1983). Thus, when we interpret the County Code, "we apply the same canons of construction . . . as we apply to the interpretation of state statutes." *Anne Arundel Cnty. v. 808 Bestgate Realty, LLC*, 479 Md. 404, 420 (2022)).

The Baltimore County Code defines "employee" and "grievance" in several contexts. Section 4-1-101 generally provides that "'[e]mployee' means a person employed by the county[,]" and "does not include an independent contractor or volunteer worker." BCC § 4-1-101(g). More specific definitions are found in Baltimore County's Employee Relations Act, which governs "grievances and disputes relating to wages, hours, and other terms and conditions of employment." BCC § 4-5-201(a)(2). Under the Employee Relations Act, an "employee" is defined as "a person employed by the county as a member of the classified service[,]" BCC § 4-5-101(e)(1), while "grievance" refers to disputes concerning: "(1) [a]pplication or interpretation of the terms of a written memorandum of understanding; (2) [d]iscriminatory application or misapplication of the rules or work practices of an agency of the county; (3) [s]uspension, dismissal, promotion, or demotion of an employee; or (4) [a] complaint about an examination or examination rating." BCC §

4-5-101(h). Similarly, the MOU between Priester's union and the County defines employee as "all uniformed classes of the Fire Department . . . up to and including the rank of Captain[.]" Neither the County Code nor the MOU provide that an employee loses the right to continue a grievance process upon resignation.

To the contrary, our reading of the County Code suggests a legislative intent to guarantee, rather than restrict, Baltimore County employees' right to pursue grievances before the PSAB. This intent is evident in the Employee Relations Act, which provides: "[n]othing in this section may be construed to deny *the right of an employee to submit a grievance* with regard to the county's exercise of its rights under this section." BCC § 4-5-202(d) (emphasis added). Moreover, the County Code goes beyond merely guaranteeing the right to "submit" grievances; it mandates the PSAB to "[h]ear and decide" such grievances. BCC § 3-3-1305(a)(4)(i) (stating that the PSAB "*shall . . . [h]ear and decide appeals* . . . that have been filed by merit system status employees who have been dismissed for cause[.]") (emphasis added). Put differently, once a merit system status employee, *i.e.* Priester, files a grievance appeal, the PSAB must hear it. There is nothing in the relevant provisions of the County Code to suggest that, in order to maintain the right to pursue their grievance, an employee is prohibited from applying for retirement during the pendency of their grievance appeal, which in some cases, like Priester's, can take years to complete.

Our reading of the County Code is also consistent with the language of the MOU governing Priester's grievance rights. In interpreting an MOU, we "adhere to the principle of the objective interpretation of contracts" by reading its "separate provisions

harmoniously, so that, if possible, all of them may be given effect." *City of Coll. Park v. Precision Small Engines*, 233 Md. App. 74, 85 (2017) (quoting *Walker v. Dep't of Hum. Res.*, 379 Md. 407, 421 (2004)). In addition, when the language of an MOU is clear and unambiguous, we must "give effect to its plain meaning and there is no need for further construction by the court." *Id.* "It is a fundamental principle of contract law that it is 'improper for the court to rewrite the terms of a contract, or draw a new contract for the parties, when the terms thereof are clear and unambiguous[.]'" *Calomiris v. Woods*, 353 Md. 425, 445 (1999) (quoting *Canaras v. Lift Truck Servs.*, 272 Md. 337, 350 (1974)).

As with the County Code, when read as a whole, the MOU links one's status as an "employee" to one's eligibility to *initiate* a grievance. Section 5.1 of the MOU provides, "a grievance may be *filed* by an individual employee[.]" (Emphasis added). Section 5.2, titled "grievance process," sets specific deadlines for filing a grievance, requiring that it "be *raised* within fourteen (14) calendar days following the event giving rise to the grievance[.]" (Emphasis added). Although these two provisions allow an "employee" to exercise grievance rights, neither of them—or any other provision in the MOU—limit such rights based on resignation or retirement. Thus, according to the plain language of the MOU, only the ability to *file* a grievance turns on one's status as an employee, and it is undisputed that Priester filed his grievance well before he submitted his application for retirement.

Having determined that Priester's resignation did not remove the PSAB's obligation to hear his grievance appeal, we next consider whether the PSAB can still fashion an

effective remedy. We conclude that it can. The County argues that once an employee resigns or files for retirement, he is no longer eligible for relief, unlike a terminated employee who can pursue a grievance in the hopes of reinstatement. While the County offers no statutory, regulatory, or decisional law to support this interpretation, Exhibit K attached to the MOU, titled "Baltimore County Fire Department Disciplinary Process Beyond Summary Suspension," contains the following provision: "[a]ny employee who resigns after charges and specifications have been filed against him/her shall be ineligible for reemployment or reinstatement in the Fire Department."

We decline to read this provision as a blanket prohibition of all forms of relief for employees who resign after being charged. Generally, a court is "free to adopt any mode by which it can most readily and effectually administer that relief which the equity of the case may require." *Terry v. Terry*, 50 Md. App. 53, 61-62 (1981). This typically includes reinstatement *and* backpay. In *Kearny v. France*, 222 Md. App. 542 (2015), which involved a correctional officer's termination in violation of the Correctional Officer's Bill of Rights (COBR), we held that the circuit court's decision to reinstate the officer without back pay and benefits failed to "vindicate[ ] the right that [the officer] was denied[,]" emphasizing the necessity of backpay to provide adequate relief. *Id.* at 556 (quoting *Cave v. Ellicott*, 190 Md. App. 65, 92 (2010)) (second bracket added in *Kearny*). Consistent with this principle, Baltimore County Personnel Rule 17.01, codified in Section 4-8-101 of the Baltimore County Code, expressly authorizes the Board to grant both reinstatement and back pay as remedies.

> **If the Board shall adjudge the employee innocent of the offense for which he was discharged, the county will reinstate the employee in full with accumulated service credits and in case the employee was penalized by loss of working time will pay him back wages,** less any unemployment compensation or compensation from any other employer, which he may have received, during the period of his separation from the county payroll.

Therefore, even if PSAB could no longer "reinstate" Priester back to his original position under the MOU should it determine that the termination was not justified, it could still award Priester backpay for the period of time between May 16, 2013 (the date of his effective termination) and July 31, 2014 (when Priester filed for retirement). Because a justiciable controversy remains between Priester and the County regarding back pay for the year between his termination and resignation (or filing for retirement), and the PSAB has the authority to grant such relief, we conclude the matter is not moot.

II.

Collateral Estoppel and the Law of the Case

A. Preservation

The County contends that the doctrines of collateral estoppel and the law of the case preclude Priester from litigating his termination before the PSAB, citing the Board's denial of his retirement application for failure to render "honorable and faithful service." Before discussing merits of this argument, however, we must first determine whether it was properly preserved for our review. Priester argues that it was not, emphasizing, "the PSAB's written decision does not even reference the denial of his retirement benefits, much less state that such denial implicates administrative estoppel[.]" The County responds that

it did preserve the argument because it raised the doctrines of collateral estoppel and law of the case before the PSAB.

Except for certain jurisdictional issues, we ordinarily do not rule on "any . . . issue unless it plainly appears by the record to have been raised in or decided by the trial court." Md. Rule 8-131(a). The purpose of this Rule is two-fold: "to ensure fairness for the parties involved and to promote judicial administration." *McDonell v. Harford Cnty. Housing Agency*, 462 Md. 586, 602 (2019) (citation omitted). Therefore, if a party fails to raise an issue at a trial, the appellate court may not decide the unraised issue unless it is "necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal." Md. Rule 8-131(a).

The same requirement also "applies to appellate review of administrative proceedings." *Parham v. Dep't of Labor*, 189 Md. App. 604, 615 (2009). In addition to fairness and adjudicative efficiency, the preservation requirement in the judicial review context also reflects concerns about the separation of powers. Our Supreme Court explained:

> A reviewing court usurps the agency's function when it sets aside the administrative determination upon a ground not theretofore presented and deprives the Commission of an opportunity to consider the matter, make its ruling, and state the reasons for its action.

Bulluck v. Pelham Wood Apartments, 283 Md. 505, 518-19 (1978) (quoting *Unemployment Compensation Comm'n v. Aragon*, 329 U.S. 143, 155 (1946)); *see also Schwartz v. Md. Dep't of Nat. Res.*, 385 Md. 434, 444-46 (2005) (noting that an appellate court must review an agency decision "solely on the grounds relied upon by the agency.") (quoting *Brodie v.*

MVA, 367 Md. 1, 4 (2001)). "In effect, this means that the agency must be right for the right reason." *Mueller v. People's Counsel for Baltimore Cnty.*, 177 Md. App. 43, 84.

Accordingly, in an appeal of an administrative decision, the preservation requirement comes with an important caveat: "in an administrative proceeding, raising [an] issue is insufficient to preserve it on appeal." *Comptroller of Treasury v. Taylor*, 465 Md. 76, 99 (2019). In *United Steelworkers v. Bethlehem Steel*, 298 Md. 665 (1984), the Supreme Court of Maryland explained:

> Judicial review of administrative action differs from appellate review of a trial court judgment. In the latter context the appellate court will search the record for evidence to support the judgment and will sustain the judgment for a reason plainly appearing on the record whether or not the reason was expressly relied upon by the trial court. **However, in judicial review of agency action the court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency.**

Id. at 679 (emphasis added). "[A]s the reviewing court, we 'may not pass upon for the first time issues not encompassed in the final decision of the administrative agency.'" *Wilson v. Md. Dep't of Env't*, 217 Md. App. 271, 284 (2014) (quoting *Cross v. Balt. City Police Dep't*, 213 Md. App. 294, 307 (2013)). "[A] passing reference to an issue, without making clear the substance of the claim, is insufficient to preserve an issue for appeal, particularly in a case with a voluminous record." *Concerned Citizens of Cloverly v. Montgomery Cnty. Planning Bd.*, 254 Md. App. 575, 603 (2022) (citing *Ctr. For Sustainable Econ. v. Jewell*, 779 F.3d 588, 602 (D.C. Cir. 2015)). Furthermore, "an issue is not preserved if [an administrative agency] contemplated but 'did not base its final decision on the issue.'"

Comptroller of Md. v. Broadway Servs. Inc., 250 Md. App. 102, 133 n.21 (2021) (quoting *Taylor*, 465 Md. at 98-99).

We conclude that the County failed to preserve the issues of collateral estoppel or law of the case for judicial review. The County fails to point to any instance in the administrative hearing record where it claimed the law of the case from *Priester I* foreclosed Priester's grievance appeal, nor can we find any. Although the County raised the law of the case argument before the circuit court, "[i]t is the argument before the [PSAB] . . . that is relevant." *Concerned Citizens of Clovery*, 254 Md. App. at 601 n.6.

The County claims, however, that it "argued (and preserved) that this case is precluded under the principles of administrative collateral estoppel[,]" citing the following portion from the PSAB proceedings:

> [COUNTY ATTORNEY:] I think it's important to know here – is that he -- when he applied for retirement, he went through the pension process. It was initially denied. It was reviewed by the Circuit Court, went up to the [Appellate Court of Maryland] and a final decision was made on his entitlement to pension.

The County did not elaborate further on how the Board's denial of Priester's retirement benefit application, or this Court's affirmance of that denial in *Priester II*, would affect the issues in the current grievance appeal. Rather than giving the PSAB "an opportunity to consider" the issue of administrative collateral estoppel, the County focused on the issue of mootness, arguing that the Board would not have ruled on his retirement application if Priester were still an employee under the Baltimore County Code.

> [COUNTY ATTORNEY:] That whole case would be for naught if he hadn't retired. I mean, there would be no point for the Court to hearing whether he's

> entitled to retirement benefits if he hadn't retired. The Court wouldn't have taken the case and said that it's, you know, not ripe for judicial dec -- a judicial decision.
>
> * * *
>
> And, again, I think he filed for retirement; went through all these levels of Court review of his entitlement to pension. That case is closed. And, again, I don't think that that -- the Courts would go through that unless he had retired. And that whole decision would be for naught, and it would not make sense.

The County's brief reference to the denial of Priester's retirement benefit application failed to articulate or identify the issue of collateral estoppel for the PSAB to consider and for the courts to review on judicial review. It is not enough that an issue is raised "in some fashion[.]" *Concerned Citizens of Cloverly*, 254 Md. App. at 603 (quoting *Center for Sustainable Economy*, 779 F.3d 588, 602 (D.C. Cir. 2015)). Instead, the issue must be "raised with sufficient precision, clarity, and emphasis to give the agency a fair opportunity to address it." *Id.* Here, the County did not put the PSAB on notice of its argument that the doctrine of collateral estoppel made the outcome of Priester's retirement benefit proceedings binding on his grievance appeal, and therefore, the PSAB was not given the opportunity to address the argument.

Further, even assuming *arguendo* that the County sufficiently raised the issue of collateral estoppel during the administrative proceedings, the PSAB did not rely on collateral estoppel as a basis for its final decision. Rather, in denying Priester's grievance appeal as moot, the PSAB focused solely on the language of the MOU and the Baltimore County Code, *i.e.* whether Priester still qualifies as an "employee" even after his resignation. The PSAB's Final Decision mirrors this:

> During the September 2019 arguments hearing, Counsel for Baltimore County argued that [Priester] was no longer an employee after he submitted his voluntary application for retirement in 2014, prior to the [PSAB] issuing any decision. At that time, [Priester] permanently resigned his position with Baltimore County and ceased being an employee for the purposes of pursuing grievance.
>
> * * *
>
> The County further argued that [Priester's] due process rights were not violated as [Priester] voluntarily resigned from his position with the Baltimore County Fire Department and therefore, no governmental action was present for any due process analysis. The County also argued that because [Priester] voluntarily applied for retirement, he was no longer an employee, as defined under the MOU; and therefore, the issue of [Priester's] possible reinstatement by the [PSAB] was moot.
>
> Counsel for [Priester] argued that the [PSAB] issued letter in 2014 stating that it would hold rehearing on the Appellant's grievance appeal. [Priester] further argued that the [Appellate Court of Maryland] remanded the matter to the Board solely to hold new hearing.
>
> After the arguments were completed, the [PSAB] voted as to whether to proceed with new hearing or whether to proceed with vote due to the [Priester's] issues being moot since [Priester] was no longer an employee capable of reinstatement. As noted, there was quorum at the time of the hearing and the [PSAB] voted two in favor of finding the matter moot because [Priester] no longer an employee by definition of the MOU between the County and the Baltimore County Professional Fire Fighters Association. The third [PSAB] member abstained from the vote.
>
> If the [PSAB] were to reach the merits, two members would vote to uphold Appellant's termination on the grounds previously reached by the non-final decision. The record was replete with instances of [Priester's] misconduct and do not have to be repeated in great detail here. The instances of misconduct are incorporated by reference to the prior decision of the [PSAB]. One member would abstain from voting.

As such, the Final Decision contains no mention of the doctrines of collateral estoppel or law of the case. *See Taylor*, 465 Md. at 98-99 (holding that the issue of constitutionality

was not preserved because the Tax Court, though having considered the issue, did not decide it). Therefore, the County's arguments regarding collateral estoppel and the law of the case is not properly before us, and we need not address them.[6]

[6] Even if preserved, we find no merit in the County's argument that the doctrines of collateral estoppel and the law of the case preclude Priester from challenging his termination. Collateral estoppel, also known as "issue preclusion," bars "a party from re-litigating a factual issue that was essential to a valid and final judgment against the same party in a prior action." *Nat. Union Fire Ins. Co. of Pittsburgh, PA. v. The Fund for Animals, Inc.*, 451 Md. 431, 463-64 (2017) (citations omitted). "Collateral estoppel is concerned with the factual implications of an earlier litigation of a different case," while *res judicata*, also known as "claim preclusion," focuses on "the legal consequences of a judgment entered earlier in the same case." *Burkett v. State*, 98 Md. App. 459 (1993), *cert. denied*, 334 Md. 210 (1994). "Collateral estoppel is concerned, therefore, not with the legal consequences of a judgment but only with the findings of ultimate fact . . . that necessarily lay behind that judgment." *Id.*

The County argues that the Board's finding that Priester's misconduct rendered his service "not honorable or faithful" for the purpose of his retirement benefit application precludes him from contesting his termination before the PSAB. However, collateral estoppel does not apply here because the two proceedings involve distinct legal standards and causes of action. The Board applied the "honorable and faithful service" standard under Section 5-1-201(p) of the Baltimore County Code to evaluate Priester's retirement benefits, whereas the PSAB must determine whether Priester's termination was "arbitrary, capricious, or illegal" under Personnel Rule 15.04. Because the latter issue was not actually litigated before the Board, the doctrine of collateral estoppel cannot foreclose Priester's grievance appeal. *See MPC, Inc. v. Kenny*, 279 Md. 29, 33 (1977) ("If . . . we are not dealing with the same cause of action, collateral estoppel rather than res judicata would apply and only *those determinations of fact or issues actually litigated in the first case are conclusive in this action*.") (emphasis added).

The County's reliance on the law of the case doctrine is equally unavailing. Under the doctrine, when a party to a case presents a question on appeal, and the appellate court rules on that question, all parties to that case and the lower courts "become bound by the ruling, which is considered to be the law of the case." *Garner v. Archers Glen Partners, Inc.*, 405 Md. 43, 55 (2008). Unlike collateral estoppel, the law of the case doctrine is limited to legal conclusions and does not apply to pure questions of fact. *Reier v. State Dep't of Assessments and Taxation*, 397 Md. 2, 21 (2007).

The County argues that *Priester I* precludes Priester from challenging the PSAB's decision to deny his appeal without an evidentiary rehearing. According to the County,

(Continued)

III.

PSAB's Ruling on the Merits

A. Parties' Contentions

The County contends that the PSAB's alternate ruling on the merits terminating Priester's employment was supported with substantial evidence by the testimony and exhibits submitted by the parties during the three-day hearing in 2014—which ultimately ended in a 2-2 tie vote.

Priester responds that the PSAB's final decision "contain[ed] no findings of facts justifying the denial of [his] grievance[,]" highlighting that the PSAB had never made any factual findings to support its decision. Priester argues that absent factual findings, the PSAB's decision violated his "right to know why he lost his case" and that he is therefore entitled to a new evidentiary hearing.

B. Legal Framework

For meaningful judicial review, administrative agencies must clearly articulate the evidence in support of their conclusions. *See Clarksville Residents Against Mortuary*

"because [ ] Priester previously litigated the issue of the PSAB's authority to interpret its own rules, and he lost," the law of the case doctrine allows the PSAB to "structure the rehearing as it sees fit." We disagree. In *Priester I*, we only addressed whether the PSAB could "interpret its statutory authority to permit the rehearing of" Priester's grievance appeal; we did not resolve the merits of the grievance or mandate a specific procedure for the rehearing. 232 Md. App at 217. Accordingly, the law of the case doctrine does not preclude Priester from contesting the PSAB's denial of his grievance appeal or from asserting procedural deficiencies in the rehearing. *See Garner*, 405 Md. at 55 (the law of the case applies only to legal conclusions "properly presented on appeal").

Defense Fund, Inc v. Donaldson Properties, 453 Md. 516, 545 (2017) (holding that the zoning board's "decision regarding adverse impacts was carefully evaluated and sufficient to permit meaningful judicial review"). It is necessary for administrative agencies to "resolve all significant conflicts in the evidence and then chronicle, in the record, full, complete and detailed findings of fact and conclusions of law." *State Comm'n on Human Rels. v. Malakoff*, 273 Md. 214, 229 (1974). Thus, an agency's failure to make detailed and complete findings of fact violates the parties' "fundamental right to be apprised of the facts relied upon by the agency in reaching its decision[.]" *E. Outdoor Advertising Co. v. Mayor & City Council of Balt.*, 146 Md. App. 283, 320-21 (2002).

To meet this requirement, an agency's findings "cannot simply repeat statutory criteria, broad conclusory statements, or boilerplate resolutions." *Bucktail, LLC v. Cnty. Council of Talbot Cnty.*, 352 Md. 530, 553, 556-58 (1999). Rather, the agency should clearly express the evidentiary foundation for its findings, though it need not do so immediately after stating each finding. *Critical Area Comm'n for the Chesapeake & Atl. Coastal Bays v. Moreland*, *LLC*, 418 Md. 111, 128-29 (2011). "If the agency's factual findings are inadequate . . . neither we nor the circuit court will scour the record in search of evidence to support the agency's conclusions." *Elbert v. Charles Cnty. Planning Comm'n*, 259 Md. App. 499, 509 (2023) (citation omitted). Therefore, when an administrative agency's findings are not amendable to meaningful judicial review, a remand is warranted. *See Moreland*, 418 Md. at 134.

C. Analysis

With these principles in mind, we turn to the PSAB's ruling at issue here. In the Final Order, the PSAB recounts the evidence and testimony presented during the 2014 proceedings as follows:

> Over the course of the proceedings between March and June, 2014, the Board held public de novo hearings with four (4) Board members presiding. Testimony was heard, exhibits were presented and received.
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> The facts presented by Baltimore County included detailed and corroborated testimony from [multiple witnesses], all of whom recounted instances of physical intimidation, inappropriate physical advances, offensive gestures and sexual harassment perpetuated by the Appellant. The Board held a vote after the proceedings and came to two to two tie on the issue of discipline. Two Board members voted in favor of upholding the Appellant's termination, and two Board members voted in favor of reinstating [Priester] without back pay. There was no dispute, however, about the seriousness of the Appellant's misconduct while employed with the County.

While the Final Order enumerates the names of witnesses from the 2014 hearing, it provides no substantive detail about their testimony or the PSAB's factual findings based on that testimony. As such, the Final Order leaves unclear how the PSAB reached the conclusion that Priester engaged in "physical intimidation, inappropriate physical advances, offensive gestures, and sexual harassment." *See Forman v. MVA*, 332 Md. 201, 221 (1993) ("At a minimum, one must be able to discern from the record the facts found, the law applied, and the relationship between the two."). Moreover, while Priester was faced with multiple charges of violating departmental rules, regulations, and Baltimore County Code provisions, the Final Order does not specify which charges were sustained or

on what basis. *See Blackburn v. Bd. of Liquor License Com'rs for Balt. City*, 130 Md. App. 614, 624 (2000) (finding insufficient findings of fact for judicial review when the agency failed "even to specify whether it found the [appellant] guilty of one violation or two violations[.]).

The PSAB's discussion on the merits of Priester's grievance appeal underscores this lack of evidentiary foundation. Without making specific factual findings, the PSAB conclusively states:

> If the [PSAB] were to reach the merits, two members would vote to uphold Appellant's termination on the grounds previously reached by the non-final decision. **The record was replete with instances of Appellant's misconduct and do not have to be repeated in great detail here. The instances of misconduct are incorporated by reference to the prior decision of the [PSAB].** One member would abstain from voting.

(Emphasis added). However, the PSAB never issued a final decision following the 2014 proceedings, and its communications to Priester contained no findings or conclusions regarding his alleged misconduct. In short, there was no "prior decision" for the PSAB to incorporate. By vaguely asserting that "[t]he record [is] replete with" evidence of Priester's misconduct, the PSAB fails to provide specific findings for meaningful judicial review. *See Bucktail*, 352 Md. at 558 (noting that a county council's denial of a developer's application previously recommended for approval failed to "point[ ] to the facts found . . . that form[ed] the basis for its contrary conclusion.").

Although we affirm the circuit court's decision to remand this matter to the PSAB for a rehearing, we clarify that the PSAB is not required to hold a full evidentiary hearing on remand. We have recognized that an administrative agency may engage in a "*de novo*

weighing . . . of already established factors without any necessity of fresh fact-finding as to the existence of those factors." *People's Counsel for Balt. Cnty. v. Country Ridge Shopping Ctr.*, 144 Md. App. 580, 601 (2002). In *People's Counsel*, we explained:

> Such a reweighing is, not uncommonly, what happens in the relitigation of mixed questions of law and fact. **First-level fact-finding, frequently requiring the resolution of disputed credibilities and necessitating the choice of competing versions of the facts, is no longer involved. That fact-finding function is a *fait accompli*. It is only after the first-level facts have once been established that the second-level question even arises of what to make of those facts. That second-level question may be revisited without any necessity of revisiting the first-level fact-finding.** . . . The decisional process involves the application of the law, or of the policy, to an already given set of facts.
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> With some frequency, tribunals are called upon to engage in a *de novo* reassessment of the significance of established factors even though those tribunals never saw a witness and never participated in any of the first-level fact-finding that went into the establishment of those factors.

144 Md. App. at 601 (emphasis added). Without articulating the relevant findings, the PSAB properly apply the relevant law to decide on Priester's termination. This deficiency—compounded by the reliance on a "prior decision" that does not exist—warrants a remand for the PSAB to make additional factual findings that would enable meaningful judicial review.

On remand, the PSAB may give the parties an opportunity to submit additional evidence for its consideration. Whether this requires a full evidentiary rehearing is left to the PSAB's discretion.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED; CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE COUNTY

WITH INSTRUCTIONS TO REVERSE PERSONNEL AND SALARY ADVISORY BOARD AND REMAND THE MATTER TO THAT BOARD FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLANT.