Circuit Court for Prince George's County
Case No. CAL 20-14937

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 91

September Term, 2021

THOMAS WILLIAM HART

v.

PRINCE GEORGE'S COUNTY
POLICE DEPARTMENT

Kehoe,
Nazarian,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: March 14, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. *See* Md. Rule 1-104.

Thomas William Hart appeals from a judgment of the Circuit Court for Prince George's County that dismissed his civil action against the County Police Department on the basis that he had failed to exhaust the administrative remedies made available to him by the Law Enforcement Officers' Bill of Rights, Md. Code, Pub. Safety §§ 1-101–113.[1] He raises one issue, which we have reworded:

> Did the circuit court err in granting the Department's motion to dismiss his complaint on the basis that he failed to exhaust his administrative remedies?

Because our answer is yes, we will reverse the judgment of the circuit court.

BACKGROUND

Because Hart is appealing from the circuit court's grant of the Department's motion to dismiss, we will "presume the truth of all well-pleaded facts in the complaint, along with any reasonable inferences derived therefrom." *Higginbotham v. Pub. Serv. Comm'n,* 171 Md. App. 254, 264 (2006) (cleaned up).

In March of 2018, Hart, at the time a captain in the Department, was charged in Queen Anne's County with forgery of private documents, possession of a forged private document, and theft between $1,000 and $10,000. The forgery and theft charges were

[1] The General Assembly repealed the LEOBR effective July 1, 2022. *See* 2021 Maryland Laws, ch. 59 § 2.

felonies and the chief of the Department suspended Hart without pay pursuant to Pub. Safety § 3-112(c)(1).[2] On July 20, 2020, Hart was charged with yet another felony, first-degree assault, as well as second-degree assault. These charges were also filed in Queen Anne's County. By August 2020, prosecutors in that county had nol prossed all of the pending felony charges, whereupon the Department changed Hart's status to "suspended with pay" and assigned him to restricted duties.

On or around November 28, 2018, that is, while the forgery and felony theft charges were pending, Hart was charged with violating the Department's social media policy. According to the complaint, he waived his right to an administrative board hearing and, on September 13, 2019, accepted a demotion in rank from captain to lieutenant and a consequent salary reduction.[3]

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[2] Pub. Safety § 3-112 states in pertinent part:

> (c)(1) If a law enforcement officer is charged with a felony, the chief may impose an emergency suspension of police powers without pay.
>
> (2) A law enforcement officer who is suspended under paragraph (1) of this subsection is entitled to a prompt hearing.

[3] In its brief, the County provides us with a somewhat different version of the violation of social media matter and how it was handled by the Department. However, in an appeal from a judgment granting a motion to dismiss, we are limited to the facts as alleged in the complaint.

Invoking Prince George's County Code ("PGCC") § 16-193(c)(4)(A)(iii),[4] Hart asked for back pay and benefits that would have otherwise accrued to him for the period that he was suspended without pay. The Department refused.

In August 2020, Hart filed the current action. Among other relief, Hart asked the court to enter a declaratory judgment to the effect that PGCC § 16-193 required the Department to restore his back pay and accrued benefits. The Department responded with a motion to dismiss for failure to state a claim upon which relief may be granted. After holding a hearing, the circuit court dismissed the case on the ground that Hart had failed to exhaust his administrative remedies.[5]

THE STANDARD OF REVIEW

Whether the circuit court erred in granting a motion to dismiss is a question of law which we review *de novo*. *Chavis v. Blibaum & Associates, P.A.*, 476 Md. 534, 551 (2021). In this exercise, appellate courts "assume the truth of all well-pled facts in the complaint as well as the reasonable inferences that may be drawn from those relevant and material facts." *Smith v. Danielczyk*, 400 Md. 98, 103–04 (2007) (cleaned up).

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[4] Subtitle 16 of the Prince George's County Code is the County's personnel law. PGCC § 16-193(c)(4)(A)(iii) states that in cases in which an employee is suspended because they are charged with committing a crime and the employee is subsequently acquitted, the employer shall "revoke the suspension and return the employee to a duty and pay status, including restoration of back salary and leave benefits[.]"

[5] Hart retired while this action was pending.

ANALYSIS

A

To this Court, Hart recognizes that the chief of the Department was authorized by Pub. Safety § 3-112(c) to suspend him without pay for the periods when the felony charges were pending. Hart emphasizes that he has never challenged the chief's authority to do so. According to him, this case is not about the Department's failure to abide by the LEOBR but rather its refusal to pay him the wages and benefits that accrued while he was suspended. From his perspective, PGCC § 16-193, and not the LEOBR, is the critical statute, and the circuit court erred when it concluded that he was obligated to exhaust his administrative remedies under the LEOBR before pursuing his claim for accrued wages and benefits.

Hart contends that an administrative hearing board convened pursuant to the LEOBR would have been without the legal authority to address his claim for wages and benefits for two reasons: First, his claim for wages and benefits was not based on an assertion that the chief's decision to suspend him without pay was improper or illegal; and second, an administrative hearing board convened pursuant to the LEOBR does not have the authority to award damages. Hart acknowledges that the Department was investigating him for violating its social media policy when he retired. However, he views this as irrelevant because his claim for wages and benefits would not have been affected by a hearing board's decision on unrelated charges.

The Department sees things differently. It argues that the chief's decision to suspend Hart without pay was "the beginning of a disciplinary action, which includes a hearing." The Department cites Pub. Safety § 3-107(a)(1), which sets out the general rule that a law enforcement officer is entitled to an administrative hearing if an investigation or interrogation of the officer "results in the recommendation of as demotion, dismissal, transfer, loss of pay, reassignment, or similar action that is considered punitive[.]" The Department points out that Pub. Safety § 3-107(a)(2) provides that a "law enforcement officer who has been convicted of a felony is not entitled to a hearing under this section." From this, the Department reasons:

> If for some reason the Appellant would have been convicted of any of the felonies that he was charged with, the Department could have taken disciplinary action against the Appellant without granting him a hearing on the facts.
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> * * *
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> The Department was required to provide [Hart] a hearing after the administrative investigation is completed and the Appellant has been charged with violations of the Department's rules and regulations. (*See*, [Pub. Safety] § 3-107). In [Hart's] matter, there were formal charges brought against [him] for the incidents that occurred in Queen Anne's County. Unfortunately for [Hart], he left the Department on his own volition before the final hearing could be conducted.

Finally, the Department asserts that Hart's claim for back pay and benefits would fail for another reason. According to the Department, PGCC § 16-198 "specifically denies" law enforcement officers the right to back pay for suspensions.

B

On the record before us, the Department's administrative exhaustion arguments are unpersuasive. The first step in explaining why begins with a very brief review of the doctrine of administrative exhaustion. We quote the Honorable Michele D. Hotten's distillation of the relevant case law in *United Insurance Co. of Am. v. Maryland Insurance Admin.*:

> The doctrine of administrative exhaustion concerns the relationship between legislatively created administrative remedies and alternative statutory, common law or equitable judicial remedies. . . . Whenever the General Assembly provides an administrative and judicial review remedy to resolve a particular matter or matters, the relationship between that administrative remedy and a possible alternative judicial remedy will ordinarily fall into one of three categories:
>
> The administrative remedy may be exclusive, thus precluding any resort to an alternative remedy. Under this scenario, there simply is no alternative cause of action for matters covered by the statutory administrative remedy.
>
> The administrative remedy may be primary but not exclusive. In this situation, a claimant must invoke and exhaust the administrative remedy, and seek judicial review of an adverse administrative decision, before a court can properly adjudicate the merits of the alternative judicial remedy.
>
> The administrative remedy and the alternative judicial remedy may be fully concurrent, with neither remedy being primary, and the plaintiff at his or her option may pursue the judicial remedy without the necessity of invoking and exhausting the administrative remedy.

450 Md. 1, 14–15 (2016) (cleaned up).

The parties agree, as they must, that the administrative remedies set out in the LEOBR are exclusive as to disciplinary proceedings against police officers. *Coleman v. Anne*

Arundel County Police Dept., 369 Md. 108, 122 (2002) (The LEOBR "is the officer's exclusive remedy in matters of departmental discipline."); *Moats v. City of Hagerstown*, 324 Md. 519, 526 (1991) (same); *DiGrazia v. Montgomery County*, 288 Md. 437, 452–53 (1980) ("The legislative scheme of the LEOBR is simply this: Any law-enforcement officer covered by the Act is entitled to its protection during any inquiry into his conduct which could lead to the imposition of a disciplinary sanction.").

In the present case, it is the Department's position that *Coleman*, *Moats*, and similar cases point to the conclusion that Hart was obligated to raise his claim for back pay in the administrative proceeding. There are problems with the Department's reasoning.

The first is that any attempt by Hart to raise his back pay claim in the context of an LEOBR proceeding would have been an exercise in futility because there is nothing in the LEOBR that authorizes an administrative hearing board to grant an officer back pay or any other form of economic relief. Nor is there anything in the statute that authorizes a court to grant such relief. The LEOBR is silent on these matters because the rights that it is designed to vindicate are the procedural and substantive rights established by the statute for officers

in two related contexts: internal investigations for misconduct,[6] and administrative hearings arising out of such investigations.[7]

Additionally, Hart's claim for back pay and benefits is not based on an assertion that the Department violated a provision of the LEOBR. Rather, he asserts that the Department's refusal to pay him accrued pay and benefits violated PGCC § 16-193. There is nothing in the LEOBR that either authorizes or prohibits a local government from allowing a law enforcement officer who is suspended as a result of pending criminal charges to recover lost wages and benefits if the charges are resolved in the officer's favor. Nor is there anything in the LEOBR that addresses in any fashion whether an officer has the right to back pay or any other form of economic relief. Consistent with this, there is nothing in the LEOBR authorizes hearing boards to award back pay or another other form of affirmative relief to the officer who is the subject of the proceeding.[8]

To summarize, there is nothing in the LEOBR that purports to limit local governments authority to enact laws by which officers may recover back pay and benefits that accrued

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[6] *See* Pub. Safety § 3-104 (setting out procedural safeguards to officers who are the subject of investigations for misconduct) and Pub. Safety § 3-106 (establishing a one-year limitations period for bringing charges in all cases other than those involving criminal misconduct or excessive force).

[7] *See* Pub. Safety §§ 3-107-108 (setting out procedural safeguards and standards for administrative hearings on charges of misconduct).

[8] *See* Pub. Safety § 3-108 (providing that a hearing board has the authority to enter findings of guilty or not guilty as to each charge and, if the board makes a finding of guilt, to receive additional evidence and recommend a penalty to the chief of the department).

while they were suspended without pay. Viewing the allegations in the complaint in the light most favorable to Hart, we conclude that the doctrine of administrative exhaustion does not bar his claim for back wages and benefits.

This leaves us with two loose ends. The first is the Department's assertion that there were administrative proceedings pending against Hart at the time he retired and that those charges pertained to the events that led to the forgery, theft, and assault charges. This may in fact be correct but, in deciding this appeal, we are bound by the allegations in the complaint and inferences that can reasonably be drawn from them. The complaint does not allege that there were disciplinary proceedings arising out of the criminal charges pending against Hart when he retired and there are no allegations in the complaint which could reasonably support such an inference.

Finally, the Department argues that PGCC § 16-193 does not give Hart a legal basis to claim back pay and benefits because PGCC § 16-198 "specifically denies [Hart] that right." We do not agree with the Department's reading of the statute. Section 16-198 states in relevant part (emphasis added):

> Sec. 16-198. Hearing boards for public safety employees.
>
> * * *
>
> (b) In any case where the rights of uniformed employees occupying public safety classes of work within the Police and Sheriff's Departments with respect to disciplinary actions and appeals therefrom are governed by the [LEOBR], the provisions of said statute shall apply . . . . However, *in any case where the appointing authorities of the Police and Sheriff's Departments determine that an investigation and/or an interrogation is not*

> *necessary* in order to determine whether any uniformed employee occupying a public safety class of work within their respective departments has committed an act or acts which constitute grounds for disciplinary action under the provisions of Sections 16-193 and 16-194,[9] *then . . . said appointing authorities may take any of the disciplinary actions authorized under Section[] 16-193 . . . without appointing a hearing board in advance thereof, and any employee's appeal from any such disciplinary action shall be taken in accordance with the applicable provisions of Article XIV*.[10]

The allegations in the complaint constitute the factual universe by which we can assess the Department's § 16-198 argument. The complaint alleges nothing about the decision-making process by which the Department decided to suspend Hart without pay. We decline to speculate as to what formed the basis of the Department's decision to suspend Hart in the absence of any evidence as to the Department's decision-making process. For the present, it is sufficient to say that we do not read § 16-198 as categorically prohibiting back pay reimbursement to an officer suspended without an investigation or an interrogation.

We add the following for the guidance of the parties on remand.

PGCC § 16-198 appears to recognize a distinction between suspensions that are based on pre-existing departmental policies and those that are based on evaluations of the possible culpability of the officer facing suspension. Maryland courts have declined to adopt a bright-line rule for distinguishing acts that are investigatory or disciplinary from mere

[9] PGCC § 16-194 deals with performance-related disciplinary actions.

[10] There is no "Article XIV" in Subtitle 16 of the PGCC. There is, however, a "Division 14" which is titled "Grievances, Adverse Actions, and Appeals."

managerial decisions in favor of a fact-intensive, case-by-case approach. *See Breck v. Maryland State Police*, 452 Md. 229, 251 (2017) ("[N]o bright-line rule exists that distinguishes actions that are punitive from those that are reasonable management decisions."); *Calhoun v. Commissioner, Baltimore City Police Dep't*, 103 Md. App. 660, 674 (1995) ("'[I]t is probably not feasible to fashion a simple litmus test for determining whether any given personnel action of a law-enforcement agency falls within the punitive category. The law in this area must be developed on a case-by-case basis, with due regard to the particular facts of each situation.'" (quoting *Chief, Baltimore County Police Dep't v. Marchsteiner*, 55 Md. App. 108, 117 (1983)).

In *Breck*, the Court of Appeals conducted a thorough review of the relevant cases and concluded that "what constitutes a punitive action turns on the agency's motivation for that action." 452 Md. at 253. The Court further explained that a "punitive action" was one "based on an investigation and hearing process addressing an alleged wrongful act, [and] potentially leading to punishment for that act[.]" *Id.* A "managerial action" affecting employment was one taken "in the best interests of the internal management." *Id.* The Court explained that "[a] useful marker in this inquiry is whether the agency has acted in a quasi-judicial role (performing an administrative investigation and hearing process) or in its native executive role (routine management of the human resources of the governmental unit to achieve maximum efficiency and effectiveness in its public mission)." *Id.* Deciding how the principles elucidated in *Breck*, *Calhoun*, and *Marchsteiner* might apply in the

present case will require an evaluation of "the particular facts" surrounding Hart's suspension and these facts are not in the record before us.

In summary, based on the record before us, we conclude that Hart was not required to exhaust possible administrative remedies under the LEOBR before asserting his claim for back pay and benefits pursuant to PGCC § 16-193. Our holding is limited to that single legal issue.

THE JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS REVERSED AND THIS CASE IS REMANDED FOR FURTHER PROCEEDINGS. APPELLEE TO PAY COSTS.