Circuit Court for Frederick County
Case No. C-10-CV-25-000239

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1297

September Term, 2025

IN THE MATTER OF ANNA HINTON

Nazarian,
Arthur,
Shaw,

JJ.

Opinion by Arthur, J.

Filed: July 20, 2026

*This is an unreported opinion. This 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).

Appellant Anna Hinton, a Frederick County teacher, applied for benefits from a sick-leave bank. The Frederick County Teachers' Association (the "FCTA") granted her first request but denied her second and third.

Ms. Hinton filed a charge of unfair labor practices with the Public Employee Relations Board (the "PERB"). The PERB dismissed the charge on the ground that Ms. Hinton had not shown that the FCTA's actions were arbitrary, discriminatory, or in bad faith.

Ms. Hinton sought judicial review in the Circuit Court for Frederick County, which affirmed the PERB's decision.

She appealed to this Court. We too affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Ms. Hinton was a special education teacher with Frederick County Public Schools and a member of the bargaining unit supported by the FCTA. In the 2024-2025 school year, she was assigned to Middletown High School.

As a member of the FCTA, Ms. Hinton could enroll in a sick-leave bank program. According to the negotiated agreement between the FCTA and the Frederick County Board of Education, the sick-bank leave program allowed contributors "to use the bank for payment of prolonged, catastrophic, incapacitating personal illness, injury, or quarantine" that is unlikely to cause a permanent disability.

The negotiated agreement between the FCTA and the Board of Education required the president of the FCTA to form an approval committee to review requests for sick-leave from the bank and to recommend approval or denial. The committee must inform the Board of Education's human resources department of its decision. The human resources department must approve the committee's recommendation unless the recommendation is arbitrary or capricious.

The FCTA specified the rules and procedures for the operation of the sick-leave bank. According to those rules and procedures, a request for benefits "must be accompanied by a physician's statement confirming the cause of the illness or confinement[.]" In addition, the physician must identify the employee's expected date of return. In the case of psychiatric disability, the clinician "should provide a treatment plan that addresses the member's specific diagnosis."

On October 7, 2024, Ms. Hinton submitted a sick-leave bank request, in which she asked for paid leave from October 7, 2024, to November 18, 2024. Her physician, Nicholas Mitchell, M.D., wrote that she was unable to work because of an "[a]djustment [d]isorder." According to Dr. Mitchell, Ms. Hinton was "currently experiencing mental distress due to life events[,] leading to impairment of daily functioning[.]" Dr. Mitchell reported that Ms. Hinton had begun taking medication "to assist with executive function and manage depressive and anxiety symptoms." He stated that Ms. Hinton was expected to return to work "no sooner than" December 17, 2024.[1]

[1] The record reflects that Ms. Hinton had been placed on an unpaid leave of absence on October 7, 2024, the date when she submitted her first sick-leave bank request. The PERB's decision recounts that, before she applied for benefits from the sick-leave bank, Ms. Hinton had applied for benefits under the Americans with Disabilities Act and the Family and Medical Leave Act. "As a result of these applications, Ms. Hinton had not reported to her work assignment during the 2024-25 school year[.]"

On October 21, 2024, the FCTA's sick-leave bank committee approved Ms. Hinton's request, granting her sick-leave bank benefits from October 7, 2024, the date of the request, until November 18, 2024. The committee, however, informed Ms. Hinton that, before it would approve any additional benefits, she must submit "a treatment plan from a registered psychiatrist or psychologist" that was "specific to [her] diagnosis" and that explained how it would help her return to work.

On November 1, 2024, Ms. Hinton made a second sick-leave bank request. In this request, she asked for paid leave from November 19, 2024, to December 17, 2024. The request was accompanied by a letter and treatment plan from her psychiatrist, Dr. Mitchell.

On November 7, 2024, Andrew Macluskie, the chair of the sick-leave bank committee, informed Ms. Hinton that the treatment plan lacked a definitive date of return. He asked whether she could provide one. Ms. Hinton responded that at that time "there [was] no definitive date," but that her doctor had said that she could not return any "sooner than" December 17, 2024. Mr. Macluskie replied that "[n]o sooner than" is "not a definitive date of return." He added that the "treatment plan" was "vague" in its discussion of what accommodations she required before she could return to work.

While considering Ms. Hinton's applications, the FCTA reviewed an undated letter from Dr. Mitchell. The FCTA says that it received the letter after Mr. Macluskie's comments on November 7, 2024. In her brief, Ms. Hinton seems to assert that the letter predates her first application.

In his undated letter, Dr. Mitchell proposed that Ms. Hinton be permitted to work in a middle school, as she had in the past, and not at a high school. Dr. Mitchell wrote that Ms. Hinton experienced "symptoms of intense anxiety related to concerns [about] the hours and location of her current High School assignment[.]" That assignment, he wrote, made it "difficult" for her to have access to her special-needs child in the case of an emergency, because the high school was "significantly farther" from her child's daycare than her previous place of employment. "Any middle school as long as it is in Frederick, and is in fact, a middle school, should suffice[,]" he wrote. He concluded that because Ms. Hinton's symptoms were "related to the current school environment and location," it was "unlikely" that accommodations other than "location reassignment" would reduce her symptoms.

On November 13, 2024, the sick-leave bank committee denied Ms. Hinton's second request for leave. The committee explained that her request and her physician's statement "fail[ed] to demonstrate that [her] illness was prolonged, catastrophic, or incapacitating[,]" as required by the sick-leave bank policy. The committee added that, according to her physician, her symptoms were "related to [her] current school environment," yet there was "no evidence" that she had actually reported to any work location during that school year. "[B]ased on the information provided by [Ms. Hinton's] physician," the committee suggested that she was "currently able to work," as long as she got "an assignment of [her] preference."

On the following day, November 14, 2024, Ms. Hinton appealed the committee's denial to the president of the FCTA, who forwarded the appeal to the FCTA's board of directors.

Ms. Hinton claims that, in a Zoom meeting with the FCTA's board on November 21, 2024, she was cut off after roughly three minutes and was asked by a board member whether she had reported to work at Middletown High School during that school year. The FCTA asserts that Ms. Hinton "became combative" when a board member "inquired as to whether she had ever reported to the worksite in question."

On November 22, 2024, the board upheld the committee's decision. In response to Ms. Hinton's inquiry about whether there was a written opinion outlining the board's reasoning, the FCTA's president stated that the board "does not and will not provide lengthy opinions capturing the discussion and consideration of the members."

On approximately December 16, 2024, Ms. Hinton submitted a third sick-leave bank request, asking for benefits from December 17, 2024, to January 17, 2024. Mr. Macluskie informed Ms. Hinton that he would not forward her request to the committee because the committee had denied a prior application based on the same evidence, and the FCTA board had affirmed the committee's decision.

Meanwhile, on November 25, 2024, Ms. Hinton had filed an unfair labor practices charge with the PERB, the State agency responsible for administering and enforcing the laws relating to labor relations for public employees. *See* Maryland Code (1984, 2021 Repl. Vol.), § 22-206 of the State Government Article. In her charge, Ms. Hinton alleged that the FCTA had breached its duty of fair representation. In general, the duty of fair representation requires a labor union "to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct." *Vaca v. Sipes*, 386 U.S. 171, 177 (1967).

On March 4, 2025, the PERB declined to issue a complaint against the FCTA and dismissed the charge of unfair labor practices. In reaching its decision, the PERB rejected Ms. Hinton's contention that she had a "guaranteed right" to benefits from the sick-leave bank. To the contrary, the PERB observed that the negotiated agreement between the FCTA and the Frederick County Board of Education empowered the sick-leave bank committee to consider the validity of applications for benefits and to determine whether the applicant suffered from a "'prolonged, catastrophic, incapacitating personal illness.'"

The PERB specifically found that Ms. Hinton produced "[n]o substantive evidence" to suggest that the sick-leave bank committee or the FCTA's board of directors had acted arbitrarily or in bad faith or had substituted their preconceived notions about her medical condition for those of her medical professionals. "Rather," the committee and the board of directors had "found that the medical documentation provided by Ms. Hinton was not sufficiently detailed[.]"

The PERB also found that the FCTA board did not act arbitrarily when one board member questioned Ms. Hinton's attendance (or, more precisely, her lack of attendance) at Middletown High School during the 2024-2025 school year. According to the PERB, the member's comment related to Ms. Hinton's contention that the location of her place of employment contributed to her medical condition.

Although Mr. Macluskie had rejected Ms. Hinton's third request without referring it to the sick-leave bank committee, the PERB found no impropriety. It explained that the third request contained no more information than the previous request, which both the committee and the board had denied.

In conclusion, the PERB found that Ms. Hinton did not make an adequate showing of bad faith, that the FCTA did not act arbitrarily or in bad faith, and that Ms. Hinton failed to establish that the FCTA breached its duty of fair representation.

Ms. Hinton petitioned for judicial review in the Circuit Court for Frederick County. On August 20, 2025, the circuit court affirmed the PERB's decision.[2]

Ms. Hinton noted a timely appeal.

QUESTION PRESENTED

Representing herself, Ms. Hinton presents eight questions, which we have consolidated and recast as one: Was the PERB's decision to dismiss Ms. Hinton's unfair labor practice charge supported by substantial evidence and predicated upon a correct application of law?[3]

STANDARD OF REVIEW

In reviewing the final decision of an administrative agency, this Court "looks through" the circuit court's decision and "evaluates the decision of the agency." *People's*

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[2] The court originally purported to affirm the FCTA's decision but later amended its ruling to clarify that it had affirmed the decision of the PERB.

[3] The full text of Ms. Hinton's eight questions appears in an appendix to this opinion.

Counsel for Baltimore Cty. v. Surina, 400 Md. 662, 681 (2007); *accord Matter of Blomquist*, 268 Md. App. 418, 423 (2026). In other words, this Court reviews the decision of the agency itself, and not the decision of the circuit court. *Mitchell v. Maryland Motor Vehicle Admin.*, 225 Md. App. 529, 543 (2015), *aff'd*, 450 Md. 282 (2016); *accord Matter of Blomquist*, 268 Md. App. at 423.[4]

"Judicial review of administrative agency action is narrow." *United Parcel Serv., Inc. v. People's Counsel for Balt. Cty.*, 336 Md. 569, 576 (1994). The agency's decision is "'presumed valid.'" *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 68 (1999) (quoting *CBS Inc. v. Comptroller*, 319 Md. 687, 698 (1990)); *accord Matter of Blomquist*, 268 Md. App. at 424. This Court's review of the agency's decision is "'limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.'" *Board of Physician Quality Assurance v. Banks*, 354 Md. at 67-68 (quoting *United Parcel Serv., Inc. v. People's Counsel for Balt. Cty.*, 336 Md. at 577); *accord Matter of Blomquist*, 268 Md. App. at 424. "'We review purely legal decisions *de novo*.'" *Mayor & Council of Rockville v. Pumphrey*, 218 Md. App. 160, 194 (2014) (quoting *People's Ins. Counsel Div. v. State Farm Fire & Cas. Ins. Co.*, 214 Md. App. 438, 449 (2013)); *accord Matter of Blomquist*, 268 Md. App. at 424.

[4] Ms. Hinton devotes a considerable portion of her brief to arguments that the circuit court erred in denying her petition for judicial review. We need not consider those arguments, because we review the agency's decision, not the decision of the circuit court.

DISCUSSION

Ms. Hinton raises a plethora of issues in her brief. We shall separate them into three categories: (1) a challenge to the adequacy of the PERB's investigation; (2) an assertion that the PERB's decision was arbitrary and capricious and was not supported by substantial evidence; and (3) other, miscellaneous challenges. We shall discuss each category in turn.

I. The Adequacy of PERB's Investigation

Ms. Hinton argues that the PERB "abdicated" its duty to investigate. She complains that the agency did not interview witnesses, request additional evidence, develop a sufficient factual record, or make appropriate credibility determinations. Her complaint has no merit.

Section 22-306(b)(4) of the State Government Article authorizes the PERB to "investigate and take appropriate action in response to charges of unfair labor practices[.]" The Code of Maryland Regulations, or "COMAR," elaborates on the form and scope of the investigation.

For unfair labor practice charges not "resulting from a party's conduct in collective bargaining," COMAR 14.30.09.02D(2) states that the deputy director of the PERB "shall investigate the allegations, defenses, and all relevant facts." The deputy director must give the PERB "a case file of all relevant information gathered in the investigation, including the charge, any responses, any requested exhibits, and a written report." COMAR 14.30.09.02D(4). The report must "set forth" recommendations "as to whether, based on the totality of the factual circumstances ascertained during the investigation, probable cause exists to believe that the alleged unfair labor practice has occurred." COMAR 14.30.09.02D(4). After receiving the report, the PERB must "decide whether to issue a complaint or dismiss the charge." COMAR 14.30.09.02D(5).

Neither COMAR nor section 22-306 of the State Government Article imposes any express requirements on the manner in which the PERB must investigate an unfair labor practices charge. Instead, the statute and regulations allow the PERB to exercise its reasonable discretion about how to investigate any given charge and to make a case-by-case determination about what the investigation should entail. The PERB need not interview witnesses or conduct an evidentiary hearing in every case.

Ms. Hinton cites the PERB's website, which says that a deputy director "*will investigate the charge*," that the deputy director "'*will interview the charging party and probably will also interview other witnesses*,'" and that the investigation "'*will include review of all materials*.'" (Emphasis added by Ms. Hinton.)[5] The PERB is not bound by an informational summary of its processes, and Ms. Hinton cites no relevant judicial

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[5] In full, the relevant language states:

> Charge and response will be assigned to a PERB Deputy Director who will investigate the charge. The investigation will include review of all materials from the petitioner and the charged party. The Deputy Director might also seek additional documents from the charging or charged parties or both. In addition, the Deputy Director will interview the charging party and probably will also interview other witnesses. The Deputy Director shall also attempt to seek from the parties an informal settlement of the charge.

https://laborboard.maryland.gov/file-charge-or-petition/charge-and-petition-forms (last viewed July 14, 2026).

decision, statute, or regulation that requires the PERB to conduct its investigations using any particular method, let alone the specific methods articulated by Ms. Hinton in this appeal. The PERB need not conduct superfluous interviews if it is clear from the materials submitted that the union did not breach its duty "to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct." *Vaca v. Sipes*, 386 U.S. at 177.

Here, the PERB compiled a record consisting of Ms. Hinton's unfair labor practice charge, her sick-leave bank requests, the supporting medical documentation, a related request for benefits under the Family and Medical Leave Act, the letters by which the sick-leave bank committee and the FCTA board of directors denied her request, and the parties' submissions to the PERB itself. In addition, the PERB considered Ms. Hinton's arguments about what happened at the Zoom meeting before the FCTA board of directors. The PERB had no obligation to do anything else, and Ms. Hinton does not proffer what new evidence it would have gained had it done anything more.

In short, the PERB appears to have concluded, reasonably, that it had all of the information needed to evaluate Ms. Hinton's claim. The PERB did not err by opting not to conduct an investigation that was less detailed than Ms. Hinton would have liked.

II. The PERB's Decision

Ms. Hinton argues that the PERB's decision was arbitrary and capricious and that it was not supported by substantial evidence. She claims that the PERB erred in finding that the FCTA did not breach its duty of fair representation when it denied her sick-leave bank request. Again, her contentions have no merit.[6]

Under section 22-206(b)(6) of the State Government Article, a labor union that represents public employees, like the FCTA, is "prohibited from . . . not fairly representing employees in collective bargaining or in any other matter in which the employee organization has the duty of fair representation." This "duty of fair representation" "requires a union '[1] to serve the interests of all members without hostility or discrimination toward any, [2] to exercise its discretion with complete good faith and honesty, and [3] to avoid arbitrary conduct.'" *Stanley v. Am. Fed'n of State & Mun. Emps. Loc. No. 553*, 165 Md. App. 1, 15 (2005) (quoting *Vaca v. Sipes*, 386 U.S. at 177). A breach of the duty of fair representation "occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." *Vaca v. Sipes*, 386 U.S. at 190.

"'[A] union's actions are arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a "wide range of reasonableness". . . as to be irrational.'" *Stanley v. Am. Fed'n of State & Mun. Emps. Loc. No. 553*, 165 Md. App. at 15 (quoting *Air Line Pilots Ass'n, Int'l v. O'Neill*, 499 U.S. 65, 67 (1991)). "A union breaches the duty, 'for example, when it "arbitrarily ignore[s] a meritorious grievance or process[es] it in [a] perfunctory fashion."'" *Id.* at

[6] The FCTA argues that the duty of fair representation does not apply to operation of the sick-leave bank. The PERB concluded otherwise. We shall assume for the sake of argument that the duty of fair representation does apply to operation of the sick-leave bank.

15-16 (quoting *Int'l Bhd. of Elec. Workers v. Foust*, 442 U.S. 42, 47 (1979), *which quoted Vaca v. Sipes*, 386 U.S. at 191).

In the context of the duty of fair representation, "discrimination" means "invidious, hostile treatment at the hands of the majority of [one's] coworkers." *Amalgamated Ass'n of St., Elec. Ry. & Motor Coach Emp. of Am. v. Lockridge*, 403 U.S. 274, 301 (1971). A union must treat "all factions and segments of its membership without hostility or discrimination." *Griffin v. Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am.*, 469 F.2d 181, 183 (4th Cir. 1972). For example, a union may not cause, or attempt to cause, an employer to discriminate against an employee based on union membership status, except for failure to pay dues and initiation fees. *Amalgamated Ass'n of St., Elec. Ry. & Motor Coach Emp. of Am. v. Lockridge*, 403 U.S. at 282-83.

"To succeed on a theory of a bad faith breach of the duty of fair representation," an employee "must show 'fraud, or deceitful or dishonest action' on behalf of the Union." *Stanley v. Am. Fed'n of State & Mun. Emps. Loc. No. 553*, 165 Md. App. at 19-20 (quoting *In re ABF Freight Sys., Inc., Labor Contract Litig.*, 988 F. Supp. 556, 564 (D. Md. 1997)). "Bad faith focuses not on 'the objective adequacy of that union's conduct,' but 'on the subjective motivation of the union officials.'" *Stanley v. Am. Fed'n of State & Mun. Emps. Loc. No. 553*, 165 Md. App. at 20 (quoting *Thompson v. Aluminum Co. of Am.*, 276 F.3d 651, 658 (4th Cir. 2002)).

An employee "'alleging a breach of the union's duty of fair representation faces a heavy burden in seeking to establish that a union's actions were arbitrary, discriminatory, or conducted in bad faith[.]'" *Stanley v. Am. Fed'n of State & Mun. Emps. Loc. No. 553*, 165 Md. App. at 20 (quoting *In re ABF Freight Sys., Inc., Labor Contract Litig.*, 988 F. Supp. at 564). At the most fundamental level, the PERB found that Ms. Hinton failed to discharge her "heavy burden."

According to the PERB, Ms. Hinton produced "[n]o substantive evidence" to suggest that the sick-leave committee or the FCTA's board "acted arbitrarily [or] in bad faith, or substituted their own pre-conceived notions about Ms. Hinton's medical condition for that of Ms. Hinton's medical professionals." The PERB's opinion shows that the agency was unpersuaded that Ms. Hinton had met her "heavy burden" of establishing that the union's actions were arbitrary, discriminatory, or in bad faith. Yet, it is virtually impossible for a factfinder to be clearly erroneous when, as in this case, it is simply not persuaded of something. *See*, *e.g.*, *Bricker v. Warsh*, 152 Md. App. 119, 137 (2003).

Nonetheless, Ms. Hinton contends that "the record contains **no** evidence to support PERB's conclusion." (Emphasis in original.) Ms. Hinton concedes, however, that the record includes "medical certifications, FMLA forms, the denial letters, and email correspondence." Her real complaint seems to be that the FCTA did not produce any evidence of its own. The short answer to her complaint is that she had the "heavy burden" of showing that the FCTA's actions were arbitrary, discriminatory, or in bad faith. The FCTA had no burden to show anything.

Ms. Hinton's contentions to the contrary notwithstanding, it is beyond any serious dispute that the PERB's decision is supported by substantial evidence, which is to say "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *See*, *e.g.*, *Caucus Distributors, Inc. v. Maryland Secs*. Comm'r, 320 Md. 313, 323-24(1990); *Matter of Homick*, 256 Md. App. 297, 308 (2022). The PERB based its decision on the negotiated agreement between the FCTA and the Board of Education, the protocols governing the operation of the sick-leave bank, Ms. Hinton's multiple requests for benefits from the sick-leave bank, the medical documentation relating to the requests, the denial letters, and e-mail correspondence between Ms. Hinton and others. This evidence tended to show that the FCTA denied Ms. Hinton's second request because the medical documentation did not include a specific treatment and return-to-work plan, because her doctor said that she actually could return to work if she were assigned to a middle school closer to her child's daycare, and because she had never reported to the placement site that had allegedly exacerbated her anxiety symptoms. Based on this evidence, the PERB could reasonably conclude that the FCTA had not breached its duty of fair representation.

III. Miscellaneous Challenges

We turn now to the collection of miscellaneous challenges that Ms. Hinton asserts in her brief.

Ms. Hinton complains that because the sick-leave committee had granted her first request, it was "arbitrary" for the FCTA to deny her second request. She is incorrect. The committee initially allowed her to receive benefits for a limited time even though her documentation was less than complete. The committee, however, instructed her to include a detailed treatment and return-to-work plan with any subsequent request for withdrawals from the sick-leave bank. The committee's initial act of grace did not bind the committee or the FCTA to grant every subsequent request, regardless of how deficient it might be. Nor was the FCTA "arbitrary"—i.e., "'irrational'"[7]—when it denied the second request because of Ms. Hinton's failure to comply with the instructions that she received after the grant of the first.

Ms. Hinton asserts that the sick-leave bank committee acted arbitrarily because, she says, the FCTA substituted "the lay opinions of its committee members" for that of her medical provider. Again, she is incorrect. Based on the information that Ms. Hinton provided, the committee and the FCTA board reached the rational conclusion that she was not experiencing a "prolonged, catastrophic, incapacitating personal illness, injury, or quarantine"—the necessary conditions for entitlement to benefits from the sick-leave bank. The PERB did not err in dismissing Ms. Hinton's charge on the ground that the FCTA committed no unfair labor practice when it reached and acted upon that rational conclusion.

Ms. Hinton contends that Mr. Macluskie arbitrarily refused to forward her third request to the sick-leave committee. Once again, she is incorrect. The committee did not need to consider a new request that no contained more information than a previous request that the committee had already denied.

Ms. Hinton contends that the FCTA engaged in discriminatory conduct because, she says, it admitted to placing a heightened burden on her to produce supporting

[7] *Stanley v. Am. Fed'n of State & Mun. Emps. Loc. No. 553*, 165 Md. App. at 15 (quoting *Air Line Pilots Ass'n, Int'l v. O'Neill*, 499 U.S. at 67).

documentation solely because she put forth a mental health condition as the basis of her request. In support of that contention, Ms. Hinton cites the FCTA's response to an employment discrimination claim that she has filed against the union. Because that response is dated April 12, 2025—more than a month after the PERB declined to issue a complaint against the FCTA and dismissed the charge of unfair labor practices—it could not have factored into the PERB's conclusion. As a "reviewing court," we are "restricted to the record made before the administrative agency," and "may not pass upon issues presented to [us] for the first time on judicial review and that are not encompassed in the final decision of the administrative agency." *Department of Health & Mental Hygiene v. Campbell*, 364 Md. 108, 123 (2001) (citation omitted).[8]

Ms. Hinton claims the FCTA acted in bad faith because, she says, it denied her request in retaliation for her invocation of her rights under the Americans with Disabilities Act and the Family and Medical Leave Act. To show that FCTA acted in bad faith, Ms. Hinton must provide "substantial evidence of fraud, deceitful action or dishonest conduct." *Humphrey v. Moore*, 375 U.S. 335, 348 (1964); *accord Amalgamated Ass'n of St., Elec. Ry. & Motor Coach Emp. of Am. v. Lockridge*, 403 U.S. at 299. Yet, Ms. Hinton presents no support for her allegations beyond the timing of the

[8] Even if we could consider Ms. Hinton's contention, we would reject it. The response to the employment discrimination complaint merely states that the sick-leave bank committee "conditioned any future requests for this condition on presentment of a 'treatment plan from a registered psychiatrist or psychologist, that is specific to [the] diagnosis and enumerates how said plan will be helping [Ms. Hinton] return to work[.]'" In other words, the committee imposed the same obligation on Ms. Hinton as it would have imposed on any similar applicant. The committee did not discriminate against her.

denial, her own distaste for the process, and conjecture as to the underlying motivation. The PERB did not err in finding her allegations unpersuasive.

Ms. Hinton asserts that the FCTA acted in bad faith because the board of directors cut her off during the Zoom call and because the union president declined to elaborate on the board's findings. The record contains no evidence about what happened during the Zoom call other than the parties' unsworn assertions. Thus, the PERB had no basis to evaluate the validity of the assertions, much less conclude that they showed "substantial evidence of fraud, deceitful action or dishonest conduct." *Humphrey v. Moore*, 375 U.S. at 348. As for the refusal to elaborate on the findings, Ms. Hinton points to nothing requiring the board to say any more than it had already said, which is actually quite expansive:

- "your request and the physicians' [sic] statement fail to demonstrate that your illness is prolonged, catastrophic, or incapacitating";
- "your doctor states that your symptoms are related to your current school environment, but there is no evidence that you have actually reported to any work location this school year"; and
- "based on the information provided by your physician it appears that you are currently able to work as long as you get an assignment of your preference."

Ms. Hinton claims that the PERB's decision is "arbitrary and capricious" because, she says, the FCTA told the circuit court that the PERB "did not engage in a comprehensive review of [Ms.] Hinton's medical documentation as it was irrelevant. . . ."

Ms. Hinton does not provide the full quotation in her brief, nor does she include the full memorandum in the record extract. The full sentence reads, "Notably, the PERB did not engage in a comprehensive review of [Ms.] Hinton's medical documentation as it was irrelevant *to a determination of whether FCTA administered the sick-leave bank process consistent with the standards outlined in the Negotiated Agreement*." (Emphasis added.) This sentence correctly notes that the PERB's responsibility was not to evaluate Ms. Hinton's medical documentation to determine the severity of her condition, but instead to analyze whether the FCTA's evaluation of the evidence was arbitrary, discriminatory, or conducted in bad faith.

Ms. Hinton asserts that the PERB erred in stating that the sick-leave bank is not a "guaranteed benefit" "but rather a benefit which may, or may not, be granted upon review by the [] committee." She is incorrect. An employee may apply for the benefit, but its availability is expressly conditioned on proof of a "prolonged, catastrophic, incapacitating personal illness, injury, or quarantine" that is unlikely to cause a permanent disability.

Ms. Hinton contends that the PERB erred when it failed to find that the FCTA impermissibly relied Dr. Mitchell's undated letter, which stated that Ms. Hinton could return to work as long as she worked at a middle school that was more convenient to her child's daycare. She claims, without substantiation, that Dr. Mitchell wrote the undated letter about a week before he certified that she was completely unable to work. She argues that the FCTA should have disregarded the letter because, she says, it contradicts the information on the subsequent sick-leave bank request, which indicated that she could not perform any essential job functions as a result of her condition. The FCTA, by contrast, says that it received the letter after Mr. Macluskie asked for additional documentation in response to her second request. As an appellate court, we have no way to resolve this factual dispute. We can only presume that the PERB resolved it against Ms. Hinton, as it was entitled to do.

Finally, Ms. Hinton alleges that the PERB impermissibly ascribed justifications for the FCTA's actions even though the FCTA itself did not articulate those justifications. She argues that the decision runs afoul of *Securities and Exchange Commission v. Chenery Corp.*, 318 U.S.80, 87 (1943), which, she says, stands for the proposition that an agency's decision "must be upheld, if at all, on the basis articulated by the agency itself."[9]

Ms. Hinton misinterprets the applicable law. She incorrectly places the FCTA into the role of the agency and casts the PERB as a reviewing court that affirmed the agency decision on grounds that the agency did not articulate. In fact, the PERB is the agency, and the circuit court (and now this Court) are the reviewing courts. The PERB had to determine whether to issue a complaint against the FCTA based on Ms. Hinton's allegations that it had breached its duty of fair representation and therefore engaged in unfair labor practices. On judicial review, the courts must decide whether the PERB's

[9] The so-called *Chenery* doctrine is part of Maryland law: "in judicial review of agency action," a Maryland "court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency." *United Steelworkers of Am. AFL-CIO, Loc. 2610 v. Bethlehem Steel Corp.*, 298 Md. 665, 679 (1984); *accord United Parcel Serv., Inc. v. People's Counsel for Baltimore Cty.*, 336 Md. at 577.

decision "is sustainable on the agency's findings and for the reasons stated by the agency." *United Steelworkers of Am. AFL-CIO, Loc. 2610 v. Bethlehem Steel Corp*., 298 Md. 665, 679 (1984); *accord United Parcel Serv., Inc. v. People's Counsel for Baltimore Cty.*, 336 Md. at 577. We have already decided that it is.

JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY AFFIRMED. COSTS TO BE ASSESSED TO APPELLANT.

APPENDIX

The eight questions presented in Ms. Hinton's brief are:

1. Whether the Public Employee Relations Board (PERB) committed reversible error by abdicating its nondiscretionary, statutory duty under COMAR 14.30.09.02 to investigate an unfair labor practice charge, where the agency conducted no interviews, made no factual findings, and failed to develop any record, thereby rendering its decision an arbitrary nullity.

2. Whether PERB's decision is arbitrary, capricious, and unsupported by substantial evidence where the record contains no evidence to support the agency's conclusion, and where the union (FCTA) admitted in its own pleadings that PERB never reviewed the central medical evidence at issue.

3. Whether PERB and the Circuit Court committed legal error by failing to reject the FCTA's prohibited post hoc rationalizations, which were invented by counsel during litigation and improperly legitimized by PERB in its summary of the case, in direct violation of the Chenery doctrine.

4. Whether PERB erred by failing to find that the FCTA breached its duty of fair representation under *Vaca v. Sipes* [386 U.S. 171 (1967)], where the union's conduct was arbitrary (inconsistent denials, blocking of requests), discriminatory (applying heightened standards to a mental health disability), and in bad faith (refusing to provide rationale for its decision).

5. Whether the Circuit Court committed reversible error by failing to conduct a meaningful judicial review, as evidenced by its perfunctory dismissal and a final order that demonstrated a fundamental misunderstanding of administrative law by affirming the decision of a private entity (the FCTA) rather than the state agency (PERB).

6. Whether the Circuit Court abused its discretion by denying my motion to supplement the administrative record with newly discovered, material evidence that would have provided a compelling basis to remand the case to PERB for the investigation it failed to conduct.

7. Whether the Sick Leave Bank, established by mandatory language in the Negotiated Agreement stating that a qualifying contributor **"will be permitted"** to draw from the Bank, is a protected contractual benefit that must be administered fairly and without arbitrary or discriminatory treatment.

8. Whether PERB erred in accepting FCTA's reliance on outdated medical notes to deny my Sick Leave Bank request, despite the union's own pamphlet stating that exceptions may be granted for members who are able to work in a limited capacity, and despite my physician certifying at the time of the application that I was unable to work.

(Emphasis in original.)