IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Donegal Township, Petitioner	:	
v.	:	No. 1072 C.D. 2025
	:	Argued: June 16, 2026
Pennsylvania Labor Relations Board, Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE CHRISTINE FIZZANO CANNON, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
PRESIDENT JUDGE COHN JUBELIRER FILED: November 5, 2026

Donegal Township (Township) petitions for review of the Final Order of the Pennsylvania Labor Relations Board (Board) that denied Township's Exceptions to the Proposed Decision and Order (PDO) in which a Hearing Examiner (HE) dismissed the amended unfair labor charge Township filed against the International Union of Operating Engineers Local 66 (Union), the bargaining representative for a small group of Township employees. The Board upheld the HE's determination that Union did not commit an unfair labor practice, as defined by Section 1201(b)(3) of the Public Employe Relations Act[1] (PERA), finding that Union did not act in bad faith in how it processed its members' grievances to arbitration because it had a "sound arguable basis" based on the parties' Collective Bargaining Agreement

[1] Act of July 23, 1970, P.L. 563, *as amended*, 43 P.S. § 1101.1201(b)(3). Section 1201(b)(3) makes it an unfair labor practice for any "[e]mploye organization, their agents, or representatives . . ." to "[r]efus[e] to bargain collectively in good faith with a public employer, if they have been designated in accordance with the provisions of [PERA] as the exclusive representative of employes in an appropriate unit." *Id.*

(CBA) for its actions. (Board Final Order at 3-4; PDO at 10-11.) On appeal, Township argues the Board abused its discretion in upholding the PDO because the Board misapplied the law and evidence in making its decision. Discerning no abuse of discretion or error of law in the Board's Final Order, we affirm.

I. BACKGROUND

For the purposes of PERA, Township is a public employer, and Union is an employe organization. (PDO Findings of Fact (FOF) ¶¶ 1-2.) The parties had a CBA, effective July 1, 2017, through December 31, 2022, and are in the process of negotiating a successor agreement.[2] The CBA addresses the procedures for filing and processing grievances and arbitration, which are set forth, respectively, in Articles 13 and 14. Those Articles provide:

> **ARTICLE 13**
> GRIEVANCE PROCEDURE
>
> Any grievance arising under the terms of this Agreement shall be reduced to writing within five (5) working days and settled in the following manner:
>
> **Step 1.** Between the Steward, the aggrieved employee and the Department Supervisor. The decision must be rendered in writing within five (5) working days thereafter.
>
> **Step 2.** If the matter is not settled in the first step, it shall be presented in writing within fifteen (15) working days of the event giving rise to the grievance to the Township Supervisors. The Township Supervisors shall attempt to settle the matter with the Steward and a representative of [Union], after which the Township shall have ten (10) days to render, in writing, its decision.
>
> **Step 3.** If the matter is not settled in the second step, it shall, if the matter is to be processed further, be referred to arbitration.

[2] Township and Union were still negotiating the successor agreement at the time of the hearing before the HE in August 2024. (PDO at 1.)

> Unless written notice of intent to arbitrate is given [to] the other party within five (5) working days after the Step 2 answer, the Step 2 answer shall be final.
>
> A complaint alleging a grievance or an appeal at any step in the grievance procedure must be filed, in writing, with the appropriate representative of the Township within time limits prescribed herein. A complaint or appeal, which is not filed within the prescribed period of time, shall neither be heard as a grievance nor be subject to binding decision by arbitration.
>
> **ARTICLE 14**
> ARBITRATION
>
> Grievances in this step shall be submitted to an impartial arbitrator selected by the parties, and his decision shall be final and binding on all parties. If the parties are unable to agree upon an arbitrator, a joint request shall be addressed to the State Mediation and Conciliation Service for a panel or panels of arbitrators from which selection shall be made.

(Reproduced Record (R.R.) at 77a-78a.)

On February 28, 2024, Township filed a charge of unfair labor practices with the Board alleging Union violated Section 1201(b)(1), (3), (8), and (9) of the PERA, which Township later amended to include additional information. (PDO at 1.) Relevantly, Township asserted Union was committing an unfair labor practice by refusing to timely process grievances to arbitration in bad faith so as to prevent the Step 2 response from being binding. (R.R. at 3a.) The Board's Secretary issued a complaint and scheduled a hearing before the HE. (*Id.* at 9a.) At the hearing, Township offered documentary evidence and the testimony of James Bauer, Chairman of Township's Board of Supervisors.[3] Union also offered documentary evidence and the testimony of Larry Cardillo, Union's Business Agent. Based on that evidence, the HE made the following findings of facts.

[3] Edward W. Shingle, Jr., a Township Supervisor, also testified, but his testimony is not relevant to the issue before the Court.

In June 2022, "Union filed an unfair practice charge with the Board against [] Township," alleging that "Township has refused to meet for grievance meetings, has failed to respond to grievances, and has frustrated [Union's] ability to process grievances." (PDO FOF ¶ 5 (first alteration added).) A series of emails and discussions between Union and Township from May 2023 through August 2023 reflect that the parties: agreed to select a neutral arbitrator and to consolidate multiple "Un-Arbitrated Grievances" for a hearing; agreed to attempt to settle those grievances before that hearing; actually settled seven of nine outstanding grievances; and agreed to hold the hearing on the remaining two grievances in January 2024. (*Id.* ¶¶ 6-8.) Union agreed to withdraw its unfair labor charge. (*Id.* ¶ 6.)

Union filed additional grievances in 2023 alleging Township violated various provisions of the CBA, one of which it agreed to withdraw with prejudice. (*Id.* ¶¶ 9-10.) The second grievance, filed in December 2023, related to Township road crew employee Noah Dorsey, whom Union maintained was being employed part-time but should be a full-time employee. (*Id.* ¶¶ 10-12.) Township disagreed with the grievance, asserting Mr. Dorsey had been hired to work part-time and did not want to work full-time, a position it re-asserted at the Step 2 meeting. (*Id.* ¶¶ 12-13.) Union gave Township notice of its intent to arbitrate the grievance, but at the time of the August 2024 hearing, no grievance arbitration hearing had been held. (*Id.* ¶¶ 13-14.) The parties provided evidence of 16 Union-filed grievances between October 10, 2023, and July 16, 2024, that were in various phases of review. One was pending a Step 2 meeting. Fourteen had requests to process the grievance to arbitration but were not yet scheduled for arbitration. One was scheduled for an arbitration hearing based on Union's belief it was the most urgent as it involves Township moving all road crew employees to part-time status. (*Id.* ¶¶ 15-16.)

In early February 2024, Township began requesting for Union to submit all outstanding grievances to arbitration, taking the position that Union had to request an arbitrator within a reasonable time, which it interpreted as "mov[ing] a grievance to arbitration within five days of noticing its intent to arbitrate after Step 2." (*Id.* ¶¶ 17-18; R.R. at 162a, 164a-67a.) In response to Township's request, Union's Counsel emailed Township's Solicitor, stating in pertinent part,

> [] Union does not agree to add deadlines to the grievance and arbitration provision that do not currently exist.
>
> Most respectfully, this sudden position by [] Township is astonishing in light of the fact that it was not providing any answers to any grievances and making it extremely difficult to schedule any grievance meetings.
>
> In fact, the multi-grievance arbitration arose from a settlement from an unfair practice filed by [] Union because []Township was completely ignoring the grievance procedure all together.
>
> In light of the fact that [] Township violates and disregards the CBA so often, it is very difficult to arbitrate so many cases summarily.
>
> [] Union will continue to process its grievances consistent with the grievance procedure as it has done in the past[,] and it will not agree to any unilateral changes by [] Township.
>
> If you would like to discuss consolidating some grievances for one arbitration, we are happy to discuss.
>
> We also continue to be willing to discuss resolving any and all outstanding grievances.
>
> You had indicated that you were interested in trying to resolve some disputes when we last met[;] please let us know what has changed[.]

(FOF ¶ 19; R.R. at 160a-61a.) Township's Solicitor replied that

> [he] assume[d] from [Counsel's] email[] and the email from [Mr. Cardillo] that [] Union does not wish to discuss further or engage in

> effects bargaining over this issue of when an arbitration panel must be requested. [] Township stands on its position that [] Union must request a panel of arbitrators within a reasonable time from sending a notice of intent to arbitrate. It is [] Township's position that five (5) working days from when it sends the Notice of Intent to Arbitrate is reasonable. If [] Union is refusing to comply with this reasonable request, [] Township will deem the Notice of Intent to Arbitrate to have been sent in bad faith[] and conclude that [] Union has no real intention to arbitrate the grievance or grievances in question and have the matter resolved with a final and binding decision as intended and implied by the expired CBA and the grievance procedure. I am astounded that we cannot agree on a reasonable way to resolve this simple issue.
>
> [Township is] also herewith again demanding that [] Union immediately request arbitration panels for any outstanding grievances in which a Notice of Intent to Arbitrate has been sent. If this does not occur[,] [] Township will mark the grievances closed and will not discuss them further. [] Township will not agree to arbitrate any grievances that do not comply with this reasonable request and will deem such grievances resolved as per [] Township's last step Answer.
>
> This is [] Township's final position on this issue, since you have expressed no desire to engage in effects bargaining or offer a reasonable time frame in which the panel will be requested. It is obvious [] Union would prefer that grievances do not come to a final conclusion[;] that is not only unreasonable[] but also unacceptable and a clear violation of the intent of the grievance procedure and represents bad faith bargaining.

(FOF ¶ 20; R.R. at 159a.)

Mr. Bauer testified that Township advised Union that it agreed to moving the grievances to arbitration following Union's Notices of Intent to Arbitration and requested that Union submit the grievances to arbitration multiple times. (R.R. at 267a-68a, 276a.) Mr. Bauer acknowledged on cross-examination that Union and Township agreed to consolidate a number of grievances to be resolved in a single arbitration hearing and that Union offered to do the same with other outstanding grievances. (*Id.* at 301a-02a, 304a-05a.) However, on re-direct, Mr. Bauer indicated

that Township advised Union that it was not interested in consolidating any more grievances and that Township expected Union to follow the strict timeframes set forth in the CBA, which it had not been doing. (*Id.* at 306a.)

Mr. Cardillo testified as follows. He represents between 15 and 20 bargaining units in two states and has represented 8 of Township's employees for more than 5 years. (FOF ¶ 21.) Union's understanding of Article 14 is that a dispute does not go to arbitration until the parties select an arbitrator. (*Id.* ¶ 22.) Township has never requested an arbitration panel, nor has it ever requested Union to join in a request for an arbitration panel that Union has refused. (*Id.* ¶ 23.) Union does not immediately request an arbitration panel for all its ripe grievances because there are so many grievances between the parties, more than any other local bargaining unit in the larger Union, and to request individual hearings on every grievance would result in excessive litigation. (*Id.* ¶ 24; R.R. at 335a-36a.) Union has previously processed grievances through arbitration, including matters in which they prevailed before the arbitrator and before the local common pleas court upon Township's subsequent appeal in one, with a second Township appeal still pending. (R.R. at 323a-24a.) Union and Township agreed to resolve seven of nine grievances, and the last two were sent to arbitration, with both grievances being sustained by the arbitrator. (*Id.* at 325a-27a.) Still another grievance was scheduled for an arbitration hearing shortly after the hearing before the HE. (*Id.* at 327a.) Union offered multiple times to meet with Township to discuss resolving the remaining grievances, and Township has agreed to meet only once. Mr. Cardillo pointed to the resolution of its grievance #7-2023 relating to Township hiring employees on a part-time basis, namely that Union withdrew the grievance based on a change in its position following the Step 2 meeting with Township. (*Id.* ¶ 26.) While the grievance

involving Mr. Dorsey involved his being a part-time employee, it was filed because Township did not vote to retain Mr. Dorsey as part-time following the end of his probationary period, which led to his position becoming full-time automatically. (*Id.* ¶ 27.)

After briefing, the HE issued the PDO in which he concluded Township did not meet its burden of proving that Union committed an unfair labor practice under PERA. Initially, the HE held that to the extent Township's arguments reflected differences in the parties' interpretations of the CBA, such matters are resolved through arbitration, not an unfair labor practice complaint. (PDO at 9 (citing *Maras v. Dep't of Pub. Welfare*, 534 A.2d 153 (Pa. Cmwlth. 1987)).) As for Township's claims that Union committed an unfair labor practice by bargaining in bad faith, the HE explained that an unfair labor practice charge will not be sustained if the union had a "sound arguable basis" to believe that its actions conformed to the collective bargaining agreement. (*Id.* at 10.) This "contractual privilege" affirmative defense can be raised by a union to obtain the dismissal of an unfair labor practices charge if "the respondent establishes a 'sound arguable basis' in the language of the parties' collective bargaining agreement . . . for the claim that the respondent's action was permissible under the agreement." (*Id.* (citing, e.g., *Pa. State Troopers Ass'n v. Pa. Lab. Rels. Bd.*, 761 A.2d 645, 651 (Pa. Cmwlth. 2000)).) The union's interpretation need not be the correct interpretation in order for it to prevail in its defense. (*Id.*)

Applying these principles to the CBA's provisions, the HE concluded "Union ha[d] a sound arguable basis for its opinion that the CBA does not contain time deadlines to submit grievances to arbitration." (*Id.*) The HE pointed to the differences in language in Articles 13 and 14, with Article 13 setting forth specific timeframes and deadlines for the three steps of the grievance process and Article 14

containing no explicit deadline. (*Id.*) In short, "Union ha[d] a sound arguable basis for its interpretation that there are no deadlines in the [CBA] language which would compel either party to submit a grievance to arbitration at any specific time" because Article 14 contains no time period or deadline for the requesting of an arbitration panel. (*Id.* at 10-11.)

The HE further held that the totality of the record showed that Union was not acting in bad faith in its processing of grievances, pointing to the facts that Union was scheduling grievances to arbitration and those grievances were, ultimately, resolved. The HE observed that Union tried to move forward with arbitrations and work with Township to resolve grievances, as reflected in the consolidation of a large number of grievances into a single arbitration proceeding and Union's ongoing attempts to have other grievances consolidated. (*Id.* at 11.) These actions, the HE concluded, did not support Township's claim that Union "never intended to reach an agreement on the issue of the outstanding grievances or demonstrated unreasonableness regarding the same." (*Id.*) While there were a number of outstanding grievances, the HE found, crediting Mr. Cardillo's testimony, this was not an issue of bad faith, as the large number of grievances filed on behalf of a small bargaining unit that would result in overwhelming litigation should they all be arbitrated independently and at the same time. (*Id.*)

Based on the findings of fact and conclusions, the HE held that Union did not commit an unfair labor practice under Section 1201(b)(3) of PERA, dismissed Township's amended charge, and rescinded the complaint. (*Id.* at 12-13.)

Township filed Exceptions to the PDO, which the Board dismissed concluding there was no error in the HE's determination that Union committed no unfair labor practice because Union had a sound arguable basis for its actions. (Final

Order at 1, 4.) The Board rejected Township's arguments that its interpretation of the CBA was the correct one, holding the Board's role is not "to function as an arbitrator and determine which party's interpretation of an agreement is correct." (*Id.* at 3 (citing *Pa. State Troopers Ass'n*, 761 A.2d 641).) "Regardless of whether [] Union's interpretation is correct, [] Union [] demonstrated a sound arguable basis for its interpretation of the grievance provisions in the parties' CBA." (*Id.* at 4.) Additionally, the Board rejected Township's allegation that Union is engaging in bad faith bargaining because there was "ample evidence" supporting the HE's conclusion that Union was willing to discuss resolving or consolidating grievances, Union and Township had resolved grievances after the Notice of Intent was filed, and Union had worked for two years to process grievances to arbitration. (*Id.*) Although Township challenged the HE's reliance on Mr. Cardillo's testimony about the volume of grievances at issue for this bargaining unit and asserted this was not a permissible excuse for the delays, the Board concluded the totality of the circumstances supported the conclusion that Township failed to establish Union's violation of Section 1201(b)(3) of PERA.

Township now petitions this Court for review. It states that the issue before the Court is

> [w]hether the [Board's] finding that . . . Union[]'s interpretations of the grievance provisions of the [CBA] were based upon a "sound and arguable basis," thereby resulting in a finding that the Union did not act in bad faith with its application of the [CBA], was an abuse of discretion under Pennsylvania law and the evidentiary record.

(Township's Brief (Br.) at 2-3.)

II. DISCUSSION

A. The Parties' Arguments

Township argues the Board's Final Order should be reversed because the Board misapplied contract law in approving Union's interpretation of the CBA and erroneously relied upon Mr. Cardillo's explanations as to why Union was not moving the grievances to arbitration. Township acknowledges that the interpretation of a CBA is traditionally a matter for an arbitrator, but there are some instances, like here, when a union unilaterally interprets a CBA's terms incorrectly which can give rise to an unfair labor practice. (Township's Br. at 10.) Township maintains Union's interpretation and application of the CBA's grievance and arbitration provisions are incorrect, and the Board abused its discretion in concluding Union had a sound and reasonable basis for its interpretation.

According to Township, the interpretation of the CBA "is guided by general contract construction principles," and the lack of a specific time frame for processing a grievance to arbitration should be interpreted as implying **a reasonable time requirement** to take such action, citing cases from the federal courts. (*Id.* at 11-13 (citing *Teamsters Loc. No. 5 v. Formosa Plastics Corp.*, 363 F.3d 368 (5th Cir. 2004); *Plumbers & Pipe Fitters Loc. Union No. 442 v. Ford Constr. Co.*, 7 F.App'x 558 (9th Cir. 2001); *Boston Mut. Life Ins. Co. v. Ins. Agents' Int'l Union*, 258 F.2d 516 (1st Cir. 1958)).) This would be consistent with Article 22 of the CBA, which sets forth the statement of policy for the agreement and states the parties "shall endeavor to carry out to the fullest extent the intent and letter of this [CBA] and will avoid any attempt to coerce the other party to change any part of the [CBA]." (R.R. at 86a.) The Board's interpretation of the CBA as allowing Union to not move grievances to arbitration indefinitely is absurd and makes the grievance procedure ineffectual whereas Township's interpretation of a five-day deadline is reasonable.

(Township's Br. at 13-14.) Accordingly, Township argues the Board abused its discretion in finding that Union had a "sound arguable basis" for its interpretation of the CBA.

Township further asserts that because Union did not have a "sound arguable basis" for its interpretation, Union acted in bad faith in not timely processing grievances to arbitration, and its failure to do so constitutes an unfair labor practice. (*Id.* at 5.) Township maintains that the Board erred in relying on Mr. Cardillo's testimony because his explanation for the delay, the large volume of grievances pending for Union, is not a legitimate reason for the delay. (*Id.* at 16.) Its more recent explanation that it never objected to Township moving a grievance to arbitration, Township argues, was not espoused prior to the proceedings before the HE and is contrary to the parties' practice of Union always requesting arbitration. (*Id.* at 16-18.) Township contends that Union's inaction in moving grievances to arbitration is intended to avoid having grievances be resolved at the Step 2 stage and reflects that Union "has no good faith intention to arbitrate these grievances." (*Id.* at 19.)

The Board responds that it did not err in concluding that Township did not establish that Union committed an unfair labor practice in violation of Section 1201(b)(3). The Board maintains that Township's position that Union's "refusal" to request an arbitration panel within five days of a notice of intent to arbitrate is filed is misplaced because Union's actions are not a "repudiation" of the CBA, where Article 14 contains no language setting a deadline for the parties to request an arbitration panel or requiring only Union to request such a panel. Thus, Union had a "sound arguable basis" for its interpretation of the CBA, and its actions were not an unfair labor practice under precedent, including *State System of Higher Education*

v. Pennsylvania Labor Relations Board, 821 A.2d 156, 158 n.2 (Pa. Cmwlth. 2003). Moreover, the Board's determination that Union's actions were not, more broadly, an unfair labor practice is supported by the totality of the record, which showed that Union did process grievances to arbitration multiple times and resolved many other grievances through other means permitted by the CBA and not prohibited by Articles 13 or 14. As for Township's arguments that it needed to file the unfair labor charge given the continued delay of resolving grievances, the Board notes that there are contractual remedies available to Township that have not been utilized.

Union, which has intervened, reiterates many of the Board's arguments and asserts this Court should give the Board's determination of whether an unfair labor practice was committed "great deference." (Union's Br. at 8.) The Board's role, Union argues, is to determine if a statutory violation (an unfair labor practice) occurred, not if Union violated the CBA, which is a subject for an arbitrator. (*Id.* at 9 (citing *Wilkes-Barre Township v. Pa. Lab. Rels. Bd.*, 878 A.2d 977, 982 (Pa. Cmwlth. 2005)).) Union asserts the Board's conclusion that Union had a sound arguable basis for its actions is supported by the CBA's language, which neither mandates a deadline for requesting an arbitration panel (let alone that it had to occur within five days) nor specifies which party had to request a panel. The federal cases Township relies upon do not support its arguments that the only reasonable time period could be five days, and, in fact, at least one, *Boston Mutual Life Insurance* recognized long delays in requesting arbitration could be justified in some situations. (*Id.* at 12.) Union maintains that if Township believes Union's interpretation is incorrect and that its processing of grievances is untimely, Township's remedy lay with a claim before an arbitrator, not the Board.

B. Analysis

Our Supreme Court has described appellate review of Board decisions as being limited to reviewing whether

> an error of law, a procedural irregularity, or [] the findings of the agency are supported by the substantial evidence of record. [The Court] further explained: "a decision of the Board must be upheld if the Board's factual findings are supported by substantial evidence, and if conclusions of law drawn from those facts are reasonable, not capricious, arbitrary, or illegal." [*Borough of Ellwood City v. Pa. Lab. Rels. Bd.*, 998 A.2d 589, 594 (Pa. 2010).]

Lancaster County v. Pa. Lab. Rels. Bd., 94 A.3d 979, 986 (Pa. 2014).

To determine whether an agency's decisions are "in accordance with the law," appellate review of the agency's conclusions is designed "to ensure that they are adequately supported by competent factual findings, are free from arbitrary or capricious decision[-]making, and, to the extent relevant, represent a proper exercise of the agency's discretion." *Fraternal Ord. of Police, Conf. of Pa. Liquor Control Bd. Lodges v. Pa. Lab. Rels. Bd.*, 735 A.2d 96, 99 (Pa. 1999). Precedent states as a rule that administrative action is "arbitrary and capricious where it is unsupportable on any rational basis because there is no evidence upon which the action may be logically based." *Lynch v. Urb. Redevelopment Auth. of Pittsburgh*, 496 A.2d 1331, 1335 (Pa. Cmwlth. 1985).

The Board determined that Township did not establish that Union committed an unfair labor practice under Section 1201(b)(3) of PERA. Section 1201(b)(3) prohibits "[e]mploye organizations, their agents, or representatives . . . from" "[r]efusing to bargain collectively in good faith with a public employer, if they have been designated in accordance with the provisions of this act as the exclusive representative of employes in an appropriate unit." 43 P.S. § 1101.1201(b)(3).

Township's arguments are predicated on its position that its interpretation of the CBA is correct and that Union's interpretation is not only incorrect, but also unreasonable. The Board's role is "to remedy violations of statute, i.e., unfair labor practices, and not violations of contract." *Wilkes-Barre Township*, 878 A.2d at 982. Issues of contract interpretation or alleged contractual violations are generally not considered in an unfair labor practice claim, and those issues are for an arbitrator to determine. *Pa. State Troopers Ass'n*, 761 A.2d at 649-50 & n.11. Even in the instances where an interpretation can be considered by the Board, such interpretation must reflect a **clear repudiation** of the collective bargaining agreement for it to constitute an unfair labor practice. *Id.*

The Board found no unfair labor practice here because Union has utilized the grievance and arbitration processes outlined in the CBA several times and continued to attempt to use those processes to resolve outstanding grievances by, for example, requesting to consolidate multiple grievances for a single arbitration hearing. (Final Order at 4.) Still other grievances had been arbitrated individually, the grievances sustained, and Township appealed, at least one of which remains outstanding. Yet another grievance was scheduled for a hearing after the proceeding before the HE. Having used the procedures outlined in the CBA and sought to resolve grievances through, among other means, consolidation and arbitration, the Union neither engaged in bad faith bargaining nor repudiated the terms of the CBA. The Board's determinations are supported by the record and are consistent with precedent, and there is a rational basis for the Board's conclusions. Accordingly, we discern no error or abuse of discretion in the Board's determination, nor were its actions arbitrary or capricious.

This leaves Township's argument that Union's interpretation of the CBA is not reasonable, which essentially challenges the Board's conclusion that Union had a sound arguable basis for Union's actions and interpretation of Article 14. This Court has repeatedly recognized contractual privilege as an affirmative defense that can defeat an unfair labor practice charge where the party asserting it demonstrates that its interpretation of the collective bargaining agreement and actions have a "sound arguable basis" in the contractual language. *Wilkes-Barre Township*, 878 A.2d at 983; *State Sys. of Higher Ed.*, 821 A.2d at 158 & n.2; *Pa. State Troopers Ass'n*, 761 A.2d at 651-52. If there is a sound arguable basis in the contract for the party's interpretation and its actions are consistent with that construction, the Board is not to act as an arbitrator to determine which interpretation is correct. *Wilkes-Barre Township*, 878 A.2d at 983 (citation omitted).

Reviewing the CBA and record, we discern no error, abuse of discretion, or arbitrary or capricious decision-making in the Board's conclusion that Union established a sound arguable basis for its interpretation of the CBA. It is undisputed that the language contained in Articles 13 and 14 is different. Article 13 sets forth specific timeframes and deadlines for each of the three steps of the grievance process, and Article 14 contains no explicit deadline. We agree with the HE that "Union ha[d] a sound arguable basis for its interpretation that there are no deadlines in the [CBA] language and that there is no language which would compel either party to submit a grievance to arbitration at any specific time" because Article 14 contains no time period or deadline for the requesting of an arbitration panel. (PDO at 10-11.) This is unlike *Wilkes-Barre Township*, where the employer's interpretation of the agreement at issue, which led to the unfair labor charge, was contrary to the agreement's express language. 878 A.2d at 983. The employer's

disregard of the express contractual language in *Wilkes-Barre Township* precluded it from successfully asserting a "sound arguable basis" for its interpretation in order to defend against the unfair labor charge. *Id.* No direct conflict exists here to defeat Union's assertion of the contractual privilege defense, and we agree with the Board's determination as to that defense's applicability here.

And while Township maintains its interpretation imposing a five-day deadline is more consistent with Article 22 of the CBA than Union's interpretation and the Board's acceptance of Union's interpretation, neither the HE nor the Board held that Union's interpretation of the CBA was correct. Rather, they merely held that there was a "sound arguable basis" for that interpretation given the differing language used in Articles 13 and 14, allowing Union to successfully assert the contractual privilege defense under precedent. Article 22 of the CBA states the parties "shall endeavor to carry out to the fullest extent the intent and letter of this [CBA] and will avoid any attempt to coerce the other party to change any part of the [CBA]." (R.R. at 86a.) The consistency, or not, of the parties' respective positions as to the meaning of Articles 13 and 14 with Article 22 is a matter of contract interpretation to be resolved by an arbitrator, not the Board. *Pa. State Troopers Ass'n*, 761 A.2d at 649-50 & n.11. Accordingly, this is not a reason for reversing the Board's Final Order.

Finally, we agree with Union that Township's reliance on non-binding federal cases[4] is misplaced. First, although the United States Court of Appeals for the Ninth Circuit in *Plumbers & Pipe Fitters* found the arbitrator in that case did not exceed

[4] Other than decisions of the United States Supreme Court, "[c]ourts of this Commonwealth are not required to follow federal courts on federal questions, let alone on questions involving state law." *Weaver v. Pa. Bd. of Prob. & Parole*, 688 A.2d 766, 772 n.11 (Pa. Cmwlth. 1997). *See also W. Chester Area Sch. Dist. v. A.M.*, 164 A.3d 620, 630 (Pa. Cmwlth. 2017) (recognizing that this Court is not bound by the decisions of federal district courts or intermediate appellate courts, but that such decisions can be persuasive on questions of federal law).

his jurisdiction by reading a collective bargaining agreement as impliedly requiring that a grievance be filed within a reasonable period, it also held that such "conclusion was **not inevitable**." 7 F.App'x at 559 (emphasis added). Second, in *Teamsters Local No. 5*, the United States Court of Appeals for the Fifth Circuit upheld an arbitrator's interpretation that the parties' contract impliedly required that grievances be filed within a reasonable time period because that interpretation drew its "essence" from the agreement and did not go against any clear contractual language. 363 F.3d at 371. Notably, however, both of these cases involved **an arbitrator** determining the proper interpretation of a contract in the context of a grievance, not, as here, an unfair labor practice claim, subject to the contractual privilege affirmative defense. Thus, these cases are not persuasive in this context.

Issued almost 70 years ago, *Boston Mutual Life Insurance* is the most similar of the federal cases to the one here and involved a dispute over the timing of a union to request the designation of an impartial chairman of an arbitration panel where the collective bargaining agreement contained specific timeframes for other steps in the grievance and arbitration process but not for this step. There, the United States Court of Appeals for the First Circuit held that the issue of the reasonableness of a delay was for a court to determine and that, given the strict timelines provided elsewhere, "the phrase 'within a reasonable time' must be implied" into the agreement for this step. 258 F.2d at 521. However, the Court also explained that the use of this timeframe reflected an intent for "**flexibility** to meet varying situations" and that there were "situations [where] **a long delay might be justified**." *Id.* (emphasis added). Thus, even under the aged reasoning of *Boston Mutual Life Insurance*, reading an implied "within a reasonable time" into the CBA would **not automatically** impose the five-day deadline as Township argues. Instead, it would

mean that the time period is flexible, and long delays could be justified, which the Board essentially found here based on its crediting Mr. Cardillo's testimony and concluding Union's actions were not unreasonably delayed. Therefore, we find *Boston Mutual Life Insurance* unpersuasive.

III. CONCLUSION

For the foregoing reasons, we discern no error, abuse of discretion, or arbitrary and capricious decision-making by the Board, and, therefore, we affirm the Board's Final Order.

RENÉE COHN JUBELIRER, President Judge

Judge Dumas did not participate in this decision.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Donegal Township, Petitioner	:	
v.	:	No. 1072 C.D. 2025
Pennsylvania Labor Relations Board, Respondent	:	

O R D E R

NOW, November 5, 2026, the Order of the Pennsylvania Labor Relations Board, entered in the above-captioned matter, is hereby **AFFIRMED**.

RENÉE COHN JUBELIRER, President Judge