

STATE OF ILLINOIS – DEPARTMENT OF LABOR
115 S. LASALLE STREET, 37th FLOOR
CHICAGO, ILLINOIS 60603

IN THE MATTER OF:)
)
NORTHEASTERN ILLINOIS CHAPTER)
OF THE NATIONAL ELECTRICAL)
CONTRACTORS ASSOCIATION (NEIL-)
NECA), MCWILLIAMS ELECTRIC CO.,)
INC., AND HOMESTEAD ELECTRICAL)
CONSTRUCTION, LLC)

OBJECTOR(S),)

STATE FILE NO. 2027-H-CC08-2366

v.)

JANE R. FLANAGAN, DIRECTOR of the)
ILLINOIS DEPARTMENT OF LABOR,)
and THE ILLINOIS DEPARTMENT OF)
LABOR)

RESPONDENTS.)

RESPONDENTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS

Respondents, Jane R. Flanagan, Director, of the Illinois Department of Labor and The Illinois Department of Labor (“IDOL” or “Department”), by their attorneys, Stephanie Barton and Sean Imburgia, bring forth this REPLY IN SUPPORT OF RESPONDENTS’ MOTION TO DISMISS (“Reply”) filed by Northeastern Illinois Chapter of the National Electrical Contractors Association (NEIL-NECA), McWilliams Electric Co., Inc., and Homestead Electrical Construction, LLC (collectively “Objectors”). Respondents reassert a lack of subject matter jurisdiction under the Illinois Prevailing Wage Act (“PWA”), 820 ILCS 130/4 and 9. In support, Respondents state as follows:

I. Procedural Background

IDOL published its prevailing wage schedule on July 15, 2026, on its website in accordance with Section 9 of the PWA, 820 ILCS 130/9. The thirtieth (30th) day following that date was Friday, August 14, 2026, at the close of business at 5:00 p.m. See 56 Ill. Admin. Code § 120.130(a), (b). Objectors claim they attempted to transmit its Objection on August 14, 2026, via hand delivery at or near 5:00 p.m. but security at the Jesse White State of Illinois Building indicated the filing location was closed and would not accept service on behalf of the Department. Objectors sent their Objection and Request for Hearing (“Objection”) by email on August 14, 2026, at approximately 9:13 p.m.; by U.S. Mail on August 14, 2026, by hand delivery on August 17, 2026; and the date-stamped by IDOL denotes August 17, 2026. Objectors also sent a Request for Extension of Time to File Objections (“Request for Extension”) by email on August 14, 2026, at 10:20 p.m.

II. Argument

A. Dismissal Is Required as a Matter of Subject Matter Jurisdiction

- i. The right for those affected by prevailing wage schedules to object to the schedules is a statutorily created right dependent on statutorily created timeframes.

The PWA and its Administrative Code provides a statutory right not afforded in common law. Cases support that administrative tribunals have limited subject matter jurisdiction based on the statute that empowers it thus that statutory statute of limitations and procedural requirements create a prerequisite to subject matter jurisdiction. See, e.g. *Klopper v. Court of Claims*, 286 Ill. App. 3d 499, 506-07, 676 N.E.2d 679, 684 (1997); *Goral v. Dart*, 181 N.E.3d 736, 745-46 (2020); *Weatherly v. Human Rights Comm’n*, 338 Ill. App.3d 433, 437, 788 N.E.2d 1175, 1178 (2003); *Fredman Brothers Furniture Co. v. Dep’t of Revenue*, 109 Ill. 2d 202, 486 N.E.2d 893, 895 (1985). The PWA provides a statutory right to file an objection to the prevailing wage schedule “within

30 days after the Department of Labor has published on its official web site” the prevailing wage schedule “by filing a written notice with the Department of Labor stating the specific grounds of the objection.” 820 ILCS 130/9. IDOL posted and published the prevailing wage schedule on July 15, 2026, so 30 days thereafter is Friday, August 14, 2026. See 56 Ill. Admin. Code § 120.130(b).

Objector relies on *Austin Gardens* and *Mercury Sightseeing Boats* to assert that the determination of whether an agency may hear a filing depends on the authority granted to it by the governing statutes. *Austin Gardens, LLC v. City of Chi. Dep't of Admin. Hearings*, 420 Ill. Dec. 282, 283, 289, 96 N.E.3d 367, 368, 374 (Ill. App. Ct. 2018) (holding that the DOAH lacked jurisdiction because the 21-day time limitation in the governing ordinance was a mandatory – not merely directory – provision that limited the DOAH’s authority to act); *Mercury Sightseeing Boats, Inc. v. Cty. of Cook*, 142 N.E.3d 777, 790 (Ill. App. Ct. 2019). Respondents accept this proposition, for the statutory authority of the PWA and its administrative rules create the limited jurisdiction of IDOL Administrative Law Judges, so parties must “strictly comply” with the procedures set forth in the statute for subject matter jurisdiction. See *Austin Gardens, LLC*, 96 N.E.3d at 371.

Objector did not timely file within the statutorily required 30-day time period and try to distinguish the legal authority of the PWA and the administrative rules by arguing “the question... is whether the PWA itself deprives the agency of authority to hear Objector’s Objection, not whether a separate procedural regulation, which governs the manner of filing, deprives the agency of authority to hear the Objection.” Objector cites no supporting case law for this proposition as there is none. The Illinois Supreme Court has long recognized that administrative rules and regulations have the same force and effect of law, and carry a presumption of validity. See *Granite City Div. Of Nat’l Steel v. Illinois Pollution Control Bd.*, 155 Ill.2d 149, 613 N.E. 2d 719 (1993)

citing *Northern Ill. Auto Wreckers & Rebuilders Ass’n v. Dixon*, 75 Ill.2d 53, 58, 387 N.E.2d 320, 323 (1979).

Moreover, in the area of administrative review, subject matter jurisdiction is not distinct from timely filing of claims. See *Belleville Toyota, Inc. v. Toyota Motor Sales*, 99 Ill. 2d 325, 334-40, 770 N.E.2d 177 (2002) (“*Except in the area of administrative review*, the jurisdiction of the circuit court flows from the constitution. . . Only in the area of administrative review is the court's power to adjudicate controlled by the legislature”) (emphasis in original). Accord *Fredman Brothers Furniture Co. v. Dep’t of Revenue*, 109 Ill. 2d 202, 209-10 (1985); *Vill. of Arlington Heights v. City of Rolling Meadows*, 270 N.E.3d 350, 354-55 (Ill. 2025). Objections and hearings pursuant to Section 4 and 9 are administrative rights and actions in which the ALJ’s power to exercise jurisdiction stems from the legislature. The right of an affected party to object to the Department’s prevailing wage schedule determination and right to a hearing – administrative actions – are provided by statute. 820 ILCS 130/9. The ALJ makes a “final and binding” administrative decision (“defined as in Section 3-101 of the Code of Civil Procedure”) that is subject to the provisions of the Administrative Review Law. 820 ILCS 130/9. Hence, hearings brought under Section 4 and 9 of the PWA exist in the area of administrative review where subject matter jurisdiction is predicated on statutory procedural requirements. As the filing of the Objections occurred on August 17, 2026, after the 30th day, there is no subject matter jurisdiction, and the matter must be dismissed.

- ii. The Administrative Code for IDOL hearings codify procedural filing requirements, and IDOL has the authority to promulgate those administrative rules that must be strictly followed for subject matter jurisdiction to exist.

Objector acknowledges in their Response that Section 9 of the PWA creates the statutory 30-day requirement to file an Objection. Objector argues that it did timely file its Objection by

sending its email at approximately 9:08 p.m. on the 30th day and/or sending its Objection by dropping it in the U.S. Mail on August 14, 2026. To support their argument, Objector claims that the administrative rules narrow the statutory right to file within 30 days by the Department not accepting filings after the office closes at 5:00 p.m., or accepting filings by email, or when the Objector claims it placed its Objection in the U.S. Mail. This argument is not supported by law and does not confer subject matter jurisdiction to this court.

IDOL is authorized to promulgate administrative rules to effectuate the hearings brought under the various statutes it enforces, including the PWA in accordance with the Illinois Administrative Procedure Act. The PWA recognizes formal hearings under Section 9. See 820 ILCS 130/9 (“Such hearing by the Department of Labor shall be held within 45 days after the objection is filed”). The Illinois Administrative Procedure Act requires that “each agency shall (i) adopt rules of practice setting forth the nature and requirements of all formal hearings.” 5 ILCS 100/5-10. Accord 5 ILCS 100/10-5 (“[a]ll agencies shall adopt rules establishing procedures for contested case hearings”). IDOL properly complied with the rulemaking process of Section 5-40 of the Illinois Administrative Procedure Act when it established hearing rules for filing and service.¹

As explained above, administrative rules promulgated by an agency “have the force and effect of law, [and] are presumed to be valid.” *Granite City Div. Of Nat’l Steel v. Illinois Pollution Control Bd.*, 155 Ill.2d 149, 162, 613 N.E. 2d 719, 725 (1993) citing *Northern Ill. Auto Wreckers & Rebuilders Ass’n v. Dixon*, 75 Ill.2d 53, 58, 387 N.E.2d 320, 323 (1979). The administrative rules promulgated by IDOL codify the procedural requirements for service and filing of documents in connection with a hearing in contested cases before the Department.² 56 Ill. Admin. Code § 120, *et seq.* The administrative rules require:

When the Act or this Part requires the filing of [documents]. . . the document *must be received by the Department* or the officer or agent designated to receive that matter *before the official closing time* of the receiving office on the last day of the time limit, if any, for the filing or extension of time that may have been granted. Filings received after 5:00 p.m. will be considered filed on the following business day.

56 Ill. Admin. Code § 120.130(a) (emphasis added).

Furthermore, the administrative rules also codify that the Department will not accept filings by e-mail unless an ALJ requests or orders otherwise. 56 Ill. Admin. Code § 120.130(c). In this case, Objector sent their Objection and Request for Hearing by email – an impermissible means of service - on August 14, 2026 at 9:03 p.m. – a time after the statutory deadline of Friday, August 14 at the close of business. Therefore, Objector’s Objection was not timely filed according to the PWA and its Administrative Code and subject matter jurisdiction does not exist.

B. The Request for Extension Must Be Denied

- i. The ALJ does not have jurisdiction to grant a Request for Extension of Time when the Objection was not timely filed to invoke subject matter jurisdiction.

The Request for Extension must be denied as this court lacks subject matter jurisdiction to consider a request for an extension when the original Objection was not filed within the statutory 30-day time period. Objector attempts to minimize the lack of subject matter jurisdiction and invite the ALJ to act beyond its authority. Objector cites to no authority for its contention that statutory subject matter jurisdiction can be extended by an Administrative Law Judge. To the contrary, caselaw supports the opposite:

Subject matter jurisdiction is the power and authority of a tribunal to consider and act upon the case before it. It either exists or it does not. Just as subject matter jurisdiction cannot be conferred by consent or acquiescence of the parties, neither can it be conferred by estoppel.

See *Klopper*, 286 Ill. App.3d at 507 citing *Volkmar v. State Farm Mutual Automobile Insurance Co.*, 104 Ill. App. 3d 149, 432 N.E.2d 1149 (1982). See also *Paulik v. Village of Caseyville*, 100 Ill. App. 3d 573, 427 N.E.2d 213 (1981).

To construe otherwise, as Objector argues, would render the statutory 30 day deadline meaningless and would allow the ALJ to act beyond its authority to extend subject matter jurisdiction to allow Objector to file its Objection 33 days after the July 15, 2026, publication or by email or other means not allowed by the administrative rules, exceeding the ALJ's statutory authority. See *Northern Illinois Automobile Wreckers & Rebuilders Ass'n v. Dixon*, 75 Ill. 2d 53, 60, 387 N.E.2d 320 (1979) (finding that a statute may not be "altered or added to by the exercise of a power to make rules and regulations thereunder.").

Illinois Courts recognize that reviewing courts "will not construe a regulation in a manner that would lead to consequences that are absurd, inconvenient, or unjust." *Davis Bancorp, Inc. v. Bd of Review of the Dep't of Empl Sec.*, 393 Ill. App. 3d 135, 911 N.E. 2d 1125 (2009). Interpreting the administrative rules as Objector argues would extend the 30-day statutory filing requirement, and extend the Administrative Code's legal filing requirement to be filed in-person or by mail received by 5:00 p.m. on the 30th day. Therefore, the Request for Extension must be denied.

- ii. In the alternative, should the ALJ find it has jurisdiction to consider Objector's Request For Extension of Time, it must be denied.

The Administrative Code requires Requests for Extensions to be filed prior to the date and time that the document is due. 56 Ill. Admin. Code § 120.130(b) ("A request for an extension of time to file a document **shall** be filed no later than 5:00 p.m. at the Chicago Office on the date on which the document is due") (emphasis added).³ Here, the Request for Extension was sent by email on August 14, 2026, at 10:20 p.m. As previously explained, the deadline for filing was on August 14, 2026, at 5:00 p.m. There is no evidence in this case that Objector ever properly *filed* their Request for Extension of time by personal service or by U.S. Mail as required by the rules.

There is no Certificate of Service, and the letter only indicates that it was emailed. To date, the Request for Extension of time has not been properly filed and therefore must be denied.

Alternatively, if the ALJ accepts the Request or Extension of time can be filed by email, it was not timely emailed as it was emailed well after 5:00 p.m. on August 14, 2026. Consequently, Objector's Request for Extension would not be considered to be filed until Monday August 17th, if email filing were acceptable. Respondents assert email filing is only allowed "when specifically requested or ordered by the ALJ." 56 Ill. Admin. Code § 120.130(c). The ALJ did not allow any such filings by parties to be by email until the scheduled September pre-hearing conference and subsequent Order.

Moreover, the Request for Extension should be denied because the circumstances were reasonably foreseeable. Section 120.130(b) of the Administrative Code only allows requests for extension "grounded upon circumstances *not* reasonably foreseeable in advance" (emphasis added). A statutory deadline is reasonably foreseeable. Objector's Request for Extension claims, "counsel faced an unexpected combination of time-sensitive professional obligations and administrative staffing disruptions that materially affected the ability to complete physical delivery before close of business." Although the disruptions may have been unexpected for counsel, it is foreseeable both that an attorney may experience time-sensitive professional obligations (such is the career of a practicing attorney) in the course of their work, and that administrative staff disruptions may occur (e.g. an administrative staff member may need to take a sick day). Objectors have 30 days from the publishing of the prevailing wage schedule to file an objection. A Request for Extension should not be granted based on foreseeable disruptions arising on the day of the statutory deadline, particularly when the attorney waits until the last day of the statutory deadline to make such a subject matter jurisdiction filing.

III. Conclusion

This tribunal lacks subject matter jurisdiction based on the PWA and its applicable administrative rules as the Objection failed to be timely filed and this tribunal lacks jurisdiction to consider a Request for Extension of Time. Alternatively, the Objector's Request for Extension of Time to file its Objection beyond the 30-day statutory deadline has not been properly filed, for it was sent only by email, contrary to the rules. Further, if email service is accepted the Objection was untimely filed per the rules and the basis for the late filing was reasonably foreseeable. Consequently, Respondents respectfully request that the ALJ GRANT Respondents' Motion to Dismiss.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she caused the foregoing RESPONDENTS' REPLY IN SUPPORT OF ITS MOTION TO DISMISS to be served pursuant to Section 56 Ill. Admin. Code § 120.130 via email as designated below on September 15, 2026, prior to 5:00 p.m. as follows:

By email to:

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