

STATE OF ILLINOIS - DEPARTMENT OF LABOR
115 S. LASALLE STREET, 37th Floor
CHICAGO, ILLINOIS 60601

IN THE MATTER OF:	)	
	)	
NORTHEASTERN ILLINOIS CHAPTER	)	
OF THE NATIONAL ELECTRICAL	)	IDOL FILE NO. 2027-H-CC08-2366
CONTRACTORS ASSOCIATION	)	
(NEIL-NECA), MCWILLIAMS ELECTRIC	)	
CO., INC., and HOMESTEAD ELECTRICAL	)	
CONSTRUCTION, LLC	)	
	)	
OBJECTORS,	)	
	)	
V.	)	
	)	
JANE R. FLANAGAN, DIRECTOR	)	
of the ILLINOIS DEPARTMENT OF LABOR,	)	
and THE ILLINOIS DEPARTMENT OF LABOR,	)	
	)	
RESPONDENTS.	)	

**OBJECTORS' COMBINED RESPONSE IN OPPOSITION
TO RESPONDENTS' MOTION TO DISMISS AND REPLY IN SUPPORT OF
OBJECTORS' MOTION FOR EXTENSION OF TIME TO FILE**

NOW COME Objectors, Northeastern Illinois Chapter of the National Electrical Contractors Association (NECA-NEIL), McWilliams Electric Co., Inc., and Homestead Electrical Construction, LLC (collectively, "Objectors"), by and through their attorneys, Laner Muchin, Ltd., and submit this Combined Response in Opposition to Respondents Director Jane R. Flanagan and the Illinois Department of Labor (collectively, "Respondents") Motion to Dismiss the Objection and Request for Hearing and Reply In Support of Objectors' Request for Extension of Time.

The instant circumstances justify granting the requested extension and allowing Objectors to be heard on its Objection because: (1) Objectors filed within the timeframe required by the governing statute; (2) The Department maintains jurisdiction over the Objection under the unambiguous terms of the Illinois Prevailing Wage Act; (3) The Department's administrative rules

permit the Department to provide the extension requested by Objectors and Respondents identify no concrete prejudice from a brief extension. In support, Objector states as follows:

I. PROCEDURAL BACKGROUND

In accordance with Section 9 of the Illinois Prevailing Wage Act, 820 ILCS 130/9 (the “PWA”), the Illinois Department of Labor published the prevailing wage schedule on July 15, 2026. Excluding that date, the thirtieth day following that date was Friday, August 14, 2026. *See* 56 Ill. Admin. Code §120.130(b).

Objectors attempted to transmit its Objection and Request for Hearing (“Objection”) via hand delivery on August 14, 2026, at or just before the 5:00 p.m. deadline, but security at the Jesse White State of Illinois Building indicated the filing location was closed and refused to accept service on behalf of the Department. Objectors, therefore, promptly sought relief to ensure the filing would be accepted and made additional efforts to transmit the Objection by email submission at 9:08 p.m. that same day **Exhibit A-1**), and by Hand Delivery on August 17, 2026 (**Exhibit A-2**). Objectors also filed a Request for Extension of Time to File Objections *Instante*r (“Request for Extension”), under 56 Ill. Admin. Code §120.130(b), on August 14, 2026, at 10:20 p.m. (**Exhibit B**).

On August 20, 2026, the Department issued a Notice and Amended Notice setting the matter for hearing on September 25, 2026, before Administrative Law Judge John O’Meara (“ALJ”). The Amended Order further set a pre-hearing conference with the ALJ on September 8, 2026 (the “Pre-Hearing Conference”).

On September 1, 2026, the Midwest Laborers filed a Petition to Intervene. Subsequently, on September 2, 2026, the Chicago Laborers, Operators, IBEW Local 134, IBEW Locals 117/150/701, and IBEW Local 461 filed their respective Petitions to Intervene.

On September 3, 2026, Respondents filed a Motion to Dismiss Objectors' Objection and Request for Hearing and Deny its Request for Extension of Time, arguing the Objection was neither timely filed nor properly served on August 14, 2026, and that the agency lacks subject matter jurisdiction to hear the objection, as a result.

On September 8, 2026, the Parties and all potential Intervenors appeared before the ALJ for the Pre-Hearing Conference. The ALJ denied Objectors' oral motion to stay and entered a Briefing Order on Respondents' Combined Motion to Dismiss and to Deny Objector's Motion for Extension of Time.

II. ARGUMENT

A. Objector Filed Its Objection Within The Time Authorized By Section 9 of the Prevailing Wage Act.

To prevail on their Motion to Dismiss, Respondents must establish more than Objectors' technical failure to conform with the Department's filing requirements. They must demonstrate that the Department's filing specifications as to time and manner of service create a limitation on the agency's authority to hear the Objection under Section 9 of the PWA. Respondents have not done so because they cannot do so.

Because an administrative agency is bound by the specific statute that brought it into existence, the determination as to whether an agency may hear a filing depends on the authority granted to it by the specific text of the governing statute. *See Austin Gardens, LLC v. City of Chi. Dep't of Admin. Hearings*, 2018 IL App (1st) 163120, ¶ 1, 420 Ill. Dec. 282, 283, 96 N.E.3d 367, 368 ("Since an administrative agency is a creature of statute, its jurisdiction or authority must be found within the provisions of the statute by which it acts."); *See also Mercury Sightseeing Boats, Inc. v. Cty. of Cook*, 2019 IL App (1st) 180439, ¶ 69, 436 Ill. Dec. 376, 389, 142 N.E.3d 777, 790 ("The statute or ordinance governing that administrative proceeding represents and defines the

taxpayer's sole right to relief.”). The question, therefore, 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.

Respondents' reliance on *Weatherly v. Human Rights Commission*, 338 Ill. App. 3d 433 (2003), and *Goral v. Dart*, 2020 IL 125085, is misplaced. Neither case construed Section 9 of the PWA, and neither held that procedural filing requirements contained in agency regulations automatically become jurisdictional limitations on an agency's authority. Rather, each arose under a different statutory framework governing a different administrative body. Because an agency’s authority depends on the statute under which it acts, the jurisdictional inquiry here must be resolved under the singular text of the PWA.

Section 9 of the PWA provides:

“At any time within 30 days after the Department of Labor has published on its official web site a prevailing wage schedule, any person affected thereby may object in writing to the determination or such part thereof as they may deem objectionable by filing a written notice with the Department of Labor stating the specified grounds of the objection.” (820 ILCS 130/9)(emphasis added)

The PWA grants affected persons the right to object “at any time within 30 days” after publication of the prevailing wage schedule. Respondents acknowledge that Objectors sent, and the Department received, a written Objection and Request for Hearing on August 14, 2026 – the date Respondents identify as the thirtieth day following the publication of the prevailing wage rates. Thus, by Respondents’ own admission, Objectors provided written notice to the Department within the period expressly authorized by Section 9. (*i.e.*, at any time on August 14, 2026).

Respondents identify no language in Section 9 stating that an objection filed on the thirtieth day becomes jurisdictionally defective if received after 5:00 p.m., if transmitted electronically, or

if the Objectors otherwise fail to satisfy a procedural requirement set forth in the Department's administrative rules.

Instead, Respondents rely upon 56 Ill. Admin. Code § 120.130(a) and (c), provisions contained in the Department's procedural rules governing administrative hearings. But Respondents identify no provision of the PWA incorporating those regulations as jurisdictional prerequisites.

At most, Respondents have alleged a violation of a procedural claim-processing rule governing the manner in which filings are received. That is not the same as establishing a jurisdictional defect which would prevent this agency from processing the Objection. Nothing in Section 9 provides that an otherwise timely objection is rendered void, or that the agency loses authority to act, because of an alleged filing-method or after-hours receipt issue under Part 120.130 of the Illinois Administrative Code ("Administrative Code" or "Part 120").

In short, Section 9 grants affected parties the right to file written objections within thirty days of publication of a prevailing wage schedule. Respondents concede that Objectors submitted their written Objection on the thirtieth day. Because Respondents identify no language in the PWA making compliance with Part 120 a jurisdictional prerequisite, they have failed to establish that either the Objectors' Objection is untimely under the PWA or that the Department lacks subject matter jurisdiction to hear the Objection. Accordingly, the Motion to Dismiss should be denied.

B. The Department's Rules Expressly Authorize the Relief Requested

Even if the Department concludes that the Objectors did not strictly comply with every procedural requirement of Part 120, dismissal is not warranted because the Department's own rules provide a mechanism for relief.

The statutory terms of the PWA and regulatory provisions of the Department's Administrative Code operate together without conflict. Section 9 of the PWA establishes the

statutory period for objections, while Part 120 governs the Department's administration of its contested-case process, including requests for extensions of time. This reading is consistent with the Department's prior recognition that an Administrative Law Judge may consider relief from a procedural filing defect under §120.130(b). *Mid-America Carpenters Regional Council v. Jane R. Flanagan, et al.*, State File No. 2022-H-RP01-2337 (Order dated April 20, 2022, Chief ALJ Claudia D. Manley).

Section 120.130(b) expressly authorizes extensions and contemplates requests filed shortly after a due date: "Requests for extensions of time filed within three days after the due date must be grounded upon circumstances not reasonably foreseeable in advance." 56 Ill. Admin. Code § 120.130(b). Reading subsections (a) and (c) as an absolute jurisdictional bar would deprive subsection (b) of practical effect precisely when relief from a deadline is needed. A tribunal that lacks subject matter jurisdiction cannot restore it by granting an extension. The extension provision therefore confirms that Part 120's filing requirements are procedural rules governing case administration, not limits on the Department's adjudicatory authority.

Respondents' construction also would impermissibly permit a procedural regulation to narrow the statutory right granted by Section 9 of the PWA. Section 9 allows an affected party to object "at any time within 30 days." In the absence of statutory language imposing a 5:00 p.m. cutoff, the Department cannot convert an after-hours receipt issue into a jurisdictional forfeiture through its rule making process.

C. Good Cause Exists to Grant the Requested Extension, and Respondents Identify No Prejudice

Even assuming *arguendo* that a procedural defect occurred, good cause supports granting Objectors' Request for Extension of Time. The Objectors did not disregard the deadline. Objectors transmitted the Objection on August 14, 2026, the date Respondents identify as the final day

permitted by Section 9, used multiple methods of delivery, and promptly sought relief. Objectors' conduct reflects diligence, not neglect.

Respondents identify no prejudice from allowing the Objection to proceed. They do not contend that evidence has been lost, witnesses have become unavailable, or their ability to defend the prevailing wage determination has been impaired. The Department and the ALJ remain able to manage the schedule and ensure an orderly adjudication, as demonstrated by the Pre-Hearing Conference on September 8, 2026.

By contrast, denial of the extension could permanently deprive Objectors of the opportunity to challenge the prevailing wage schedule and to be granted the relief that it seeks, despite its timely effort to invoke the Department's review process.¹ That result would impose the harshest possible consequence for an alleged procedural defect that caused no demonstrated prejudice. The equities therefore favor granting the requested extension.

D. The ALJ Should Accept the Filing and Permit the Matter to Proceed

Objectors timely invoked the Department's review process under the plain language of Section 9. Respondents have identified no provision of the PWA depriving the Department of jurisdiction to consider the Objection. Even if a procedural defect exists, §120.130(b) of the Illinois Administrative Code authorizes relief, and the circumstances favor allowing the matter to be heard on a complete record.

¹ Objectors sought, and were granted, conditional intervention in a factually similar Objection and Request for Hearing in File No. 2027-H-CC08-2369 (Electrical Contractors' Association of City of Chicago and McWilliams Electric Company, also pending before this same ALJ). Respondents objected to the relief sought by Objectors in that case. Should Respondents' objection be upheld, Objectors will have no administrative avenue in which to seek the relief it requests, if Respondent's Motion to Dismiss is granted.

III. CONCLUSION

Objectors provided written notice of their Objection within the thirty-day period established by Section 9 of the PWA, the governing statute. Respondents have identified no statutory language making compliance with Part 120, which merely establishes the manner and timing of service, a jurisdictional prerequisite to the agency's authority to hear the Objection. Moreover, the Department's own rules expressly authorize extensions of time, and the circumstances presented warrant that Objector's Request for Extension be granted.

Accordingly, Objectors Northeastern Illinois Chapter of the National Electrical Contractors Association (NECA-NEIL), McWilliams Electric Co., Inc., and Homestead Electrical Construction, LLC respectfully request that the Administrative Law Judge: (1) deny Respondents' Motion to Dismiss; (2) grant Objectors' Request for Extension of Time to File Objection; (3) accept Objectors' Objection and Request for Hearing; (4) establish an appropriate schedule for further proceedings; and (5) grant such other and further relief as is just and proper.

Dated: September 11, 2026

Respectfully submitted,

Northeastern Illinois Chapter of National Electrical
Contractors' Association (NECA-NEIL),
McWilliams Electric Co., Inc., and Homestead
Electrical Construction, LLC

By: 
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