

**STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD**

In the Matter of:)	
)	
Robert Wilkerson,)	
)	
Charging Party,)	
)	
and)	Case No. 2005-CB-0008-C
)	
Service Employees International Union,)	
Local 73,)	
)	
Respondent.)	

OPINION AND ORDER

On September 9, 2004, Robert Wilkerson filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (“Board”). On October 25, 2004, the Executive Director issued a Recommended Decision and Order. The Executive Director determined that the evidence did not establish an un rebutted prima facie case that Service Employees International Union, Local 73 (“Union”) violated Section 14(b)(1) of the Illinois Educational Labor Relations Act (“Act”). Accordingly, he dismissed the unfair labor practice charge in its entirety. The certified mail receipt for the Executive Director’s Recommended Decision and Order shows that Wilkerson received the Recommended Decision and Order on October 29, 2004.

On November 15, 2004,¹ Charging Party Robert Wilkerson filed exceptions to the Executive Director’s Recommended Decision and Order. Wilkerson’s exceptions were not accompanied by a certificate of service. The Union did not file a response to Wilkerson’s exceptions. We strike Wilkerson’s exceptions and affirm the Executive Director’s Recommended Decision and Order on the basis that Wilkerson did not provide a certificate of service and that his exceptions were not timely filed.

I.

Section 1100.20(d) of the Board’s Rules, 80 Ill. Adm. Code 1100.20(d), provides that “[a]ll documents...will be served on the appropriate parties by the party propounding the document....” Section 1100.20(e) of the Board’s Rules, 80 Ill. Adm. Code 1100.20(e), provides that “[w]henver a document is filed with the Board, it shall be accompanied by a certificate of service.” Section 1120.30(c) of the Board’s Rules, 80 Ill.

¹ Wilkerson’s exceptions were sent to the Board by regular, first-class mail. Under Section 1100.20(a) of the Board’s Rules, 80 Ill. Adm. Code 1100.20(a), documents sent by regular, first-class mail are considered filed when they are received by the Board. The Board received Wilkerson’s exceptions on November 15, 2004.

Adm. Code 1120.30(c), provides that “[c]opies of all exceptions [to the Executive Director’s dismissal of a charge] and supporting briefs shall be served upon all other parties and a certificate of service shall be attached.” Section 1100.20(e) of the Board’s Rules defines a certificate of service as “a written statement, signed by the party effecting service, detailing the name of the party served and the date and manner of service.” Section 1100.20(f) of the Board’s Rules, 80 Ill. Adm. Code 1100.20(f), provides:

Failure of a party to serve a document or failure to attach a certificate of service may be grounds to strike the document, if the failure results in prejudice to another party (such as lack of notice or detrimental reliance) or demonstrates disregard of the Board’s processes (such as continued noncompliance).

The Board has consistently stricken exceptions where a party has failed to provide a certificate of service or otherwise demonstrate that the exceptions have been served on the other parties. *Service Employees International Union, Local 73*, 21 PERI 91, Case No. 2005-CB-0005-C (IELRB, May 20, 2005); *International Brotherhood of Teamsters, Local 743, AFL-CIO*, 21 PERI 89, Case Nos. 2004-CB-0002-C, 2004-CA-0006-C (IELRB, May 20, 2005). The Appellate Court approved this practice in *Jones v. IELRB*, 272 Ill.App.3d 612, 650 N.E.2d 1092 (1st Dist. 1995).

In this case, Wilkerson did not provide a certificate of service or otherwise demonstrate that he served his exceptions on the Union. The Union has not filed a response to Wilkerson’s exceptions. The Union has been prejudiced by Wilkerson’s failure to serve because he denied it an adequate opportunity to respond to his exceptions. Therefore, we strike Wilkerson’s exceptions.

II.

Section 1120.30(c) of the Board’s Rules, 80 Ill. Adm. Code 1120.30(c), provides that, in the case of exceptions to the Executive Director’s dismissal of an unfair labor practice charge, “[e]xceptions must be filed with the Board no later than 14 days after service of the notice of dismissal.” In *Pierce v. IELRB*, 334 Ill.App.3d 25, 777 N.E.2d 570 (1st Dist. 2002) and in *Board of Education of City of Chicago v. IELRB*, 289 Ill.App.3d 1019, 682 N.E.2d 398 (1st Dist. 1997), the Appellate Court determined that a party’s failure to file exceptions with the Board within the time limit constituted a waiver of the party’s right to challenge a recommended decision in the next step of Board proceedings.

Here, Wilkerson received the Executive Director’s Recommended Decision and Order dismissing his charge on October 29, 2004. Wilkerson did not file his exceptions until November 15, 2004, more than 14 days after he received the Executive Director’s Recommended Decision and Order. Accordingly, Wilkerson has waived

his right to challenge the Executive Director's Recommended Decision and Order before the Board. We also strike Wilkerson's exceptions on the ground that they were not timely filed.

III.

For the above reasons, IT IS HEREBY ORDERED that the Executive Director's Recommended Decision and Order is affirmed. The unfair labor practice charge is dismissed in its entirety.

IV. Right to Appeal

This is a final order of the Illinois Educational Labor Relations Board. Aggrieved parties may seek judicial review of this Order in accordance with the provisions of the Administrative Review Law, except that, pursuant to Section 16(a) of the Act, such review must be taken directly to the Appellate Court of the judicial district in which the Board maintains an office (Chicago or Springfield). "Any direct appeal to the Appellate Court shall be filed within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision," 115 ILCS 5/16(a).

Decided: October 11, 2005
Issued: October 13, 2005
Chicago, Illinois

/s/ Lynne O. Sered
Lynne O. Sered, Chairman

/s/ Ronald F. Ettinger
Ronald F. Ettinger, Member

/s/ Bridget L. Lamont
Bridget L. Lamont, Member

/s/ Michael H. Prueter
Michael H. Prueter, Member

/s/ Jimmie E. Robinson
Jimmie E. Robinson, Member

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