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SECOND DIVISION  
July 19, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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DEXTER HALL,	)	Petition for Administrative
	)	Review of an Order of the
Petitioner,	)	Illinois Educational Labor
	)	Relations Board.
v.	)	
	)	
THE BOARD OF EDUCATION OF THE	)	No. 2009-CA-0058-C
CHICAGO PUBLIC SCHOOL DISTRICT and	)	
THE ILLINOIS EDUCATIONAL LABOR	)	
RELATIONS BOARD,	)	
	)	
Respondents.	)	

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JUSTICE CONNORS delivered the judgment of the court.  
Presiding Justice Cunningham and Justice Harris concur in the judgment.

**ORDER**

*Held:* This court lacks jurisdiction over petitioner's appeal where petitioner failed to timely file exceptions with the Illinois Educational Labor Relations Board challenging the dismissal of his unfair labor practice claims.

¶ 1 Petitioner Dexter Hall filed charges with the Illinois Educational Labor Relations Board (the Board) after his employment was terminated by the Chicago Board of Education (the employer). The Executive Director of the Board (the Director) dismissed the charges. Hall attempted to file exceptions to the Director’s dismissal, but the filings were stricken by the Board as untimely. Hall now appeals, arguing the merits of his original claims. For the following reasons, we dismiss this appeal for lack of jurisdiction.

¶ 2 I. BACKGROUND

¶ 3 Petitioner Dexter Hall filed unfair labor practice charges with the Board alleging that his employer violated sections 14(a)(1) and (a)(3) of the Illinois Educational Labor Relations Act (115 ILCS 5/14(a)(1), (a)(3) (West 2008) (the Act)) when it terminated his employment. Hall also filed charges against the Chicago Teachers Union (the Union); however, the result of that proceeding is not before us. The following facts underlying the original charges filed by Hall are taken from the Director’s Recommended Decision and Order. These facts are not disputed on appeal.

¶ 4 Hall was a temporarily assigned teacher at Roosevelt High School in the fall of 2007. In early 2008, he injured his knee and reported to his doctor. Hall alleged that he called the principal at Roosevelt and sent her an email informing her of his injury and his subsequent absence from work. A few weeks later, Hall’s doctor recommended that he not return to work because of the severity of the injury. Hall sent correspondence from his doctor to the principal to that effect. Several days later, the principal sent him a “cautionary letter advising him of his excessive absences.”

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¶ 5 Hall sent a copy of the cautionary letter to the Union representative and sent a rebuttal letter to the principal. He was later contacted by the employer's Office of Labor and Employee Relations with a request for a meeting. Hall and the Union representative attended the meeting. Hall asserted that the employer's representative "berated" him and spoke to him in a "condescending and shouting manner, and pointed his finger in Hall's face." Hall also alleged that the Union representative failed to defend him or advocate for him in the meeting.

¶ 6 About a month after the meeting, Hall learned that his employment had been terminated. Hall asked the Union representative to file a grievance on his behalf. He also met with the Union's Teacher Field Staff Coordinator and sent a letter to the Union president. The employer told the Union that Hall had resigned his position.

¶ 7 During this period, Hall had applied for unemployment benefits, but his application was initially denied because of his misconduct in failing to report his absences for 10 school days. He successfully appealed that decision with the Illinois Department of Employment Security, which stated that he presented adequate proof that he contacted the school about his absences.

¶ 8 Hall then contacted the Union seeking assistance in getting reinstated in his prior position. He believed that the Union representative had filed a grievance on his behalf, but subsequently learned that the grievance was denied because it was not timely filed. He also learned that the employer placed a note in his personnel file stating that "he should not be rehired into the system."

¶ 9 Hall then filed the unfair labor practice charges at issue in this case, alleging that the employer retaliated against him for filing a disability benefits claim after his injury. He claimed

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that the employer unlawfully interfered with the exercise of his rights under the Act, and that the employer discriminated against him to discourage his membership in a union. He also filed charges against the Union for its failure to process a grievance arising out of his termination, which is not at issue in this appeal.

¶ 10 On January 29, 2010, the Director issued a Recommended Decision and Order dismissing Hall's charges. The order stated that to establish a *prima facie* case for a violation of the Act, Hall had to prove that he engaged in protected union activity, that his employer was aware of that activity, and that the employer took adverse action against him for engaging in union activity. The Director's order concluded that filing a disability claim is not protected union activity under the Act. It also concluded that even if it was protected union activity, Hall failed to present sufficient evidence that his termination resulted from filing a disability claim. Therefore, the Director's order concluded that Hall failed to establish a *prima facie* case of a violation of the Act and dismissed the unfair labor practice charges.

¶ 11 The Director's order also stated:

“Pursuant to the Board's Rules and Regulations at 80 Ill. Adm. Code 1120.30(c), the parties may file exceptions to this Recommended Decision and Order and briefs in support of those exceptions no later than fourteen (14) days after receipt of this Decision and Order. \*\*\* If no exceptions are filed within the fourteen (14) day period, the parties will be deemed to have waived their exceptions, and unless the Board decides on its own motion to review this matter[,] this Recommended Decision and Order

will become final and binding on the parties.”

The Director sent the order to the parties by facsimile on January 29, 2010, with a message stating, “The following Order is hereby served by this facsimile copy. No other copies will be sent.” The facsimile transmission cover sheet indicates that the order was successfully sent to Hall’s attorney and the employer’s attorney.

¶ 12 Hall personally sent a handwritten “Motion for Reconsideration” to the Board on February 18, 2010. He sent a second “Motion for Reconsideration” on February 25, 2010, in which he states, among other things, that his initial motion was timely filed “as I personally only received service of the decision in each [*sic*], on Tuesday, February 16, 2010, as I was out of the state in the month prior.”

¶ 13 On April 19, 2010, Hall’s attorney filed an “Amended Notice of Appearance and Request for Oral Argument Before Board.” In it, he stated that he “continues to be counsel of record for Dexter Hall – in the exceptions he personally filed on Feb. 19, 2010 [*sic*] with the Board (IELRB) and affidavit of service to representatives of charged party [*sic*] [the Union] and [the employer].” He additionally requested that the Board set the case for oral argument.

¶ 14 The Board issued a Decision and Order on July 19, 2010. In its order, the Board detailed the filing dates of Hall’s exceptions. It also recited the provision of the Board’s administrative rules permitting the parties to file exceptions to the Director’s order within 14 days of receipt of that order. It also stated that the record “clearly showed” that Hall’s attorney received the Director’s order on the date of issue. The Board then concluded that Hall’s exceptions were filed more than 14 days after his attorney received the Director’s order. The

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order concluded, “Accordingly, we strike [Hall’s] exceptions and affirm the Executive Director’s Recommended Decision and Order.”

¶ 15 Hall filed his initial petition for administrative review with this court on August 18, 2010, through his attorney. In it, he named the “Chicago Board of Education” as the sole respondent. On September 14, 2010, the Illinois Attorney General, on behalf of the “Unnamed Respondent Illinois Educational Labor Relations Board,” filed a motion seeking a determination that it was a necessary party not named in Hall’s petition and requesting that Hall be allowed an additional 35 days in which to file an amended petition, pursuant to section 3-113(b) of the Administrative Review Law (735 ILCS 5/3-113(b) (West 2008)). A different division of this court issued such an order on October 6, 2010. The next day, Hall sought leave to file an amended petition, which did not include the Board as a respondent. Nevertheless, the motion was granted and the amended petition was filed.

¶ 16 On December 2, 2010, this court issued an order *sua sponte* finding that Hall had “failed to file the brief within the extension last provided” in the October 6, 2010, order. This court then ordered “that this case will be DISMISSED FOR WANT OF PROSECUTION if the brief is not filed by Jan. 6, 2011.” On January 6, 2011, Hall filed his brief and appendix, which listed the employer and the Board as respondents in the caption.

¶ 17 Three weeks later, on January 27, 2011, Hall filed a motion for leave to file a second amended petition for administrative review “out of time” to add the Board as a respondent. In it, Hall’s attorney claimed that he never received a copy of the October 6, 2010, order because “for some reason the Clerk’s Office in the Appellate Court went back to the Educational Labor

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Relations Boards' files and pulled [his] address out of the file" and sent the order to that old address, despite the fact that his new address was listed on all correspondence filed with this court.

¶ 18 On the same day, the Attorney General filed a motion on behalf of the "Unnamed Respondent Illinois Educational Labor Relations Board" to dismiss the appeal "for failure to name the Board as a necessary party within the 35 days ordered by this [c]ourt." This court granted Hall's motion and denied the Attorney General's motion. The appeal was subsequently transferred to this division of the appellate court.

¶ 19 II. ANALYSIS

¶ 20 Hall's brief on appeal challenges the merits of the Director's order, which concluded that making a disability claim was not protected union activity and that Hall nevertheless failed to present sufficient evidence demonstrating that he was fired for filing that claim. In response, the Board contends, as it did in its motion, that this court lacks jurisdiction over the appeal because Hall failed to file his amended petition for review naming the Board as a defendant within the additional 35-day period granted by this court on October 6, 2010. Alternatively, the Board contends that its decision to strike Hall's exceptions as untimely and to affirm the Director's order was not clearly erroneous and should itself be affirmed. We agree with the Board that we lack jurisdiction over this appeal, but we reach that conclusion on an alternative basis.

¶ 21 The Illinois Constitution provides that final decisions of administrative agencies are appealable only "as provided by law," unlike appeals from final judgments of the circuit

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court, which are appealable as a matter of right. *Collinsville Community Unit School District No. 10 v. The Regional Board of School Trustees of St. Clair County*, 218 Ill. 2d 175, 181 (2006) (quoting Ill. Const. 1970, art. VI, §§ 6,9). As such, courts exercise “ ‘special statutory jurisdiction’ ” in their review of administrative decisions. *Collinsville*, 218 Ill. 2d at 182 (quoting *ESG Watts, Inc. v. Pollution Control Board*, 191 Ill. 2d 26, 30 (2000)). A court’s special statutory jurisdiction derives from the language of the act that created it and the court is limited to exercising only the power contained in that act. *Collinsville*, 218 Ill. 2d at 182 (quoting *Fredman Brothers Furniture Co. v. Department of Revenue*, 109 Ill. 2d 202, 210 (1985)).

¶ 22 This court derives its special statutory jurisdiction from the Administrative Review Law. Section 3-113 of the Administrative Review Law, together with section 16 of the Act, govern the procedures for direct judicial review of an order of the Board. 735 ILCS 5/3-113 (West 2008); 115 ILCS 5/16 (West 2008). Section 3-102 of the Administrative Review Law, which applies to and governs “every action to review judicially a final decision” of an administrative agency that has adopted the Administrative Review Law, provides:

“If under the terms of the Act governing the procedure before an administrative agency an administrative decision has become final because of the failure to file any document in the nature of objections, protests, petition for rehearing or application for administrative review within the time allowed by such Act, such decision shall not be subject to judicial review hereunder excepting only for the purpose of questioning

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the jurisdiction of the administrative agency over the person or subject matter.” 735 ILCS 5/3-102 (West 2008).

That is, if the Director’s decision becomes a final order because a party fails to timely file its objections with the Board under the applicable provisions of the Act, this court lacks subject matter jurisdiction to review the decision. See *Pierce v. Illinois Educational Labor Relations Board*, 334 Ill. App. 3d 25, 30-31 (2002).

¶ 23 Pursuant to section 5(i) of the Act, the Board promulgated rules to govern its administrative procedures, which are codified in the Illinois Administrative Code (the Code). 115 ILCS 5/5(i) (West 2008). Specifically, section 1120 of the Code governs the procedures for resolving unfair labor practice claims under section 14(a) of the Act. 80 Ill. Adm. Code 1120.10 (2004). Upon the filing of an unfair labor practice claim by a charging party, the Director initiates an investigation of the claim. 80 Ill. Adm. Code 1120.30(b) (2004). If, after its investigation, the Director determines that there is no issue of law or fact presented by the claim that warrants a hearing, the Director must dismiss the claim and notice of the dismissal must be served on the charging party and the respondent. 80 Ill. Adm. Code 1120.30(b)(5) (2004).

¶ 24 If the charging party wishes to file exceptions to the Director’s dismissal order, it must file its exceptions with the Board “no later than 14 days after service of the notice of dismissal.” 80 Ill. Adm. Code 1120.30(c) (2004). For cases in which the Director issues a recommended decision on the merits of the claim after a hearing, rather than dismissing the claim, the Code provides that a party will be deemed to have waived any exceptions to the Director’s order if it fails to timely file its exceptions with the Board. 80 Ill. Adm. Code 1120.50(a) (2004). We have

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previously held that the waiver provision in section 1120.50(a) applies to other sections of the Code as well. See *Pierce*, 334 Ill. App. 3d at 32 (applying waiver provision to general hearing procedures under section 1105 of the Code).

¶ 25 As a result of waiver under section 1120.50(a), the Director’s decision becomes final and binding on the parties. *Pierce*, 334 Ill. App. 3d at 32 (citing *Board of Education of the City of Chicago v. Illinois Educational Labor Relations Board*, 289 Ill. App. 3d 1019, 1023 (1997)). No judicial review may be taken from that order because the parties have failed to exhaust their administrative remedies by properly seeking review from the Board. *Pierce*, 334 Ill. App. 3d at 32 (citing *Board of Education*, 289 Ill. App. 3d at 1023). Consequently, this court is precluded from undertaking a review of any challenge to an order of the Director that became final as a result of a party’s failure to timely file its exceptions. 735 ILCS 5/3-102 (West 2008); *Pierce*, 334 Ill. App. 3d at 32 (citing *Board of Education*, 289 Ill. App. 3d at 1023).

¶ 26 Here, the Director served its Recommended Decision and Order on Hall’s counsel and the employer’s counsel by facsimile on January 29, 2010. The record confirms that the facsimile transmissions were successful. The order was accompanied by a cover sheet stating that the order was “hereby served by this facsimile copy” and that no other copies would be sent. Pursuant to the Board’s rules, Hall was required to file his exceptions to the dismissal “no later than 14 days after service of the notice of dismissal,” or by February 12, 2010. 80 Ill. Adm. Code 1120.30(c) (2004). Although the Director’s order stated that the filing period began upon receipt of the order, it also explicitly directed the parties’ attorneys to section 1120.30 of the Code, the plain language of which states that the time for filing exceptions begins upon service

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of the order.

¶ 27 Despite being represented by counsel, Hall personally filed his “motions to reconsider” with the Board on February 18, 2010, six days beyond the time for filing. Consequently, the Director’s dismissal order became final by operation of law on February 12, 2010, because Hall’s motions were untimely. Under the Administrative Review Law, that order “shall not be subject to judicial review.” 735 ILCS 5/3-102 (West 2008); *Pierce*, 334 Ill. App. 3d at 32 (citing *Board of Education*, 289 Ill. App. 3d at 1023). Thus, we have no subject matter jurisdiction to review the claim and we must dismiss this appeal. *Pierce*, 334 Ill. App. 3d at 38.

¶ 28 To the extent that Hall is challenging the method of service, we reject that claim. He cites section 1100.20 of the Code in support of his claim that the order should have been served on his attorney by personal service, certified mail, or hand delivery to his attorney’s office, rather than by fax. 80 Ill. Adm. Code 1100.20 (2004). However, section 1100.20 prescribes the proper method for parties to file their documents with the Board and to effectuate service upon each other. Although section 1100.20(c) requires the Board to serve “petitions, intervening claims and unfair labor practice charges on the appropriate parties” after the charging party files its initial complaint, it contains no requirement that the Director or the Board serve its orders on parties by any particular method. 80 Ill. Adm. Code 1100.20(c) (2004).

¶ 29 We also note that the gravamen of Hall’s argument with respect to jurisdiction is not that service by fax was improper, but that we should extend the time for filing exceptions because the fax was not *actually* received by his attorney until seven days after it was served and presumed to be received. He additionally states that because his attorney was unable to discuss

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the case with him until he returned to Illinois, his attorney could not timely file any exceptions. To that end, we note that Hall's attorney never sought an extension of time to file exceptions, as permitted by section 1100.30(d) of the Code. 80 Ill. Adm. Code 1100.30(d) (2004). Thus, we find this argument unavailing.

¶ 30 We also reject Hall's contention that, as in proceedings before the National Labor Relations Board, the Director should have served him personally and not through his attorney. The Board has promulgated its own rules and they specifically provide that in all proceedings before the Board, service shall be on counsel when the party is represented by counsel, and on the party when he is proceeding *pro se*. 80 Ill. Adm. Code 1100.20(d) (2004). The record reflects that Hall was at all times represented by counsel, confirmed by counsel's April 19, 2010, letter to the Board indicating that he "continues to be counsel of record for Dexter Hall," even though Hall filed his exceptions personally. Therefore, he was not entitled to personal service.

¶ 31 Finally, we reject Hall's contention that because the Board stated that it "affirmed" the Director's order after striking his exceptions, the Board's order should be considered a decision on the merits that we have jurisdiction to review. The Board has discretion to review the Director's order on its own motion. 80 Ill. Adm. Code 1120.30(c) (2004). In doing so, it may consider the Director's order on the merits; that is, whether the order was consistent with the Act and whether the Director acted within its discretion. 80 Ill. Adm. Code 1120.30(c) (2004). However, in this case, the Board's order made no substantive evaluation of the Director's order and cannot be considered a decision on the merits. The entirety of the Board's order was addressed to Hall's failure to timely file his exceptions and, as a result, his exceptions were

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stricken. The Board's statement that it "affirmed" the Director's decision does not transform a procedural default into a review of the merits of the claim.

¶ 32 In conclusion, Hall's exceptions were untimely, causing the Director's order to become final by operation of law. This court has no jurisdiction to review orders that have become final as a result of a party's failure to file exceptions and exhaust its administrative remedies. As such, we must dismiss this appeal. *Pierce*, 334 Ill. App. 3d at 38.

¶ 33 Appeal dismissed.