

the Board issued a written decision and order adopting the ALJ's recommendation and dismissing the Association's petition.

¶ 3 The Association appeals, asserting the Board erred by (1) denying the Association an evidentiary hearing and (2) finding local office administrators held a supervisory position that precluded membership in a collective-bargaining unit. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In June 2012, after receiving signatures from approximately 70 state employees sharing the title of "local office administrator," the Association filed a majority interest petition with the Board requesting bargaining unit representation. In July 2012, CMS filed an opposition to the petition, asserting those employees with the title "local office administrator" were supervisory, managerial, and/or confidential employees that had previously been excluded from collective bargaining by the Board in a 2009 unit clarification decision (case No. S-UC-09-182) and a 2010 unit clarification decision (case No. S-UC-10-014). CMS noted the duties and responsibilities of local office administrators had not changed since the Board's previous decision. In light of CMS's position, on August 16, 2012, an ALJ sent a letter to the Association stating, "please explain why the [Association] is not bound by the decisions in the earlier cases and/or address any changed circumstances in the petitioned-for employee's job duties. The [Association's] response should fully address why the instant petition must not be dismissed and instead should proceed to hearing." The ALJ ordered the Association to respond by August 30, 2012. The Association failed to respond.

¶ 6 In September 2012, the ALJ issued a proposed decision (1) excluding the local office administrators from collective bargaining and (2) soliciting comments or exceptions from the participants. The ALJ noted the two previous Board cases, Nos. S-UC-09-182 and S-UC-10-

014, ruled the state's local office administrators did not qualify for bargaining unit representation. The ALJ noted the Association failed to respond to the ALJ's August 2012 order requiring the Association to show why it was not bound by the prior decisions or to explain a change in circumstances that would affect the Board's decision. The ALJ then went on to explain the prior decisions reached by the Board in Nos. S-UC-09-182 and S-UC-10-014, finding those decisions controlled the outcome in the present case. Specifically, the ALJ noted as follows.

¶ 7 In 2009, the American Federation of State, County, and Municipal Employees (AFSCME) filed a unit clarification petition with the Board (No. S-UC-09-182), seeking to include in the RC-62 bargaining unit "human casework managers" employed by CMS who also held the title of "local office administrators." In that case, the ALJ found and the Board affirmed that local office administrators were supervisors and, thus, excluded from the RC-62 bargaining unit.

¶ 8 In 2010, AFSCME filed a unit clarification petition seeking to add to the RC-150 bargaining unit approximately 70 state employees in the Department with the title of "public service administrator" (No. S-UC-10-014). This encompassed those employees classified as "local office administrators." Following a hearing, the ALJ determined and the Board affirmed the employees with the working title of "local office administrator" were supervisors and therefore exempt from the RC-150 bargaining unit.

¶ 9 In reaching a decision in this case, the ALJ noted the 2009 and 2010 proceedings included full evidentiary hearings with opportunity for argument and, in the present case, respondent failed to submit (1) any evidence indicating a change in the local office administrators' duties or (2) an explanation as to why the Association was not bound by the Board's prior orders. Therefore, the ALJ recommended the dismissal of the Association's

petition, as local office administrators in the Department were confidential, managerial, and/or supervisory positions that were to be excluded from collective bargaining under section 3(c), 3(j), and 3(r) of the Illinois Public Labor Relations Act (5 ILCS 315/3(c), 3(j), and 3(r) (West 2012)).

¶ 10 In October 2012, the Association filed an exception to the ALJ's order, asserting (1) the individuals and parties to the instant petition differed and were distinct from those in the Board's previous decisions; (2) the duties and responsibilities of local office administrators had changed since 2009; (3) assistant local office administrators were part of a collective-bargaining unit despite sharing the exact duties as local office administrators; (4) the Association had been denied due process because the Board provided no evidentiary hearing; and (5) the Association and the prospective members of the bargaining unit had been deprived of due process and equal protection due to the Board's failure to provide an evidentiary hearing.

¶ 11 In January 2013, the Board issued a written decision and order adopting the ALJ's recommendation and dismissing the Association's petition.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 On appeal, the Association asserts the Board erred by (1) denying the Association an evidentiary hearing and (2) finding local office administrators held a supervisory position that precluded membership in a collective-bargaining unit. Before we discuss the Association's contentions, we first address the applicable standards of review.

¶ 15 A. Standard of Review

¶ 16 Initially, the parties dispute the appropriate standard of review. In reviewing agency decisions, multiple standards of review may apply. First, the Board's findings of fact will not be overturned unless those findings are against the manifest weight of the evidence.

Department of Central Management Services v. Illinois Labor Relations Board, State Panel, 2012 IL App (4th) 110013, ¶ 50, 979 N.E.2d 603. Conversely, the Board's application of the law is reviewed *de novo*. *Id.* ¶ 51, 979 N.E.2d 603. Where a case presents a combined issue of law and fact, we will overturn the Board's decision only if it is clearly erroneous. *Id.* ¶ 52, 979 N.E.2d 603. "A finding is clearly erroneous if, despite the existence of some evidence to support the finding, the evidence in its entirety leaves the reviewing court with the definite and firm conviction that the finding is a mistake." *Id.*

¶ 17 The Association and respondents agree the Board's decision to deny an evidentiary hearing presents a mixed question of law and fact subject to the clearly erroneous standard of review. See *Department of Central Management Services/Illinois Commerce Comm'n v. Illinois Labor Relations Board, State Panel*, 406 Ill. App. 3d 766, 769, 943 N.E.2d 1136, 1140 (2010). However, with respect to the Board's findings, the Association advocates for a *de novo* standard of review, asserting the Board had no facts to consider in reaching a decision that resulted from an incorrect application of the law. Respondents contend the clearly erroneous standard is more appropriate because the Board applied findings of fact from previous hearings to the law. We agree the Board, in reaching its decision in this case, applied findings of fact from previous decisions; thus, we will apply the clearly erroneous standard of review. However, we note our holding would not have been affected if we had applied the *de novo* standard of review.

¶ 18 With these standards in mind, we now turn to the Association's assertions on appeal.

¶ 19 B. Whether the Board Erred in Denying the Association a Hearing

¶ 20 The Association asserts the Board erred in denying the Association a hearing as to each disputed employee in violation of the employees' rights to due process and the Board's rules. Respondents, in turn, contend the employees had no right to an evidentiary hearing because the ALJ and Board had no reasonable belief that these employees were eligible to join a collective-bargaining unit.

¶ 21 Section 1210.100(b)(6) of Title 80 of the Illinois Administrative Code (Code) (80 Ill. Adm. Code 1210.100(b)(6) (2004)) provides, in relevant part, as follows:

"Upon receipt of the petition, the Board or its agent shall investigate the petition. If, for any reason during the investigation, the Board or its agent discovers that the petition may be inappropriate, the Board or its agent may issue an order to show cause requesting that the petitioner provide sufficient evidence to overcome the inappropriateness. Failure to provide sufficient evidence of the petition's appropriateness can result in the dismissal of the petition."

A petitioner is entitled to a hearing only where "the investigation discloses that there is reasonable cause to believe that there are unresolved issues relating to the question concerning representation[.]" 80 Ill. Adm. Code 1210.100(b)(7)(C) (2004). Thus, contrary to the Association's argument, the language of the Code does not require an evidentiary hearing in every situation to satisfy due process. Rather, the Code "vest[s] the ALJ with express authority to dismiss" those petitions which are "clearly inappropriate" or those which fail to establish "reasonable cause to believe a question of representation existed." (Internal quotation marks

omitted.) *Illinois Council of Police v. Illinois Labor Relations Board, Local Panel*, 387 Ill. App. 3d 641, 661, 899 N.E.2d 1199, 1215-16 (2008).

¶ 22 In this instance, the ALJ's review of the petition and the employer's position statement revealed the members petitioning for union membership were from the same department and held the same "local office administrator" titles as those to whom the Board denied membership in 2010 (No. S-UC-10-014) after finding they held supervisory positions. Prior to that, in 2009, the Board found "local office administrators" employed by CMS were ineligible to join a collective-bargaining unit based on their supervisory position (No. S-UC-09-182).

¶ 23 Based on this information, on August 16, 2012, the ALJ ordered the Association to (1) explain why the Association was not bound by the prior decision "and/or" (2) address a change in the petitioners' job duties, consistent with section 1210.100(b)(6) of Title 80 of the Code. The Association failed to comply with the order and, thus, presented no evidence to refute the ALJ's determination that the petition was inappropriate. After the ALJ filed the September 2012 recommended decision and order, the Association filed an exception, stating that local office administrators' duties had changed and that individual membership had changed; however, the Association provided no evidence in support of those statements.

¶ 24 Because the Association failed to provide evidence as requested by the ALJ, the ALJ had the authority to recommend dismissal of the petition. 80 Ill. Adm. Code 1200.100(b)(7)(a) (2004). Moreover, without evidence to the contrary, the ALJ and the Board had no reasonable cause to believe unresolved issues existed relating to the question concerning representation, as those issues had previously been resolved in Nos. S-UC-09-182 and S-UC-10-014, where the Board decided the local office administrators' supervisory position precluded

them from joining a collective-bargaining unit. The Association's argument that it has been provided no opportunity to be heard is without merit; the ALJ directed the Association to present evidence that gave rise to reasonable cause, which would have warranted a hearing, but the Association failed to comply with the ALJ's order. Thus, we conclude the Board's decision to proceed without a hearing was not clearly erroneous.

¶ 25 C. Whether the Board Erred in Dismissing the Association's Petition

¶ 26 The Association next challenges the Board's ultimate decision to dismiss the petition by adopting the ALJ's finding that no reasonable cause to believe a question of representation existed. The employer had the burden of proving, by a preponderance of the evidence, that the local office administrators held supervisory positions that precluded them from membership in this collective-bargaining unit. *Service Employees International Union, Local 73 v. Illinois Labor Relations Board, Local Panel*, 2013 IL App (1st) 120279, ¶ 48, 993 N.E.2d 76. CMS cited and attached prior Board decisions in which the Board determined local office administrators held supervisory positions that excluded them from membership in a collective-bargaining unit. Based on this information, the ALJ had cause to believe the petition may have been inappropriate, and thus appropriately shifted the burden to the Association to provide sufficient evidence to show the petition was indeed appropriate. 80 Ill. Adm. Code 1200.100(b)(6) (2004). The Association failed to present any evidence, yet asks this court to find the Board incorrectly based its decision on *res judicata*. We decline to do so.

¶ 27 Section 1200.100(b)(6) of Title 80 of the Code gives the ALJ authority to (1) order the Association to present evidence in situations in which the ALJ has cause to believe the petition inappropriate and (2) dismiss a petition where the Association fails to provide evidence. 80 Ill. Adm. Code 1200.100(b)(6) (2004). For the Association to ask this court to evaluate the

