

United States of America
Before The National Labor Relations Board
Region Twenty-Five

E.L.C. Electric, Inc. and its alter Ego and/or Midwest Electric & Retail Contractors, Inc. d/b/a MERC, Inc. , and Asset Management Partners, Inc, a single integrated business Enterprise and single employer, and Edward L. Calvert, Individually.

Case Nos.:

25-CA-28283-1 Amended
25-CA-28283-2 Amended
25-CA-28283-4 Amended
25-CA-28398-1 Amended
25-CA-28567
25-CA-28582
25-CA-28637 Amended

and

International Brotherhood of Electrical Workers, AFL-CIO,

And

International Brotherhood of Electrical Workers, Local Union No. 481, a/w International Brotherhood of Electrical Workers, AFL-CIO

Case Nos.:

25-CA-28397-Amended
25-CA-28406
25-CA-28532 Amended

Respondent's Reply Brief To The Acting General Counsel's Answering Brief To Respondent's Exceptions ToThe Administrative Law Judge's Supplemental Decision And Order

Comes now Respondent Calvert and respectfully submits to the Board this Reply Brief to the Acting General Counsel's Answering Brief To Respondent's Exceptions To The Administrative Law Judge's Supplemental Decision. Respondent Calvert hereby request Respondent's Exception to the Administrative Law Judge's Decision issued on December 20, 2011 be granted in its entirety. In support of this position the Respondent offers the following:

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Opening Statement

On Friday, April 20, 2012, Respondent Calvert received a copy of AGC Ramirez's Answering Brief to Respondent Calvert's Exceptions to the Administrative Law Judge's Supplemental Decision issued on December 20, 2011. Having reviewed this brief, AGC Ramirez continues her quest to turn allegations and suppositions into truthful facts and proof. Even though Calvert's Exceptions are tied directly to the recorded transcripts, evidence submitted, subpoenaed documents, normal business practices, and common sense, and even though AGC Ramirez does not deny the Exceptions are truthful in content and reflect an accurate accounting of facts, AGC Ramirez is requesting the Board strike the Exception and Appeal Brief in its entirety claiming its content contains facts not in evidence. According to the Board's established policies, the burden of proof with the preponderance of the evidence lies with the Government. With this in mind, Respondent Calvert was not required to submit into evidence, documentation of proof to refute false accusations, and/or call witnesses to support Calvert's testimony. AGC Ramirez wants the Board to consider Calvert as an unreliable witness and give no weight to any testimony from Calvert. ALJ Sandron in his Supplemental Decision writings also wants the Board to ignore any testimony from Calvert. Eliminating the testimony of the accused would also eliminate the need for a Hearing. The ALJ, the AGC, and the union representative could meet and determine which allegations were true and then publish the decision. Common sense and modest reasoning tells us no one is one hundred percent right and no one is one hundred percent wrong. Evidently AGC Ramirez and ALJ Sandron do not subscribe to this reasoning inasmuch as they claim Calvert has been wrong in every situation. Throughout AGC Ramirez's Answering Brief, AGC Ramirez continues to make false and unsubstantiated allegations as "Calvert master-minded the formation of MERC to escape the liabilities of ELC", "there was a scheme behind transactions to hide the fact that the money flows to Calvert", "strong indications in the record that Calvert is in business with his son Kevin Calvert as planned", and many other such examples that will be addressed later within this Answering Brief. For Calvert to be the "master mind" of a plan to escape from the liabilities of ELC and divert money to Calvert then why did Calvert loan ELC over a million dollars to pay ELC debt, take on major personal debt which he is making payments on today, and have no other personal income than

social security and three rentals? If AGC Ramirez has proof that Calvert has money hidden anywhere or that Calvert has a partnership with his son , Kevin Passman, or anyone else, then AGC Ramirez should submit this evidence to the Board and then the Board could decide fairly based on this information. If AGC Ramirez does not have factual proof to all of the absurd allegations and personal mischaracterizations she has made against Calvert, then AGC Ramirez and ALJ Sandron should apologize to Calvert and the Board should make their decision accordingly. In AGC Ramirez's Answering Reply Brief, she continues to make the same allegations over and over again but once again offers no proof. We will show AGC Ramirez in her unfettered zeal to win her case against Calvert and up hold ALJ Sandron's Decision continues to distort the truth no matter if she has proof or not to back up her claims.

Calvert's Creditability

ALJ Sandron's allegations regarding the unreliability of Calvert's testimony is ALJ Sandron's "opinion" and is not based on the facts and the record unless the Board rules nothing Calvert testifies to is truthful no matter if there is evidence in Calvert's favor or not. It should become clear through facts listed in other parts of this brief that AGC Ramirez and ALJ Sandron's allegations regarding the unreliability of Calvert's testimony is nothing more than the first part of ALJ Sandron's plan to ultimately destroy all of Calvert's testimony and arrive at the Decision he wanted. From the beginning ALJ Sandron did not have an open mind and was clearly bias as Respondent Calvert's previous Appeal brief and this Answering Brief will show.

Records would Show The Truth

AGC Ramirez continues to argue that Calvert was not creditable when he made comments that "the records" would show the truth. AGC Ramirez has admitted to receiving all of ELC's business records listed in the subpoena. AGC Ramirez never admitted or denied she reviewed all contents of each box of ELC records and/or the computer printout records she received (in fact the voluminous amount of records would make it almost impossible for a through review of every document in the time frame available to AGC Ramirez), yet she makes the statement that the business records submitted did not contain the information Calvert alluded to. Of course, ALJ Sandron sided with AGC Ramirez's opinion and wrote so in his decision. How can AGC

Ramirez accurately and truthfully make this statement if she did not review every document and computer printout? The fact is she could not and her statement and that of ALJ Sandron in his Decision are speculations and not proof of the allegations made.

Money Loaned To Passman

AGC Ramirez stated Calvert testified, “ he knew nothing of Passman’s business” and that ALJ Sandron gave great weight to this testimony in determining Calvert’s creditability. This is just another untrue allegation statement by Ramirez and her attempt to change the facts. Calvert never testified that he knew nothing of Passman’s business but consistently testified that the personal money Calvert loaned was to Passman only and was not to his business MERC. AGC Ramirez submitted into evidence documents that were meant to help Passman in knowing the things needed to do to start his new business. Calvert has admitted making this document to help Passman. The name of his new business “MERC” is clearly shown on this document. This document alone clearly refutes AGC Ramirez’s allegations and ALJ Sandron’s Decision that he gave heavy weight to this untrue accusation by AGC Ramirez.

Calvert Planned The Whole Thing

Shamefully AGC Ramirez continues to make unsubstantiated and unproved allegations hoping if said enough, the Board might believe her statements. AGC Ramirez claims Calvert “planned the whole thing” pointing to several “to do” list Calvert made, however, she refuses to acknowledge there were many items listed on Calvert’s “to do” list. AGC Ramirez cannot explain the things that were not done only commenting “this does not make sense” and “this does not make business sense”, as a way to escape from the reality that when friends help friend it is not based on business but on helping one another without thoughts of profits or any other material compensation.

Calvert’s Cryptic Notes

AGC Ramirez makes reference that there were documents filled with cryptic notations that Calvert could not explain. Clearly ALJ Sandron’s judicial understanding is Calvert is guilty unless he can fully explain notations and events that happen five, six, seven or more years ago. It’s my

understanding that the burden of proof with the preponderance of the evidence is placed on the government and that Calvert need not prove anything. The AGC and the ALJ make allegations to Calvert's wrong doing without providing any proof, just questions.

Adverse Inferences

ALJ Sandron has drawn an "adverse inference" claiming Calvert did not call Van Treese or any of Calvert's relatives to testify in Calvert's behalf stating his opinion that their testimony might hurt or be in disagreement with Calvert's testimony. Ironically, AGC Ramirez states in her Answering Brief that "Calvert obviously thought Van Treese would have helped his case". Evidently ALJ Sandron and AGC Ramirez wants the Board to up hold the adverse inference decision indifference to whether calling these witnesses would hurt or help Calvert's testimony. Again the burden of proof is on AGC Ramirez. Calvert did not call Van Treese or his relatives as witnesses because Calvert knew AGC Ramirez could not prove her allegations.

Calvert Disparaged

AGC Ramirez claimed Calvert had not been disparaged by ALJ Sandron. From the beginning of ALJ Sandron's Decision to the end, the judge vivified Calvert whenever possible, claiming that Calvert's testimony suffered from the same defects as in the 2003 ULP hearing i.e., "smacked of evasion, "was replete with internal inconsistencies", and on and on. Furthermore, ALJ used words throughout his decision that "Calvert testified—Incredible", "Calvert was vague in his answers, and other such things meant to undermine Calvert's testimony at every occasion.

Calvert Was Not Disrespectful

Once again AGC Ramirez is deceitful when she claims Calvert made disrespectful comments when he said blah, blah, blah. AGC Ramirez knows Calvert's remarks as listed in paragraph 8-12 on Tr 730 is where Calvert is asked to read some handwritten notes and that these notes were illegible. This is proven by Calvert reading the note and then said blah, blah, blah" something". Had AGC Ramirez thought the words where Calvert substituted blah, blah, blah, she would have pointed it out in testimony.

Judge Assisted AGC in Case / Shows Bias

Respondent Calvert's accusations that ALJ Sandron assisted AGC Ramirez in her case is factual and is supported by the transcripts. Nothing supports Respondent Calvert's accusations more than Tr 603, par 24-25 and Tr 605, par 1-8, where ALJ Sandron states to AGC Ramirez "Well, why don't you just ask him (Calvert) at the time of the sale which bank accounts he had open and aside from those that you say the records were closed. And then **"we"** limit it to ---. "We" is clearly Judge Sandron and AGC Ramirez. Amazingly, AGC Ramirez's question to Calvert is almost identical to that suggested by the judge asking "Yes, Mr. Calvert at the time of this purchase agreement of August 13, 2007, do you recall which bank accounts you would have had open to be able to deposit this money in? There are other such examples where ALJ Sandron gives hints to AGC Ramirez as what to say or which path to go down. Having examined the nine hundred plus pages of the transcripts I cannot find where ALJ Sandron assisted attorney Blankenship as what to say. What is clearly shown throughout the transcripts is that ALJ Sandron on one occasion denied Blankenship's request to have the court recorder read back a portion of the record and that almost every objection by Ramirez was up held and every objection by Blankenship was over ruled.

Calvert Took More Money Out Of ELC Than He Put In

Probably the most preposterous allegation of all by AGC Ramirez is that Calvert took more money out of ELC than what he had loaned to ELC. Respondent Calvert has testified that located within the Exhibits AGC Ramirez submitted into evidence is substantiated proof showing Calvert's loans to ELC and Asset and the repayment of those loans and repayments. Calvert listed the Exhibits where the information was located. To make these transactions abundantly clear, Calvert constructed a spread sheet showing where each check or money transfer came from, the date of the check or transfer, the check or transfer number, who the check or transfer went to, the reason for the money transfers, the deposits and deposit date for each, and the loan repayments listing the same information. AGC Ramirez wants the Board to accept her Exhibits A, B, C, and D, that consists of only numbers and dates. These numbers and dates could mean anything and consists of the specific information needed to accurately tie the

loans, deposits, and repayments, together. Also, AGC Ramirez's statement that because ELC failed to make out specific loan documents for each loan, Calvert's loans to ELC should not be credited as money loaned by Calvert. Evidently AGC Ramirez believes ELC should have the resources to operate like General Motors.

Calverts To Do List And Cryptic Notes

AGC Ramirez and ALJ Sandron have made many allegations against Calvert based on Calvert's self made to do list and other cryptic notes. Many of these notes are questions Calvert has regarding legal facts regarding certain situations. No note made by Calvert ever suggested doing anything illegal. The AGC and ALJ have referenced and given great importance to Calvert's questions as "what would happen to NLRB actions if business was sold", and "if ELC stop bidding work and layoff people, could anyone present a claim on money due to ELC, making allegations that first, these things happened, and second, Calvert asking these questions somehow make him guilty of something. Once again, the AGC and ALJ's statements are opinions only of which there has not been any proof submitted that the things Calvert made notes about were ever done and/or there was no proof of any wrong doing.

- 1) Business was never sold
- 2) Business was closed due to enormous debt and the necessity to borrow huge sums of money to keep from filing corporate bankruptcy
- 3) If you close a business you stop bidding work---that's a normal part of closing a contracting business
- 4) Ed to receive 10% of gross receipts of a new company---never happened
- 5) Give Kevin a chance to become a partner in the business----never happened---Passman is sole owner of his business
- 6) Have KC (I assume Kevin Calvert) set up a company---- did not happen
- 7) Use KC company to sub work to ----never happened
- 8) Share profits with KP, have a business partner---never happened
- 9) Under notes that states—My Vision—set up a corporation with KP as President---Passman set up a corporation for his business, Construction Services Inc—no clue what this means, KP to bid out small jobs in Indiana—per Passman's testimony he did not do "bid work", KP to set up supplier accounts and put telephone number in his company's name---a natural progression to establishing a new company, KP to him as needed---no idea of this statement, done by

someone (Darlene)?----no idea of what this means, 10) Move Kmart work ran through CCI---never happened 11) Get other work to run through KP---never happened 12) Help KP when needed, rent space-10 year lease, lease office, equip and tools, min -\$10,000 per month—this happened and based on the fact that other renters were paying \$7000 per month without the use of equipment and tools-the rent amount was fair 13) Let KP use my License—never happened except 1 time when he needed a license in Anderson Indiana and the person who license Passman used on a daily basis did not have an Anderson License therefore Passman used my license in this one time situation 14) KP to take out X dollars per week plus expenses, at the end of year review KP salary and give bonus, I need \$20,000 per month -----never happened 15) Any Kmart work I get ½ of gross profits ---never happened 16) Flowchart showing Calvert’s name, Passman’s name, MERC name, Kevin Calvert’s name, USF name, and CCI name with arrows pointing everywhere---never happened 17) MERC to pay CCI for marketing---never happened 18) Calvert to get lawyer to set up new company for Passman ---never happened 19) WalMart Portland job-Calvert would have contract cancelled and a new contract would be written to Passman ---never happened, and on and on and on. AGC Ramirez refers to Calvert’s statement about being judgment proof and trying to think of other legal ways to protect the Calvert’s personal property and insinuates there was something deceitful in Calvert’s thinking however, this type of thinking is done every day by business owners which is one of the main reasons business are incorporated—to limit liability to the corporation and protect assets of the owners. All is legal.

Closing Statement

I could go on disputing AGC Ramirez’s allegations and ALJ Sandron’s Decision based on false and unproven allegations, however, ten pages are not enough to refute everything in AGC Ramirez seventy page answering brief. I can only hope the Board will set aside all politics and biases and fairly discern between facts and fiction, allegations and proof, substantiated and unsubstantiated and judge accordingly.

ELC admittedly did not complete all loan documents as they should have however ELC did not have an attorney on staff and the loans and repayments were being handled at a rapid pace. Also, accountants coming in once or twice a month conflicted with documents being completed promptly. Calvert's intentions and his documentation of records clearly shows Calvert wanted to create a paper trail that could be followed and accurately account for monies borrowed and repaid.

Calvert did not set up MERC nor did Calvert ever receive any compensation from Passman or MERC. Calvert is truthful and no proof exists refuting this statement. Calvert's statement that he loaned money to Passman only is truthful and no evidence exists that contradicts this statement. There are no checks written to MERC. There is no evidence that Calvert ever knew where the money was going or what the money was used for when he loaned the money to Passman.

Clearly MERC was not a **Golden State Successor** to ELC. A Golden State Successor relationship exists between ELC and MERC. As I review Golden State Bottling Co., Inc. V. NLRB, 414 US 168, I do not think this case applies. In this case, a company (All American Beverages) purchases another company (Golden State Bottling Co) in its entirety, even though the purchaser knew about an NLRB judgment against Golden State Bottling Co. Reading further, it is stated that All American Beverages continued to operate without **interruption or substantial change in operations**, employee complement, or supervisory personnel, and for these reasons it was concluded All American Bottling Co. was a successor of Golden State Bottling Co.

First, MERC **did not purchase** ELC, either in part or in its entirety. Second, **there was** "interruption and substantial change in operations" between the two companies. MERC only had three employees while ELC employed forty to fifty in the normal course of business. ELC had been bidding on several projects over a million dollars in value while MERC was acting as a "service company" bidding and obtaining small projects. ELC owned major tools to use in the course of completing major electrical projects while MERC had few tools, most of which could be classified as hand tools with exception of the ladders MERC owned.

The Board should not pierce the corporate veil of ELC. Many allegations have been made yet few have been proven. The Government has failed to prove with the preponderance of evidence, Calvert personally and/or ELC, a State of Indiana 'C' Corporation, committed any action, or failed to act in anyway, as to conclude that piercing the Corporate Veil is just and proper.

Conclusion

Clearly ALJ Sandron's suggestions to AGC Ramirez on how to ask Respondent Calvert a question (as shown under "Judge Assisted AGC in Case / Shows Bias) and his comment stating "And then **we**" limit it to --- " must raise red flags and cause the Board to question the judge's bias in this case. That being said, what other examples of the judge's bias are located within the transcripts and did the judge's bias begin at the beginning of the case as Respondent Calvert claims? I respectfully request the Board give considerable weight to the judge's inappropriate actions and biases inasmuch as the root base of NLRB Hearings are founded on receiving fair Decisions from unbiased judges.

I respectfully submit this information to the Board this 4th day of May, 2012

/s/ Edward L Calvert

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Respondent Edward L. Calvert's Exception and Appeal Brief has been served by placing in the NLRB Executive Secretary E-room and to the parties by Electronic Mail on May 4, 2012 upon the following persons, addressed to them at the following addresses:

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