

**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 Regarding Facts Not In Evidence
To The Acting General Counsel's Answering Brief Regarding Exceptions
To The Administrative Law Judge
Supplemental Decision And Order**

Table Of Contents

Request to Strike “Introduction to Exceptions” Brief ***** 3
Request to Strike “Summary to Exceptions” Brief ***** 3
Request to Strike “Closing Statement to Exceptions” Brief ***** 3
Request to Strike “Respondent’s Statement Regarding Specific Dates ***** 4
Request to Strike “Respondent’s Statement Regarding Documents ***** 5
Request to Strike “Calvert’s Accounting of Personal Loans to ELC and Asset **** 5
Request to Strike “3960 Southeastern Property Ownership ***** 6
Request to Strike “Retail Marketing” ***** 7
Request to Strike “Improper Use of ELC Funds” ***** 7
Request to Strike “Business Records” ***** 8
Request to Strike “Office for Calvert, Kevin Calvert, and Katrina Stringer ***** 8
Request to Strike “Calvert’s Personal Knowledge of MERC’s Business ***** 9
Request to Strike “Calvert’s Reason fo Closing ELC” ***** 9
Request to Strike “MERC as Golden State Successor” ***** 10
Request to Strike “ELC and Asset as Single Employers” ***** 10
Request to Strike “Piercing The Corporate Veil” ***** 10
Signature Page ***** 11
Distribution Page ***** 12

Introduction To Exception Brief

AGC Ramirez has requested the Board Completely Strike pages three, four, and five with the exception of paragraph one on page three, in the Introduction section of Respondent's Exception to The Administrative Law Supplemental Decision, alleging the statements contained therein are facts not in evidence. Although written in a story form, some of the information given is in the record of the hearing transcripts and in the Case material records for 25-CA-28283-1 et al, which are part of this complaint. Admittedly most of the information contained in this section is an explanation of Calvert's experiences and show how we got to this point. I respectfully request the Board allow the Respondent's Introduction materials to be entered into the record and give them the appropriate weight as seems reasonable.

Summary To Exception Brief

AGC Ramirez has requested the Board Completely Strike pages 28, 29, 30, and 32 claiming ALL statements in these pages "generally" reference facts not in evidence. The words "all" and "generally" in AGC Ramirez statement are conflicting. "All" indicates every statement contains facts not in evidence while "generally" indicates there are some statements where facts are in the record. Many of the statements within these pages contain answers to questions asked by the AGC at the hearing. As an example, incorporations dates are given for ELC, purpose for establishing Asset Management and Retail Marketing answered, and detail explanations regarding timing and the closing of the Wal-Mart Greenwood project. I respectfully request the Board allow all pages in Respondent's exception to be entered into the record inasmuch that AGC Ramirez failed to identify which statements she considers to be made from facts not in evidence thus admitting there are statements made based on facts in evidence.

Closing Statement to Exception Brief

AGC Ramirez has requested the Board strike references in Respondent's Closing Statement to Exception Brief comparing ELC projects to MERC projects stating these facts are not in evidence. Shamefully, AGC Ramirez wants the Board to find ALJ Sandron correctly found MERC

to be a Golden State Successor as listed on page 59 of the AGC's Answering Brief item F, 1 and 2, and then preclude Respondent from describing the differences between MERC and ELC that clearly shows ALJ Sandron's Decision to be Incorrect. AGC Ramirez claims this information is facts not in evidence however, AGC Ramirez is incorrect and facts relating to the differences between MERC and ELC regarding volume of business, number of employees, numbers of supervisors, and other such information is in the transcripts. (Tr 57, line 19- MERC does service work) (Tr 62, line 17, 18- MERC's payroll company) (Tr 63, line 16, 19-Joshua Graham a service technician), Tr 63, line 24, Tr 64, line 4-Jason Lucas a helper), (Tr 65, line 22, 25-Clint Beck a service technician), (Tr 66, line 14, 17-Christine Rossittis a electrician) (Tr 67, line 21, 24, Justin Glover a helper), (Tr 68, line 10, 11, Zachary Culp a helper), (Tr 68, line 21, 23-Brian Ferguson a helper), (Tr 72, line 3, 5-Justin Moss a helper), (Tr 72, line 10, 13-Michael McKinney a electrician), (Tr 884, line 24, 24, Tr 885, line 1-10, 19-22, Tr 891, line 3-7,), Tr 860, line 25, Tr 861, line 1-9). All transcript testimonies indicate the majority of MERC's employees were either Service technicians or helpers. Only 2 of MERC's employees were listed as "electricians" clearly indicating the vast majority of MERC's work was "service work" and was not bid work, a direct opposite to ELC's work which was large, commercial bid work projects. I respectfully request the Board allow this exception into the record as it is based on facts in evidence.

Respondent's Statement Regarding Specific Dates

AGC Ramirez has requested the Board strike statements given by Respondent Calvert regarding specific dates when Respondent decided to close ELC and when Respondent decided to conduct a auction, claiming the statements Respondent made are facts not in evidence. AGC Ramirez is incorrect and there is testimony in the hearing transcripts regarding this matter. ALJ Sandron makes unsubstantiated allegations (not proven) in his Supplemental Decision (ALJD page 3, par 10-30) that infers Respondent Calvert could not remember specific dates or that he gave vague answers and because this, it was ALJ Sandron's opinion Respondent Calvert's testimony should be view as not creditable. Respondent Calvert's statement in his exception document points out that the lack of documentation to specific answers as "when did you decide to do something or ten years ago did you do this or that" does not confirm or offer proof

that ALJ Sandron's "opinion" is correct. ALJ Sandron makes unsubstantiated allegations and considered them as factual whenever Respondent Calvert fails to give "definite and specific" answers. I respectfully request the Board allow this exception into the record for review and weigh the contents accordingly.

Respondent's Statement Regarding Documents

AGC Ramirez has requested the Board strike statements given by Respondent Calvert in Exception #3 referencing how business records were kept in the normal course of doing business (ALJD page 3-par 35-40, page 4-par 1) claiming Calvert's statements consisted of facts not in evidence. Calvert's statements were in regard to ALJ Sandron's (unsubstantiated and not proven) "allegations" that Calvert's business and personal records were kept in a "haphazard" condition. ALJ Sandron gave his "opinion" and implied the conditions the records were kept "further under minded Calvert's overall creditability". Calvert's statement in Exception #3 regarding record keeping was to clarify and refute the judge's unsubstantiated allegations. ALJ Sandron had no firsthand knowledge of the manner and/or conditions of business and personal records kept in the normal course of business nor did AGC Ramirez. There was no proof offered to substantiate how business and personal records were kept while ELC was operating. Only ALJ Sandron's personal opinion was listed in his decision and that opinion was based on records kept, and the transcript clearly shows, after ELC had been closed for several years. ALJ Sandron admits (ALJD page 3, par 35) in this statement that there were "personal records" within the boxes delivered to AGC Ramirez, a direct contradiction with Ramirez's statements, inasmuch as the judge references Calvert's personal records as being kept in a haphazard condition which could only mean these records were within the boxes of business records. I respectfully request the Board allow this exception into the record for review and weigh the value of the information accordingly.

Calvert's Accounting of Personal Loans to ELC and Asset Management

AGC Ramirez has requested the Board strike statements (claiming facts not in evidence) given by Respondent Calvert in Exception #5 regarding Calvert's calculations of personal money loaned to ELC and Asset Management. Respondent Calvert's statement directly contradicts ALJ

Sandron's statements in his Decision (ALJD page 3, par 20-30, ALJD page 4 par 5) that states the amount owed to Calvert is substantially less than the amount claimed by Calvert. AGC Ramirez's claim is incorrect and incredibility AGC Ramirez ignores evidence she submitted in Exhibits 39,38,37,36,35,34,33,32,31,30,29,28,27,26,25,24,9,41,8,213,43,42,143,48,49,208,33page 2, and 142 page 2, that confirm and proves Calvert's claim. Respondent Calvert created a spread sheet and submitted it with his original brief that listed each and every loan, who to, date, check number, and description on checks showing reason for checks. Evidently AGC Ramirez does not want the Board to use this tool that clearly shows facts are in evidence to back up my exception. I respectfully request the Board allow this exception into the record inasmuch as the Respondent's calculations came directly from exhibits previously submitted.

3960 Southeastern Property Ownership

AGC Ramirez has requested the Board strike statements given by Respondent Calvert in Exception document under "Respondent's Exception and Appeal Brief" regarding ALJ Sandron's statement of fact that the property at 3960 Southeastern Ave. was once titled in ELC's name, based on facts not in evidence. AGC Ramirez is incorrect. Calvert testified to a direct question from ALJ Sandron who asked "who actually owns the building" and Calvert answered "Me and my wife". ALJ Sandron used allegations by the AGC for which there was no proof provided. AGC references in her request for the Board to strike Respondent Calvert assertions that the property was always titled in Edward and Linda Calvert's name, that CPA Joseph Holt testified that when ELC stopped operating the building was "in Asset's books" and when Asset's books were closed the building went to Calvert. AGC Ramirez is clearly aware that first, the building being "in" Asset's books does not mean nor offer concrete proof that the title of the building was in Asset's name. Second, AGC Ramirez is fully aware that CPA Joseph Holt's testimony consistently included such language as "I can't remember, I'm not sure, I believe so, it may be, and I don't know" and whether the title of the building was legally in Asset name he answered "I don't know" (Tr 511, line 2-22,) On cross CPA Joseph Holt testified that in reality he did not have specific knowledge that the building was titled to Asset Management and in fact could

have been titled in another way. (Tr 518, line 2-15, Tr 519, line 1-25) These statements are in the record. I respectfully request the Board allow this exception into the record.

Retail Marketing

AGC Ramirez has requested the Board strike statements given by Respondent Calvert in Exception #12 as facts not in evidence. Respondent Calvert's stated that ALJ Sandron's statement of fact was inaccurate when describing the reason Retail Marketing was set up. Respondent Calvert correctly points out in Exception #12 that ALJ Sandron's statement saying "in other words, to act as a contractor" was not in testimony or in exhibits and was ALJ Sandron's personal opinion. (ALJD page 6, par 25, Tr 591, line 15-22, Tr 592, line 1-14) I respectfully request the Board allow this exception into the record.

Improper Use of ELC Funds

AGC Ramirez has requested the Board strike statements given by Respondent Calvert in Exception #16 regarding ALJ Sandron's mischaracterization that Respondent Calvert improperly used ELC's funds claiming Calvert's description of the accounting system consisted of facts not in evidence. This exception was offered by Respondent Calvert to explain the accounting system. ALJ Sandron's implication that there was no separation between personal and business expenses defies logic and normal accounting and business practices of which Carol Schmidt was over. It is non-realistic to assume and/or allege that a highly qualified CPA like Carol Schmidt who testified she was a controller for ELC would ignore the input of business and personal expenses for ELC. ALJ Sandron's statements are also unsubstantiated by proof and are mere allegations inasmuch as proof would have come through the testimony of Van Treese, the person referred to by Schmidt as the book keeper having charge of those receipts. It is the AGC's responsibility and burden to prove with the preponderance of evidence that personal and business receipts were not separated and that "receivable accounts to ELC from Calvert" were not set. In Fact, Joseph Holt testified that indeed there was an account set up in ELC book keeping records to track receivables from Calvert to ELC. (Tr 513, line 3-13) I respectfully request the Board allow this exception into the record.

Business Records

AGC Ramirez has requested the Board strike statements given by Respondent Calvert in Exception #16, paragraph 2, regarding subpoenaed business documents delivered to AGC Ramirez claiming facts not in evidence. AGC Ramirez is incorrect. The subpoenaed records were to include all accounting records for ELC. Accounting records would naturally include daily postings of labor, materials, misc. receipts, show accounting codes, show where items were posted, and provide other such information to form a complete accounting record. AGC's Ramirez's acknowledgement that ELC had met their obligation according to the subpoena to provide these accounting records, states without saying she had all accounting information needed to provide proof to support her allegations and ALJ Sandron's Decision. I respectfully request the Board allow this exception into the record.

Offices for Calvert, Kevin Calvert, and Katrina Stringer

AGC Ramirez has requested the Board strike statements given by Respondent Calvert in Exception #19 regarding the offices of Calvert, Kevin Calvert (son), and Katrina Stringer (daughter) claiming facts not in evidence. AGC Ramirez is confused and incorrect. AGC Ramirez states that Passman testified ELC and MERC's offices were on the right side of the building and that Calvert's office was on the left side as was Kevin Calvert's office which was on the second floor. (Tr 109, line 19-23, Tr 110, line 1-9,) All of this is true. AGC Ramirez further states in her reply brief that Passman testified Katrina Stringer worked at ELC offices and that CPA Holt met with Katrina Stringer at ELC Offices. All this is true. AGC Ramirez states ALJ Sandron's findings and Decision was correct. ALJ Sandron's findings and Decision is not correct. ALJ Sandron Decision stated Katrina Stringer maintained an office on the "left" side of the building which is contrary to Passman's statement that Katrina Stringer worked at "ELC's offices" and ELC's offices were on the "right" side of the building. Furthermore, Exception #19 correctly points out ALJ Sandron's statement that USF occupied the building in 2010 was made without any proof and is indeed facts not in evidence. I respectfully request the Board allow this exception into the record based on the record and the errors stated herein.

Calvert's Personal Knowledge of MERC's Business

AGC Ramirez has requested the Board strike statements given by Respondent Calvert in Exception #17 as facts not in evidence. ALJ Sandron stated the "most damaging to Calvert's credibility was his professed ignorance of Passman's business operations and the reasons Passman requested loans". (ALJD page4, par 10-15) I am amazed and confused by ALJ Sandron statement in his Decision and by AGC Ramirez statement that the judge ruled correctly. Respondent Calvert has NEVER denied telling Passman he would help him out to start his own business and would personally loan money to him to get started. Passman's testimony is the same as Calvert's. (Tr 227, line 14-23, Tr 558, line 20-25, Tr 559, line 7-8, Tr 560, line 6-7, Tr 560, line 9-14, Tr 561, line 24-25, Tr 562, line 2-8, Tr 597, line 6-11, Tr 598, line 1-25, Tr 599, line 1-25, Tr 600, line 19-25, Tr 604, line 1-21, **Tr 672, line 20-23** , Tr 675, line 7-25, Tr 859, line 20-25, Tr 860, line 1-19, Tr 872, line 5-15, Tr 875, line 16-17, Tr 885, line 11-18, Tr 886, line 6-19,) Indeed ALJ Sandron's statement in his Decision was based on facts not in evidence and were void of any proof. I respectfully request the Board allow this exception into the record.

Calvert Reason For Closing ELC

AGC Ramirez has requested the Board strike statements given by Respondent Calvert in Exception #24 regarding Calvert's reasons for closing ELC , claiming Respondent Calvert's statement contains facts not in evidence. Much testimony was given and is listed in the transcripts regarding Calvert's reasons for closing ELC. (Tr 861, line 19-25, Tr 862, line 1-12, Tr 863, line 7-17, Tr 869, line 16-25, Tr 880, line 8-13) Reasonable people would reasonably agree that if the sole owner of a company loaned the company in excess of a million dollars from personal funds and if that owner liquidated all personal accounts to come up with the money for these loans, and if the company aggressively tried to obtain new work and those attempts were unsuccessful, recouping previously loaned monies would be near impossible. These facts are in the record. I respectfully request the Board allow this exception into the record.

MERC as Golden State Successor

AGC Ramirez has requested the Board strike statements given by Respondent Calvert in Exception #27 regarding the intent and meaning of the letter received from the NLRB Regional Office, as facts not in evidence. AGC Ramirez states that Respondent Calvert misconstrues the significance of Region's 25 notice to Respondent MERC and that whatever Passman and/or Calvert believed the letter meant was not material. The letter from Region 25 was not specific and did not clearly advise Passman that if MERC continued in business MERC could be held responsible for ELC debt. AGC Ramirez recognizes this fact by her statement that, to paraphrase, it didn't make any difference what Passman or Calvert thought the letter meant. Since the meaning of Region's 25 letter to MERC is ambiguous, I respectfully request the Board allow this exception into the record.

ELC and Asset Management as Single Employers

AGC Ramirez has requested the Board strike statements given by Respondent Calvert in Exception #23 regarding ELC and Asset Management as Single Employers. claiming Respondent Calvert's statement contains facts not in evidence. Respondent Calvert testified several times that Asset Management was set up to take care of Edward and Linda Calvert's personal assets. Respondent Calvert conducted Asset's business within business corporate guidelines, hiring corporate attorneys, accountants, filing the necessary corporate documents, and paying necessary taxes that may have been required. The date when Asset started functioning as manager of Calvert assets is immaterial. Respondent Calvert's intent to manage Calvert's assets by paying bills for properties, paying for renovations, paying mortgages, and paying other such miscellaneous bills and expenses, is clearly shown in the documents provided. I respectfully request the Board allow this exception into the record.

Piercing The Corporate Veil

AGC Ramirez has requested the Board strike statements given by Respondent Calvert in Exception #24 regarding piercing the corporate veil, claiming Respondent Calvert's statement contains facts not in evidence. ELC was a standalone Indiana Corporation established and

verified in the record in 1983. AGC Ramirez did not provide any proof, evidence, or even make allegations that ELC operated in any manner other than that of a Corporation abiding by Indiana and Federal statutes. Even if the Board would rule that ELC and Asset operated as a single employer due to arms length transactions, there has been no evidence presented that ELC change its operation and acted in any other manner than it had operated before the existence of Asset. ELC was a corporation with definite and specific work duties and goals, The allegations by AGC Ramirez and ALJ Sandron that ELC had no practical existence outside of the person Calvert, is not supported by the facts and testimony in this case. I respectfully request the Board allow this exception into the record.

I respectfully request the Board review the statements herein and over rule AGC Ramirez's request to strike Respondent's Exceptions to ALJ Sandron's Supplemental Decision and Order, claiming facts not in evidence.

Respectfully Submitted;

/s/ Edward L Calvert

May 4, 2012

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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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