

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**LABORERS INTERNATIONAL UNION OF NORTH
AMERICA, LOCAL 1177**

and

STEFFANIE FIELDS

Case No. 15-CB-005974

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S MOTION
TO MODIFY BOARD'S ORDER**

Pursuant to Section 102.49 of the Rules and Regulations (the Rules) of the National Labor Relations Board (the Board), Counsel for the Acting General Counsel hereby moves to modify the Board's December 10, 2012 Order in the above-captioned matter as follows:

1. On December 10, 2012, the Board ordered that Respondent take the action set forth in the recommended Order of Administrative Law Judge Keltner Locke. In his decision dated October 24, 2012, Judge Locke recommended, among other things, that Respondent:

Make whole, with interest compounded in accordance with *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), enf. denied on other grounds sub.nom., all individuals who had registered for referral and who should have been referred pursuant to the Respondent's hiring hall rules, but were not, at any time on or after October 2, 2009.

2. On December 18, 2012, the Board, in *Latino Express, Inc.*, 359 NLRB No. 44, revisited and revised its remedial strategies and stated that it shall now "routinely require the filing [by respondents] of a report with the Social Security Administration allocating back pay awards to the appropriate calendar quarters" and "routinely require respondents to compensate employees for the adverse tax consequences of receiving one or more lump-sum back pay awards covering periods longer than 1 year."

3. In its holding, the Board specifically stated that it would apply its new rule retroactively.

4. In *Lee's Industries, Inc.*, 359 NLRB No. 69 (2013), the Board noted that "nothing in

Latino Express, Inc. prevents the Acting General Counsel from requesting that the Board modify a previously issued order in a pending case to include an applicable remedy, at least where the Board still has jurisdiction to do so.”

5. Under Section 10(d) of the National Labor Relations Act, “[u]ntil the record in a case [is] . . . filed in a court . . . , the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify . . . any . . . order made or issued by it.”

6. The proposed modification set forth below is appropriate under the circumstances, provides the full remedy established in *Latino Express, Inc.* and does not work a manifest injustice.

WHEREFORE, the Acting General Counsel respectfully moves the Board to modify its December 10, 2012 Order by adding the following paragraph to more fully comport with the Board's directives in *Latino Express, Inc.*:

Respondent shall be required to file a special report with the Social Security Administration allocating the back pay for all individuals who had registered for referral, and who should have been referred pursuant to Respondent’s hiring hall rules, but were not, at any time on or after October 2, 2009, to the appropriate calendar quarters and to compensate those individuals for any adverse income tax consequences of receiving their back pay in one lump sum.

DATED at Chicago, Illinois, this 9th day of April, 2013.

Respectfully Submitted,

/s/ Catherine L. Homolka

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Counsel for the Acting General Counsel's Motion to Modify Board's Order was filed via e-filing and served via e-mail on April 9, 2013, on the parties whose names and addresses appear below.

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