UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

E.L.C. ELECTRIC, INC. and its alter ego and/ or successor
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

and

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO	Cases	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, LOCAL UNION NO. 481, a/w INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO	Cases	25-CA-28397-1 Amended 25-CA-28406 25-CA-28532 Amended

MOTION TO MODIFY BOARD ORDER

1. On November 8, 2012, the Board, as part of its order to remedy Respondents' unfair labor practices, ordered that certain discriminatees be made whole for any loss of earnings or other benefits suffered as a result of the discrimination against them.

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 respondents to compensate employees for the adverse tax consequences of receiving one or more lump-sum backpay 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 (February 28, 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* and does not work a manifest injustice.

Wherefore, the Acting General Counsel respectfully moves the Board to modify its November 8, 2012 order by adding the following paragraph to more fully comport with the Board's directives in *Latino Express*:

Respondent shall be required to compensate the individuals named below for any adverse income tax consequences of receiving their backpay in one lump sum.

Benjamin Adair
Matthew Aldrich
Todd Bailey
Ryan Chamber
Gregory Frazier
Timothy Grow
Mikalis Grunde
Ronald Hamilton
Mark Herche
Benjamin Mullins
Rory Navratil
Bruce Sanderson
Jonathan Trinosky
Jonathan White
Troy Whitaker
David Wilson

DATED at Indianapolis, Indiana, this 16th day of May 2013.

Respectfully submitted,

/s/ Rebekah Ramirez

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Motion to Modify Board Order has been filed electronically through the Division of Judges' E-Filing Program this 16th day of May 2013. On the same date a copy of said filing was served by electronic mail upon the following persons:

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