



In the Matter of:

**OWEN MCCAFFERTY, DENNIS MALONEY,
SEAN KILBANE, TERRY McLAUGHLIN,
SEAN McCAFFERTY, and ROBERT PROHASKA,**

ARB CASE NO. 96-144

ALJ CASE NO. 96-ERA-6

COMPLAINANTS,

DATE: December 3, 1996

v.

CENTERIOR ENERGY,

RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

**SUPPLEMENTAL PRELIMINARY ORDER AND
ORDER ESTABLISHING BRIEFING SCHEDULE**

On June 11, 1996, the Administrative Law Judge (ALJ) issued a Recommended Decision and Order (R. D. and O.) in this case arising under the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. § 5851 (1988 and Supp. V 1993), as amended by the Comprehensive National Energy Policy Act of 1992 (CNEPA), Pub. L. No. 102-486, 106 Stat. 2776, 3123. The ALJ found in favor of all Complainants, and recommended relief, including reinstatement in accord with his instructions, back pay, removal of the denial of access flag from personnel records of Complainant, and interest on the back pay awards. R. D. and O. at 21. The ALJ also ordered Respondent Centerior Energy (Centerior) to pay Complainants' costs and expenses, including attorney's fees reasonably incurred and permitted further briefing on the amount of fees and costs to be paid by Centerior. *Id.* In the meantime, since the amended ERA requires that a preliminary order awarding damages, except compensatory damages, be issued when a complainant prevails before an ALJ, on July 15, 1996, the Administrative Review Board issued a Preliminary Order (P. O.) that covered all aspects of relief recommended by the ALJ other than attorney's fees and costs. The Board noted that following the issuance of a recommended decision and order on attorneys fees and costs it would supplement the P. O. On October 22, 1996, the ALJ issued a Recommended Decision and Order Granting Attorney Fees. Therefore, pursuant to 42 U.S.C. § 5851(a)(2), Centerior is preliminarily ordered to pay to Complainant's counsel the sum of \$37,930.43 in attorney's fees and expenses.

On November 7, 1996, Centerior filed a motion for Leave to File Supplemental Brief on Award of Attorney Fees, and a six page Brief. This brief relates to the issue of attorney's fees and

costs to be awarded, if applicable, pursuant to a final order of the Board. Complainants have moved to file a response to Centerior's brief. Both motions are granted, and Complainants are granted fifteen days from receipt of this order within which to file a response brief, not to exceed 10 double spaced typed pages. All pleadings are expected to conform to the page limitations and should be prepared in Courier 12 point, 10 character-per-inch type or larger, with minimum one inch left and right margins and minimum 1 1/4 inch top and bottom margins, printed on 8 1/2 by 11 inch paper.

An original and four copies of all pleadings and briefs shall be filed with the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-4309, Washington, D.C. 20210.

SO ORDERED.

DAVID A. O'BRIEN

Chair

KARL J. SANDSTROM

Member

JOYCE D. MILLER

Alternate Member