Authority Chairman and Members

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Department of Energy, Western Area Power Administration (Activity) and International Brotherhood of Electrical Workers, Local Union No. 640, IBEW; Local Union No. 1245, IBEW; Local Union No. 2159, IBEW; Local Union No. 1759, IBEW; Local Union No. 1959, IBEW; Local Union No. 611, IBEW (Interveners)

[v03 p77]
03:0077(12)CA
The decision of the Authority follows:

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3 FLRA No. 12

DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
Activity

and

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 640, IBEW; LOCAL UNION NO. 1245, IBEW; LOCAL UNION NO. 2159, IBEW; LOCAL UNION NO. 1759, IBEW; LOCAL UNION NO. 1959, IBEW; LOCAL UNION NO. 611, IBEW
Intervenors

Assistant Secretary
Case No. 61-4217(RA)

ORDER

WHEREVER THE DECISION AND DIRECTION OF ELECTION ISSUED IN THE ABOVE-ENTITLED MATTER REFERS TO "IBEW LOCAL 1749", IT IS HEREBY CHANGED TO READ "IBEW LOCAL 1759." THE FOLLOWING FOOTNOTE IS ADDED TO PAGE 2 OF THE DECISION AND DIRECTION OF ELECTION AFTER THE WORDS "LOCAL 611": " /1/ ACCORDINGLY, IBEW LOCAL 611 WILL NOT APPEAR ON THE BALLOT AS DESCRIBED IN THE DIRECTION OF ELECTION."

THE LAST SENTENCE ON PAGE 6 OF THE DECISION AND DIRECTION OF ELECTION STATES: "THOSE ELIGIBLE SHALL VOTE WHETHER OR NOT THEY DESIRE TO BE REPRESENTED FOR THE PURPOSE OF EXCLUSIVE RECOGNITION BY INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS OR BY NO UNION." THIS SENTENCE IS HEREBY CHANGED SO AS TO READ: "THOSE ELIGIBLE SHALL VOTE WHETHER OR NOT THEY DESIRE TO BE REPRESENTED FOR THE PURPOSE OF EXCLUSIVE RECOGNITION BY INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNIONS 640, 1245, 2159, 1759 AND 1959, OR BY NO UNION."

ISSUED, WASHINGTON, D.C., MAY 30, 1980

RONALD W. HAUGHTON, CHAIRMAN

HENRY B. FRAZIER III, MEMBER

LEON B. APPLEWHAITE, MEMBER

FEDERAL LABOR RELATIONS AUTHORITY

CORRECTED COPY ATTACHED

DECISION AND DIRECTION OF ELECTION

UPON A PETITION DULY FILED UNDER SEC. 6 OF EXECUTIVE ORDER 11491, AS AMENDED, A HEARING WAS HELD BEFORE HEARING OFFICER, PATRICIA L. WIGGLESWORTH. THE HEARING OFFICER'S RULINGS MADE AT THE HEARING ARE FREE FROM PREJUDICIAL ERROR AND ARE HEREBY AFFIRMED.

THE FUNCTIONS OF THE ASSISTANT SECRETARY OF LABOR FOR LABOR-MANAGEMENT RELATIONS, UNDER EXECUTIVE ORDER 11491, AS AMENDED, WERE TRANSFERRED TO THE AUTHORITY UNDER SEC. 304 OF REORGANIZATION PLAN NO. 2 OF 1978 (43 F.R. 36040), WHICH TRANSFER OF FUNCTIONS IS IMPLEMENTED BY SEC. 2400.2 OF THE AUTHORITY'S RULES AND REGULATIONS (45

F.R. 3482, JANUARY 17, 1980). THE AUTHORITY CONTINUES TO BE RESPONSIBLE FOR THE PERFORMANCE OF THESE FUNCTIONS AS PROVIDED IN SEC. 7135(B) OF THE FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE (92 STAT. 1215).

UPON THE ENTIRE RECORD IN THIS CASE, INCLUDING THE BRIEFS FILED BY THE ACTIVITY AND THE INTERVENORS, THE AUTHORITY FINDS:

THE DEPARTMENT OF ENERGY, WESTERN AREA POWER ADMINISTRATION (WAPA) FILED THE SUBJECT PETITION CONTENDING THAT AS A CONSEQUENCE OF THE CHANGES RESULTING FROM THE CREATION OF THE DEPARTMENT OF ENERGY (DOE), IT HAS A GOOD FAITH DOUBT OF THE CONTINUING APPROPRIATENESS OF ANY BARGAINING UNIT IN WHICH ANY LABOR ORGANIZATION ASSERTS IT IS THE EXCLUSIVE REPRESENTATIVE OF ITS EMPLOYEES. WAPA ARGUES THAT THE ONLY APPROPRIATE UNIT OF RECOGNITION IS AN ACTIVITY-WIDE UNIT OF WAGE BOARD (WB) EMPLOYEES, EXCLUDING SUPERVISORS. THE PETITION ORIGINALLY QUESTIONED ALSO THE CONTINUED APPROPRIATENESS OF EXISTING UNITS OF GS EMPLOYEES, AND THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO (AFGE) AND THE NATIONAL FEDERATION OF FEDERAL EMPLOYEES (NFFE) INTERVENED ON THE BASIS OF THEIR STATUS AS THE EXCLUSIVE REPRESENTATIVE OF THOSE UNITS. HOWEVER, SUBSEQUENT TO THE OPENING OF THE HEARING HEREIN, THE WAPA, THE AFGE AND THE NFFE STIPULATED AS TO THE APPROPRIATENESS OF A SINGLE, ACTIVITY-WIDE UNIT OF ALL GS EMPLOYEES, AND EXECUTED A CONSENT ELECTION AGREEMENT, AND, ON THIS BASIS, THE AFGE AND THE NFFE WITHDREW THEIR INTERVENTIONS HEREIN. THE INTERVENORS HEREIN, THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 640, LOCAL UNION 1245, LOCAL UNION 2159, LOCAL UNION 1759, LOCAL UNION 1959, AND LOCAL UNION 611, AFL-CIO (IBEW) CONTEND THAT WAPA IS A STATUTORY SUCCESSOR OF THE UNITED STATES BUREAU OF RECLAMATION (USBR) IN FIVE SEPARATE BARGAINING UNITS AND THAT THE FIVE UNITS CONTINUE TO BE VIABLE ENTITIES. THE INTERVENORS FURTHER CONTEND THAT THE AFFECTED SUPERVISORY EMPLOYEES WHO HAVE BEEN MEMBERS OF THE FIVE BARGAINING UNITS PRIOR TO 1962 SHOULD BE INCLUDED IN ANY UNIT THAT MAY BE FOUND APPROPRIATE.

PRIOR TO OCTOBER 1, 1977, THE SUBJECT EMPLOYEES, WITH OTHERS, WERE EMPLOYED BY USBR, WHOSE MISSION INVOLVED THE PRODUCTION, TRANSMISSION AND WHOLESALE MARKETING OF ELECTRIC POWER GENERATED AT FEDERAL POWER PROJECTS THROUGHOUT A 15 STATE AREA IN THE WESTERN PART OF THE COUNTRY. AT THAT TIME, THE WB EMPLOYEES, WHO NUMBERED APPROXIMATELY 1066 EMPLOYEES, WERE VARIOUSLY ASSIGNED TO SIX USBR ORGANIZATIONAL SUB-ELEMENTS LOCATED THROUGHOUT THE 15 STATE AREA. THESE EMPLOYEES WERE REPRESENTED EXCLUSIVELY IN SIX SEPARATE BARGAINING UNITS WHICH WERE COEXTENSIVE WITH THE GEOGRAPHICAL AND ORGANIZATIONAL ASSIGNMENTS OF THE EMPLOYEES, AND REPRESENTED VARIOUSLY BY EACH OF THE INDIVIDUAL INTERVENORS. AS OF OCTOBER 1, 1977, AS A CONSEQUENCE OF LEGISLATION CREATING THE DOE, A SEGMENT OF THESE EMPLOYEES, AND THEIR FUNCTION WERE TRANSFERRED TO DOE, AND ASSIGNED TO WAPA. APPROXIMATELY 408 OF THE USBR'S 1066 WB EMPLOYEES INVOLVED IN THE POWER TRANSMISSION AND MARKETING FUNCTIONS WHO WERE IN THE BARGAINING UNIT REPRESENTED BY IBEW LOCAL UNION 611 RETIRED SUBSEQUENT TO THE REORGANIZATION AND TRANSFER. AS A CONSEQUENCE, THERE ARE NO CURRENT WAPA EMPLOYEES WHO WERE PREVIOUSLY IN THE BARGAINING UNIT OF USBR EMPLOYEES REPRESENTED BY LOCAL 611. /1/ OF THE 151 EMPLOYEES REPRESENTED BY LOCAL 640, 102 WERE TRANSFERRED TO WAPA; OF THE 350 EMPLOYEES REPRESENTED BY LOCAL 1245, 20 WERE TRANSFERRED TO WAPA; OF THE 133 EMPLOYEES REPRESENTED BY LOCAL 2159, 48 WERE TRANSFERRED TO WAPA; OF THE 201 EMPLOYEES REPRESENTED BY LOCAL 1759, 74 WERE TRANSFERRED TO WAPA; AND, OF THE 200 EMPLOYEES REPRESENTED BY LOCAL 1959, 158 WERE TRANSFERRED TO WAPA.

WAPA, WITH HEADQUARTERS IN GOLDEN, COLORADO, IS UNDER THE DIRECTION OF AN ADMINISTRATOR, AND SEVERAL ASSISTANT ADMINISTRATORS.

ORGANIZATIONALLY, WAPA IS SUB-DIVIDED INTO FIVE AREA OFFICES AND SEVEN DISTRICT OFFICES. THE ADMINISTRATOR AND HIS STAFF ARE RESPONSIBLE FOR THE OVERALL OPERATION OF WAPA, AND, UNDER GUIDELINES ESTABLISHED BY DOE, ESTABLISH OPERATIONAL AND PERSONNEL POLICIES. EACH AREA OFFICE IS RESPONSIBLE WITHIN ITS GEOGRAPHIC AREA, FOR THE POWER MARKETING OPERATIONS, INCLUDING PLANNING, CONTRACTING AND NEGOTIATING WITH PUBLIC UTILITY COMPANIES AND OTHER MAJOR CUSTOMERS. THE DISTRICT OFFICES ARE RESPONSIBLE, WITHIN THEIR RESPECTIVE GEOGRAPHICAL AREA, FOR THE CONSTRUCTION, MAINTENANCE AND REPAIR OF POWER TRANSMISSION LINES AND EQUIPMENT.

THE RECORD REVEALS THAT ALL PERSONNEL AND LABOR RELATIONS POLICIES ARE ESTABLISHED AND ADMINISTERED BY WAPA HEADQUARTERS, AND ARE UNIFORMLY APPLICABLE TO ALL EMPLOYEES, ACTIVITY-WIDE. SUBSEQUENT TO THE CREATION OF WAPA AND THE TRANSFER OF PERSONNEL, THE WB EMPLOYEES HAVE REMAINED IN THE SAME LOCATIONS, PERFORMING THE SAME JOBS UNDER THE SAME IMMEDIATE SUPERVISION AS THEY HAD UNDER USBR. FURTHER, THE RECORD ESTABLISHES THAT ALL OF THESE EMPLOYEES HAVE BASICALLY SIMILAR JOB CLASSIFICATIONS, REQUIRING ESSENTIALLY EQUIVALENT SKILLS, TRAINING AND EDUCATIONS, AND HAVE, AND ARE, EXPERIENCING A SIGNIFICANT DEGREE OF INTERCHANGE BETWEEN ORGANIZATIONAL UNITS TO MEET EMERGENCY AND/OR WORK OVERLOAD SITUATIONS.

THE RECORD REVEALS THAT CERTAIN EMPLOYEES CLASSIFIED AS FOREMAN, I, II, AND III HAVE BEEN INCLUDED AS MEMBERS OF THE BARGAINING UNIT PRIOR TO 1962. AS INDICATED ABOVE, THE WAPA SEEKS TO HAVE THESE EMPLOYEES EXCLUDED FROM ANY UNIT OR UNITS FOUND APPROPRIATE BY THE AUTHORITY ON THE BASIS OF THEIR ALLEGED SUPERVISORY STATUS. A PRIMARY REASON THESE EMPLOYEES WERE HISTORICALLY IN THE RESPECTIVE UNITS WAS THAT THE WAGE RATES OF THESE EMPLOYEES WERE NEGOTIATED BY THE INTERVENORS AND THE USBR IN THE SAME MANNER AS THE WAGE RATES OF OTHER EMPLOYEES IN THE UNITS. THE RECORD HEREIN DOES NOT SET FORTH THE DUTIES, AUTHORITY AND RESPONSIBILITIES OF EMPLOYEES IN THE DISPUTED CLASSIFICATION.

CONTRARY TO THE CONTENTION OF THE INTERVENORS, THE AUTHORITY CONCLUDES THAT THE WAPA IS NOT THE SUCCESSOR EMPLOYER TO THE BARGAINING RELATIONSHIP BETWEEN THE INTERVENORS AND THE USBR, AND IS THEREFORE NOT OBLIGATED TO CONTINUE TO ACCORD TO THE INDIVIDUAL INTERVENORS THE RIGHTS OF EXCLUSIVE REPRESENTATIVES. IN THIS REGARD, THE AUTHORITY NOTES THAT THE FEDERAL LABOR RELATIONS COUNCIL, IN ITS DECISION IN DEFENSE SUPPLY AGENCY, DEFENSE PROPERTY DISPOSAL OFFICE, ABERDEEN PROVING GROUND, ABERDEEN, MARYLAND, 3 FLRC 789, 802, FLRC NO. 74A-22(1975), ESTABLISHED THREE CRITERIA WHICH MUST BE MET IN ORDER TO ESTABLISH THAT A GAINING EMPLOYER IS A SUCCESSOR OBLIGATED TO RECOGNIZE AN EXCLUSIVE REPRESENTATIVE FOR A PREDECESSOR AGENCY OR ACTIVITY: (1) THE RECOGNIZED UNIT IS TRANSFERRED SUBSTANTIALLY INTACT TO THE GAINING EMPLOYER; (2) THE APPROPRIATENESS OF THE UNIT REMAINS UNIMPAIRED IN THE GAINING EMPLOYER; AND, (3) A QUESTION CONCERNING REPRESENTATION IS NOT TIMELY RAISED AS TO THE STATUS OF THE INCUMBENT LABOR ORGANIZATION. AS NOTED ABOVE, IN THE SUBJECT CASE THE BARGAINING UNITS WERE NOT TRANSFERRED SUBSTANTIALLY INTACT FROM USBR TO WAPA; RATHER, THE ORIGINAL UNITS CONTAINING SIGNIFICANT NUMBERS OF USBR EMPLOYEES REMAINED AND CONTINUED TO BE RECOGNIZED BY THE USBR. THUS, IT IS CLEAR THAT THE WAPA IS NOT THE SUCCESSOR EMPLOYER TO THE BARGAINING UNITS REPRESENTED EXCLUSIVELY BY THE INTERVENORS.

WITH REGARD TO ISSUE OF APPROPRIATENESS OF UNIT, THE AUTHORITY CONCLUDES, IN AGREEMENT WITH THE WAPA, THAT AN ACTIVITY-WIDE UNIT OF ALL WB EMPLOYEES WOULD BE APPROPRIATE. THUS, AS NOTED ABOVE, SUCH A UNIT WOULD EMBRACE EMPLOYEES WHO SHARE IN A COMMON MISSION, ENJOY COMMON OVERALL SUPERVISION, ARE EMPLOYED IN SUBSTANTIALLY AND EDUCATION,

EXPERIENCE A SIGNIFICANT DEGREE OF INTERCHANGE, AND ARE SUBJECT TO UNIFORM PERSONNEL AND LABOR RELATIONS POLICIES. UNDER THESE CIRCUMSTANCES, THE AUTHORITY FINDS THAT SUCH UNIT INCLUDES ALL EMPLOYEES WHO SHARE A CLEAR AND IDENTIFIABLE COMMUNITY OF INTEREST SEPARATE AND DISTINCT FROM OTHER EMPLOYEES OF THE ACTIVITY. MOREOVER, SUCH UNIT WILL PROMOTE EFFECTIVE DEALINGS AND EFFICIENCY OF AGENCY OPERATIONS. IN THIS REGARD, THE AUTHORITY NOTES THAT SUCH A UNIT IS COEXTENSIVE WITH THE ORGANIZATIONAL STRUCTURE OF THE WAPA, EXISTS AT THE LEVEL AT WHICH PERSONNEL AND LABOR RELATIONS POLICIES ARE ESTABLISHED, AND PREVENTS FRAGMENTATION OF THE EMPLOYEES, PROMOTING A MORE COMPREHENSIVE BARGAINING UNIT STRUCTURE WITHIN THE WAPA.

THE RECORD EVIDENCE IS INSUFFICIENT UPON WHICH A DETERMINATION OF THE SUPERVISORY STATUS OF FOREMAN, I, II, AND III CAN BE BASED. HOWEVER, AS ALREADY INDICATED, THESE WORKERS WERE INCLUDED AS MEMBERS OF THE BARGAINING UNITS AT USBR SINCE BEFORE 1962 AND THEIR WAGE RATES WERE NEGOTIATED IN THE SAME MANNER AS THE WAGE RATES OF OTHER PERSONNEL IN THE UNITS. CONGRESSMAN FORD STATED WITH RESPECT TO THE BARGAINING PRACTICES CONCERNING THESE "TRADE AND CRAFT EMPLOYEES IN UNITS OR PORTIONS OF UNITS" TRANSFERRED FROM INTERIOR TO DOE THAT: "THIS HAS PRODUCED SOME OF THE MOST STABLE AND EFFECTIVE COLLECTIVE BARGAINING IN THE HISTORY OF PUBLIC EMPLOYEE LABOR RELATIONS" (124 CONG.REC. H8469, AUG. 11, 1978). TO DISRUPT THE HISTORICAL INCLUSION OF FOREMAN, I, II, AND III WITH THE NONSUPERVISORY EMPLOYEES IN ANY UNIT ESTABLISHED AT WAPA THROUGH THE PERIOD OF THE EXECUTIVE ORDERS AND BEFORE COULD FRUSTRATE THE LONG HISTORY OF STABLE AND EFFECTIVE COLLECTIVE BARGAINING. ACCORDINGLY, IN THE SPECIAL CIRCUMSTANCES OF THIS CASE, WE INCLUDE FOREMAN, I, II, AND III IN THE UNIT HERE FOUND APPROPRIATE, WITHOUT PASSING UPON THEIR SUPERVISORY STATUS.

ACCORDINGLY, THE AUTHORITY FINDS THE FOLLOWING TO CONSTITUTE AN APPROPRIATE UNIT FOR THE PURPOSE OF EXCLUSIVE RECOGNITION UNDER EXECUTIVE ORDER 11491, AS AMENDED: /2/

ALL WAGE BOARD (WB) EMPLOYEES OF THE DEPARTMENT OF ENERGY, WESTERN AREA POWER

ADMINISTRATION, INCLUDING EMPLOYEES CLASSIFIED AS FOREMAN I, FOREMAN II OR FOREMAN III,

EXCLUDING MANAGEMENT OFFICIALS, CONFIDENTIAL EMPLOYEES, EMPLOYEES ENGAGED IN FEDERAL PERSONNEL

WORK IN OTHER THAN A PURELY CLERICAL CAPACITY, AND SUPERVISORS AS DEFINED IN THE ORDER.

DURING THE PROCEEDING AND IN THE PARTIES' ACCOMPANYING BRIEFS, THE PARTIES INDICATED SUBSTANTIAL CONCERN AS TO THE POSSIBLE EFFECT OF THE DECISION OF THE AUTHORITY HEREIN ON THE SCOPE OF BARGAINING WHICH THE WAGE BOARD EMPLOYEES HAD PREVIOUSLY ENJOYED AT USBR. IN THIS REGARD, IT APPEARS FROM THE RECORD THAT, PRIOR TO THE ESTABLISHMENT OF DOE AND WAPA, AND DATING BACK TO THE 1950'S THE WAGES OF THESE EMPLOYEES WERE DETERMINED BY NEGOTIATION ON A PREVAILING WAGE BASIS, THAT IS, BY WAGE SURVEY OF IDENTICAL CRAFT POSITIONS WITHIN THE AREA OF JURISDICTION OF THE RESPECTIVE IBEW LOCALS HERE INVOLVED. THIS SCOPE OF BARGAINING ENABLED USBR TO COMPETE WITH PRIVATE INDUSTRY IN ATTRACTING EMPLOYEES WITH THE HIGH DEGREE OF COMPETENCE REQUIRED FOR THE FULFILLMENT OF THE AGENCY'S MISSION. THE LEGISLATIVE HISTORY OF THE CIVIL SERVICE REFORM ACT OF 1978 SHOWS THE INTENT OF CONGRESS THAT THE WAGE BOARD EMPLOYEES TRANSFERRED FROM INTERIOR TO DOE SHOULD CONTINUE TO ENJOY THIS BROAD

SCOPE OF BARGAINING AT DOE SIMILAR TO THAT WHICH HAS EXISTED AT INTERIOR. THUS, THE CONFERENCE COMMITTEE, IN DISCUSSING SEC. 704 OF TITLE VII OF THE CSRA (92 STAT. 1218), AS SUBSEQUENTLY ENACTED, STATED:

AS REVISED, (SECTION 704) OVERRULES THE DECISION OF THE COMPTROLLER GENERAL . . . RELATING

TO CERTAIN NEGOTIATED CONTRACTS APPLICABLE TO EMPLOYEES UNDER THE DEPARTMENT OF THE INTERIOR

AND THE DEPARTMENT OF ENERGY. THIS SECTION ALSO PROVIDES SPECIFIC STATUTORY AUTHORIZATION FOR

THE NEGOTIATION OF WAGES, TERMS AND CONDITIONS OF EMPLOYMENT AND OTHER EMPLOYMENT BENEFITS

TRADITIONALLY NEGOTIATED BY THESE EMPLOYEES IN ACCORDANCE WITH PREVAILING PRACTICES IN THE

PRIVATE SECTOR OF THE ECONOMY (H. REP. NO. 95-1717, OCT. 5, 1978, AT 159).

SIMILARLY, CONGRESSMAN FORD, IN EXPLAINING HIS PROPOSED AMENDMENT OF THE HOUSE BILL WHICH LEAD TO THE ADOPTION OF SEC. 704, STATED:

DURING COMMITTEE MARKUP, I OFFERED AN AMENDMENT . . . WHICH IS INTENDED TO PRESERVE THE

SCOPE OF COLLECTIVE BARGAINING HERETOFORE ENJOYED BY CERTAIN TRADE AND CRAFT EMPLOYEES. THIS

INCLUDES CERTAIN TRADE AND CRAFT EMPLOYEES OF THE DEPARTMENT OF THE INTERIOR, AND THOSE TRADE

AND CRAFT EMPLOYEES IN UNITS OR PORTIONS OF UNITS, TRANSFERRED, EFFECTIVE OCTOBER 1, 1977,

FROM THE DEPARTMENT OF THE INTERIOR TO THE DEPARTMENT OF ENERGY (124 CONG.REC. H8468, AUG. 11,

1978).

UNDER THESE CIRCUMSTANCES IT IS THE AUTHORITY'S VIEW THAT THE SUBJECT EMPLOYEES SHALL CONTINUE TO HAVE THE RIGHT TO NEGOTIATE WAGES AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT AT DOE (THROUGH THEIR EXCLUSIVE REPRESENTATIVE), ANALOGOUS TO THAT WHICH HAD EXISTED AT USBR AND REGARDLESS OF THE IDENTITY OF THE REPRESENTATIVE SELECTED BY THE EMPLOYEES IN THE UNIT FOUND APPROPRIATE.

DIRECTION OF ELECTION

AN ELECTION BY SECRET BALLOT SHALL BE CONDUCTED AMONG THE EMPLOYEES OF THE UNIT FOUND APPROPRIATE AS EARLY AS POSSIBLE, BUT NOT LATER THAN 60 DAYS FROM THE DATE BELOW. THE APPROPRIATE REGIONAL DIRECTOR SHALL SUPERVISE THE ELECTION, SUBJECT TO THE AUTHORITY'S RULES AND REGULATIONS. ELIGIBLE TO VOTE ARE THOSE IN THE UNIT WHO WERE EMPLOYED DURING THE PAYROLL PERIOD IMMEDIATELY PRECEDING THE DATE BELOW, INCLUDING EMPLOYEES WHO DID NOT WORK DURING THAT PERIOD BECAUSE THEY WERE OUT ILL, OR ON VACATION, OR ON FURLOUGH, INCLUDING THOSE IN MILITARY SERVICE WHO APPEAR IN PERSON AT THE POLLS. INELIGIBLE TO VOTE

ARE EMPLOYEES WHO HAVE QUIT OR WERE DISCHARGED FOR CAUSE SINCE THE DESIGNATED PAYROLL PERIOD AND HAVE NOT BEEN REHIRED OR REINSTATED BEFORE THE ELECTION DATE. THOSE ELIGIBLE SHALL VOTE WHETHER OR NOT THEY DESIRE TO BE REPRESENTED FOR THE PURPOSE OF EXCLUSIVE RECOGNITION BY INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNIONS 640, 1245, 2159, 1759 AND 1959, OR BY NO UNION.

ISSUED, WASHINGTON, D.C., MAY 29, 1980

RONALD W. HAUGHTON, CHAIRMAN

HENRY B. FRAZIER III, MEMBER

LEON B. APPLEWHAITE, MEMBER

FEDERAL LABOR RELATIONS AUTHORITY

ORDER DENYING ACTIVITY'S MOTION FOR RECONSIDERATION

THE ACTIVITY MOVED THAT THE AUTHORITY RECONSIDER ITS DECISION TO INCLUDE FOREMAN I, II AND III IN THE BARGAINING UNIT SET FORTH IN ITS DECISION AND DIRECTION OF ELECTION IN THE INSTANT CASE. THE INTERVENORS FILED AN OPPOSITION TO THIS MOTION.

THE MOTION FOR RECONSIDERATION IS DENIED. UPON CAREFUL CONSIDERATION OF THE ACTIVITY'S MOTION, THE INTERVENORS' OPPOSITION THERETO, AND FOR THE REASONS SET FORTH IN DEPARTMENT OF ENERGY, WESTERN AREA POWER ADMINISTRATION AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 640, 1245, 2159, 1759, 1959 AND 611, 3 FLRA 12, A/SLMR NO. 61-4217(RA), (MAY 30, 1980) THE AUTHORITY DENIES ACTIVITY'S MOTION FOR RECONSIDERATION. THE ACTIVITY RAISES NO ARGUMENTS THAT WERE NOT PREVIOUSLY CONSIDERED AND DECIDED BY THE AUTHORITY. IT IS NOTED FURTHER THAT THE BALLOTS FOR THE ELECTION IN THE INSTANT CASE WERE MAILED TO EMPLOYEES OF THE BARGAINING UNIT ON JUNE 10, 1980, AND THESE BALLOTS ARE TO BE COUNTED ON JULY 7, 1980.

ACCORDINGLY, SINCE NO ADEQUATE REASON HAS BEEN ADVANCED BY THE ACTIVITY IN SUPPORT OF ITS REQUEST FOR RECONSIDERATION.

IT IS HEREBY ORDERED THAT THE ACTIVITY'S MOTION FOR RECONSIDERATION IN THIS MATTER BE, AND IT HEREBY IS, DENIED.

ISSUED, WASHINGTON, D.C., JUNE 30, 1980

RONALD W. HAUGHTON, CHAIRMAN

HENRY B. FRAZIER III, MEMBER

LEON B. APPLEWHAITE, MEMBER

FEDERAL LABOR RELATIONS AUTHORITY

CERTIFICATE OF SERVICE

COPIES OF THE ORDER DENYING RESPONDENT'S MOTION FOR RECONSIDERATION IN THE SUBJECT PROCEEDING HAVE THIS DAY BEEN MAILED TO THE PARTIES BELOW:

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WESTERN AREA POWER ADMINISTRATION

P. O. BOX 3402

GOLDEN, COLORADO 80401

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ASSISTANT GENERAL COUNSEL

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P. O. BOX 3402

GOLDEN, COLORADO 80401

B. B. BOATMAN

CHIEF, LABOR MANAGEMENT AND EMPLOYEE

RELATIONS SECTION,

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MR. GORDON E. BREWER

REGIONAL DIRECTOR

FEDERAL LABOR RELATIONS AUTHORITY

CITY CENTER SQUARE, SUITE 680

1100 MAIN STREET

KANSAS CITY, MISSOURI 64105

/1/ ACCORDINGLY, IBEW LOCAL 611 WILL NOT APPEAR ON THE BALLOT AS DESCRIBED IN THE DIRECTION OF ELECTION.

/2/ IN CONFORMITY WITH SEC. 902(B) OF THE CIVIL SERVICE REFORM ACT OF 1978 (92 STAT. 1224), THE PRESENT CASE IS DECIDED SOLELY ON THE BASIS OF E.O. 11491, AS AMENDED, AND AS IF THE NEW FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE (92 STAT. 1191) HAD NOT BEEN ENACTED. THE DECISION AND DIRECTION OF ELECTION DOES NOT PREJUDGE IN ANY MANNER EITHER THE MEANING OR APPLICATION OF RELATED PROVISIONS IN THE NEW STATUTE OR THE RESULT WHICH WOULD BE REACHED BY THE AUTHORITY IF THE CASE HAD ARISEN UNDER THE STATUTE RATHER THAN THE EXECUTIVE ORDER.
