

OFFICE OF THE ELECTION OFFICER  
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
25 Louisiana Avenue, NW  
Washington, DC 20001

Michael H. Holland  
Election Officer

(202) 624-8778  
1-800-828-6496  
Fax (202) 624-8792

November 22, 1991

**VIA UPS OVERNIGHT**

Richard L. Delgado  
15051 S. 81st Court  
Orland Park, IL 60462

William J. Nellis  
Secretary to the Board  
Central States Pension &  
Health & Welfare Fund  
9377 West Higgins Road  
Rosemont, IL 60018

R. V. Durham  
c/o Hugh J. Beins, Esquire  
Beins, Axelrod, Osborne  
& Mooney  
2033 K St., NW  
Suite 300  
Washington, D.C. 20006-1002

**Re: Election Office Case No. P-1102-IBT**

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") by Richard L. Delgado, a member of IBT Local Union 743 and an employee of the Central States Southeast and Southwest Areas Pension Fund ("Central States"), located in Rosemont, Illinois. Mr. Delgado's protest concerns a booklet entitled "Roadguide To Your Pension Plan", a summary plan description within the meaning of the federal Employee Retirement Income and Security Act of 1974 ("ERISA"), recently mailed to all participants in the Central States Pension Fund. Mr. Delgado challenges the timing of the mailing; he asserts that the mailing was delayed to coincide with the mailing of the ballots for the 1991 IBT International Union officer election in order to favor candidates on the R. V. Durham Unity Team Slate. Mr. Delgado also challenges the fact that the Roadguide was sent to retirees as well as participants not yet retired. This protest was investigated by Regional Coordinator Julie E. Hamos and representatives of the Washington D. C. office of the Election Officer.

The Roadguide is an 86 page booklet. The first page lists the names of the Union Trustees and the Employer Trustees of Central States. Three of the four Union Trustees are candidates for International Union Office on the R. V. Durham Unity Team Slate: Mr. Robert S. Sansone, Mr. R. Jerry Cook, and Mr. Harold D. Leu. All of the

Richard L. Delgado  
November 22, 1991  
Page 2

Trustees' names are listed a second time on the third page of the booklet which consists of a letter from the Board of Trustees discussing improvements in the pension plan. There is no other reference to any candidates elsewhere in the booklet.

Mr. Delgado's protest does not challenge on a per se basis the contents of the booklet, and there appears to be no support for such a challenge. There is no campaign material in the booklet. Mr. Delgado suggests that the contents of the booklet -- delineating improved pension benefits -- may provide support for the candidacies of the International Union officer candidates who are also Trustees of Central States. Mr. Delgado reasons that pension benefits have become an issue in the International Union officer election; providing notice of improved pension benefits by a pension fund whose Trustees include International Union officer candidates may therefore benefit those candidates. However, the operation of the Union, or its allied or affiliated benefit trust plans, need not come to a halt merely because the Union is in the midst of an International officer election. Benefit plans, such as Central States, have a responsibility under federal law to notify beneficiaries of changes in the terms of the plan. Accordingly, absent intentional delay in distribution of the booklet, the publication and distribution of the Roadguide does not violate the *Rules*. See e.g. Election Office Case No. P-976-LU135-SCE, affirmed 91-Elec. App.-214 (inaugurating a Local Union newspaper where the Local Union principal officer is a candidate for International Union office does not, without more, violate the *Rules*).

Thus the heart of Mr. Delgado's protest is the allegation that the timing of the mailing was intentionally delayed in order to coincide with and influence the IBT International Union Election.<sup>1</sup> 474,836 copies of the Roadguide were mailed to participants on November 11 and 12, 1991. Central States has provided a voluminous account detailing the manner in which the Roadguide was drafted, printed, assembled, transported, and mailed, attaching many documents.

The language of the Roadguide was drafted in July after the approval of a series of amendments at the July Board of Trustees meeting. Drafting, revising, formatting, layout, etc., for the booklet began on July 27, 1991. Production of the camera ready filmwork was completed on October 5, 1991, and sent to the printer. 500,000 copies of the Roadguide were printed and bound, including special insertions, between October 8th and October 31st at a printing facility located in Portland, Oregon. 2,500 copies were shipped to Central States on October 25th. The bulk were sent to a Chicago mail

---

<sup>1</sup> Mr. Delgado's protest alleges that this is the first comprehensive document sent to all participants in 7 years. and the federal law which governs Central States pension fund, requires an updated summary plan description to be furnished to all participants every fifth year (29 U.S.C. Sec. 1024(b)). Central States has verified that the last summary plan description was mailed in the spring of 1986, five and one-half years ago.

Richard L. Delgado  
November 22, 1991  
Page 3

house on November 5 and 6. After the mailhouse completed the necessary stuffing, labeling and affixing of postage, the booklets were transported to the Chicago Post Office where they arrived on November 11 and 12.<sup>2</sup>

Mr. Delgado alleges that the Roadguide was printed in September 1991 and stored in Central States' warehouse until mailing on November 12th. The basis for his claim that the Roadguide was printed in September is a notation on the bottom of the back cover of the Roadguide which states "9/91." This notation is not specifically designated as a printing date. The Election Officer's investigation as noted above demonstrates that the printing was not completed until October 31, 1991.

The basis for his claim that Roadguide was stored in the warehouse since September is a hearsay comment attributed to a warehouse employee who was interviewed by the Regional Coordinator. The warehouse employee states that the first time he saw the Roadguide was on October 31st when "one skid" arrived; he checked a purchase order, which he himself had written, to ascertain the date of arrival. This date of arrival coincides with the documentation provided by Central States that 2,500 copies were shipped to Central States from Oregon on October 25th.<sup>3</sup>

In sum, Mr. Delgado's assertions do not withstand analysis. The documentation supplied by Central States definitively refutes any claim that Roadguides were printed in September and that the mailing was intentionally delayed.<sup>4</sup>

---

<sup>2</sup> The Election Officer's printshop and mailhouse experience in printing and mailing the 1991 IBT International Union officer election ballots provides him with sufficient evidence to conclude that the operations of the printer and mailhouse were not purposely delayed in any manner.

<sup>3</sup> Again, the Election Officer's experience in preparing and mailing the 1991 IBT International Union officer election ballot provides him with independent knowledge that "one skid" cannot begin to contain the approximately 500,000 copies of the Roadguide which were mailed on November 11 and 12.

<sup>4</sup> Mr. Delgado also claims that prior to the mailing of the Roadguide he had been instructed not to send Central States participants information relating to the newly improved pension benefits. Apparently he contends that this instruction further demonstrates that this information was held until such time as it would have a bigger impact on the 1991 IBT International Union officer election. However, it is certainly understandable that Central States instructed its employees such as Mr. Delgado to wait until the mailing was out before responding to requests for the information; oral communication is often misunderstood or mistranslated.

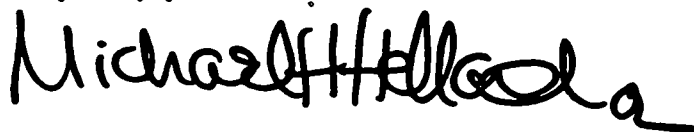
Richard L. Delgado  
November 22, 1991  
Page 4

Mr. Delgado claims that sending the Roadguide to retirees was unnecessary and therefore further substantiates his protest. The short answer is that ERISA requires any summary plan description to be sent to all participants; retirees are participants within the meaning of ERISA. Further, since retirees are not eligible to vote in the IBT International Union election, it is unclear how their receipt of the Roadguide could possibly be construed as improper campaigning.

Central States' explanation of the timing and manner of the printing and distribution of the Roadguide is credible. There is no evidence to support a contention that the timing was contrived in order to coincide with the ongoing IBT International Union officer election. Accordingly, the Election Officer DENIES this protest.

If any interested party is not satisfied with this determination, they may request a hearing before the Independent Administrator within twenty-four (24) hours of their receipt of this letter. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Officer in any such appeal. Requests for a hearing shall be made in writing, and shall be served on Independent Administrator Frederick B. Lacey at LeBoeuf, Lamb, Leiby & MacRae, One Gateway Center, Newark, New Jersey 07102-5311, Facsimile (201) 622-6693. Copies of the request for hearing must be served on the parties listed above, as well as upon the Election Officer, IBT, 25 Louisiana Avenue, N.W., Washington, D.C. 20001, Facsimile (202) 624-8792. A copy of the protest must accompany the request for a hearing.

Very truly yours,



Michael H. Holland

MHH/ca

cc: Frederick B. Lacey, Independent Administrator

Julie E. Hamos, Regional Coordinator

Ron Carey  
c/o Richard Gilberg, Esquire  
Cohen, Weiss & Simon  
330 West 42nd Street  
New York, NY 10036-6901

**Richard L. Delgado**  
**November 22, 1991**  
**Page 5**

**Walter Shea**  
**c/o Robert Baptiste, Esquire**  
**Baptiste & Wilder**  
**1919 Pennsylvania Avenue, N.W.**  
**Suite 505**  
**Washington, D.C. 20006**