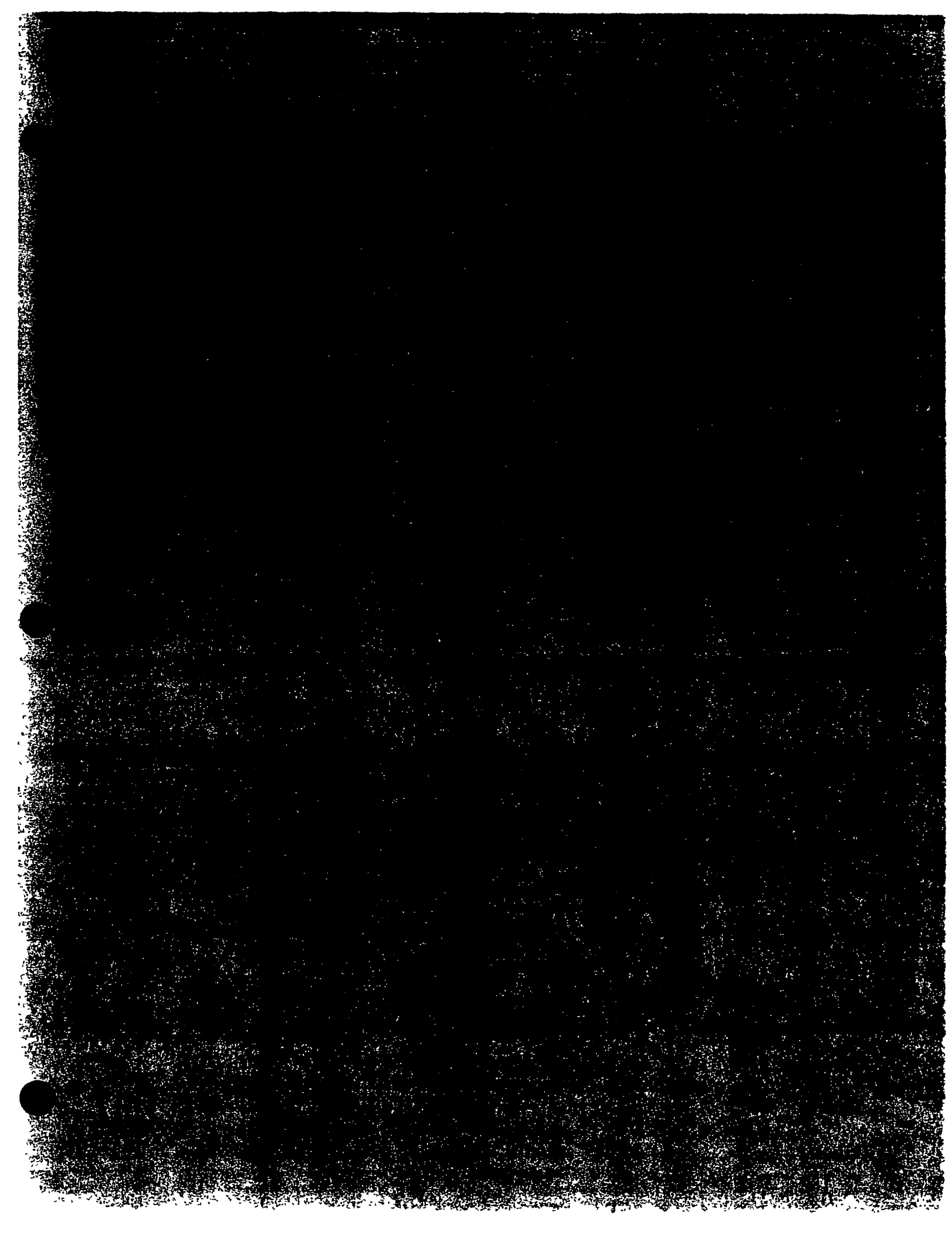

OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue, NW
Washington, DC 20001

Michael H. Holland
Election Officer

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

December 27, 1991

VIA UPS OVERNIGHT

Richard L. Delgado
15051 South 81st Court
Orland Park, Illinois 60462

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

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

David Secrest
Central States Pension &
Health & Welfare Fund
9377 West Higgins Road
Rosemont, Illinois 60018

Re: Election Office Case No. P-1119-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, an IBT member employed by the Central States Pension and Health and Welfare Fund ("Fund"). Mr. Delgado alleges that Fund management is attempting to intimidate and harass him (1) because he supports a slate of candidates for International Union officers other than those favored by Union-appointed trustees of the Fund and/or Fund management and (2) to retaliate against him for previously filing an election protest against the Fund (Election Office Case No. P-1102-IBT). The protest was investigated by Adjunct Regional Coordinator Deborah Schaaf.

Mr. Delgado is employed in the Fund's toll-free department. He and other IBT members similarly employed respond to questions of Fund participants and others utilizing the toll-free 800 number telephone service. Calls from participants are recorded according to the participant's social security number; these telephone logs are given to supervisory employees and maintained in the files of the Fund.

On or about November 21, 1991 the Fund received a telephone communication from an IBT Local Union President complaining that one of the members of his Local Union had

been given incorrect information when he had called the toll-free department. Allegedly this member had been told that IBT members employed by United Parcel Service ("UPS") were ineligible to obtain the new pension benefits introduced by the Fund in 1991.

David E. Secrest, an Executive Assistant of the Fund, determined to personally investigate this situation, ascertain the true facts and correct any misinformation provided. In his protest, Mr. Delgado contends that the personal involvement of Mr. Secrest demonstrates that the entire situation was bogus and instigated for retaliatory purposes. The Election Officer's investigation determined that Mr. Secrest's personal involvement was indeed unusual. The Fund explains his involvement on the grounds that his previous responsibilities had included the toll-free department and the absence of the manager of the toll-free department on November 21, 1991. Further the Election Officer notes that the issue of pension benefits and particularly the benefits afforded to IBT members employed by UPS was a significant issue in the IBT International Union officer election campaign then in progress. Accordingly, a basis exists other than retaliation for the Fund immediately investigating an allegation that misinformation about the level of pension benefits had been provided an IBT member employed by UPS and for conducting that investigation at the Executive Assistant level as opposed to having it conducted by the manager of the toll-free department.[1]

Mr. Secrest investigated the matter by having his assistant, Patricia McGinn, obtain and then review the telephone logs prepared by the employees in the toll-free department and maintained by supervisors of that department. After some confusion regarding the identity of the member who called[2], it was determined that the member had indeed called

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[1] Mr. Delgado's allegation that Mr. Secrest and his assistant refused to disclose the social security number or identity of the member allegedly provided the incorrect information is not supported by the evidence. Mr. Delgado's manager's offer of assistance was refused, not because Mr. Secrest and his assistant would not reveal the identity of the member, but because the member's social security number that had been provided was incorrect and therefore the manager's assistance would not have been fruitful.

[2] Apparently, there were two members of the Local Union with the same name, albeit different social security numbers. The first social security number provided was that of the member who did not call. Therefore no record of the phone call could be discovered since the calls are logged by social security number. After the correct social security number was obtained, the telephone logs revealed that the member had indeed called the toll-free department and also revealed the identity of the employee to whom he had spoken.

and spoken to an employee in the toll-free department other than Mr. Delgado. The matter was satisfactorily resolved and the misinformation, if any, corrected.

During the course of the investigation it was discovered that Mr. Delgado's telephone logs for the dates in question were missing. When this matter was brought to Mr. Delgado's manager's attention, the manager on his own initiative checked and discovered that Mr. Delgado's logs were additionally missing for other days. Again on his own initiative, the manager talked to Mr. Delgado about the missing telephone logs. Other than this discussion between Mr. Delgado and his manager, nothing occurred; Mr. Delgado has not been reprimanded, punished, warned or been the recipient of any further proceedings with respect to the missing telephone logs. There is no evidence that the discussion between Mr. Delgado and his manager resulted from any instructions to his manager or emanated in whole or in part from Mr. Delgado's political positions or International Union officer campaign activities.

In accordance with the foregoing, there is no evidence that Mr. Delgado has been subjected to intimidation or harassment because of his political position with respect to the 1991 IBT International Union officer election or because he has previously filed protests with the Election Officer. Accordingly, the protest is DENIED.[3]

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

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[3] To the extent that Mr. Delgado's protest contends that the activities undertaken by the Fund were undertaken for the purpose of obtaining the election of the International Officer candidate on the R. V. Durham Unity Team Slate, the results of the election render this portion of the protest moot. See *Rules*, Article XI, §1(b)(2).

MHH/ca

cc: Frederick B. Lacey, Independent Administrator

Julie E. Hamos, Regional Coordinator

IN RE:

RICHARD L. DELGADO

and

IBT CENTRAL STATES SOUTHEAST & SOUTHWEST AREAS HEALTH & WELFARE AND PENSION FUND.

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DECISION OF THE INDEPENDENT ADMINISTRATOR

This matter arises as an appeal from the Election Officer's decision in Case No. P-1119-IBT. A hearing was held before me by way of teleconference at which the following persons were heard: John J. Sullivan for the Election Officer; Julie E. Hamos, a Regional Coordinator; and Richard L. Delgado, the Complainant. In addition, the Election Officer submitted a written Summary in accordance with Article XI, Section 1.a.(7) of the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules").

Richard L. Delgado is an IBT member employed by the IBT Central States Southeast and Southwest Areas Health & Welfare & Pension Funds (the "Funds"). Mr. Delgado is an analyst who works in the "toll-free department" responding to questions called in from IBT members over the Funds' toll-free telephone line. The calls are recorded according to the caller's social security number and maintained in logs which are kept in the Funds' files.

Mr. Delgado is also a shop steward and was a known supporter of the Ron Carey Slate of International Officer candidates in the recent IBT International Officer election. In this matter, he alleges that the Funds investigated his work in an attempt to intimidate and retaliate against him for: 1) previously filing an Election Rules protest against the Funds;[1] and 2) for not supporting the candidates on the R.V. Durham Unity Team Slate that were favored by the Union Trustees of the Fund.

On November 21, 1991, an IBT Local Union President called the Funds to complain that one of the toll-free department analysts had furnished misinformation to one of his members regarding pension benefits. This complaint was immediately investigated by the Funds' Executive Assistant, David E. Secrest, instead of the "toll free department's" manager.

Mr. Secrest's investigation revealed that another analyst, not Mr. Delgado, was identified as the individual who had given out the misinformation. However, at some point during the investigation, it was discovered that Mr. Delgado's telephone logs for the day in question were missing and this apparently became an issue. Nevertheless, Mr. Delgado was not warned, reprimanded, or otherwise disciplined, as a result of the investigation.

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1 In November of 1991 Mr. Delgado filed a protest against the Funds alleging that they had issued a notice of new and improved pension benefits that was intended to influence the outcome of the International Union Officer elections. The Election Officer denied that protest finding that the notice was sent in the normal course of the Funds' business.

At the hearing before me Mr. Delgado suggested that the entire investigation was a pretext to "set him up" and that, but for his filing of an Election Rules protest, he might have been subject to retaliatory action. Mr. Delgado also stated that his co-employees perceived the investigation as an act of retaliation against him and that they were intimidated as a result.

Based on the foregoing, I conclude that there is no evidence that would compel the reversal of the Election Officer's denial of this protest. It is undisputed that Mr. Delgado did not suffer any adverse consequences as a result of the Funds' investigation. The misinformation regarding the pension benefits was determined to come from another analyst. Mr. Delgado's missing telephone logs were the basis of nothing more than a discussion with his supervisor.

However, it is evident that there is some confusion among the employees regarding the intent or purpose of the Funds' investigation of this matter. It is crucial that all IBT members understand that their participation in the recently completed International Officer elections will not result in retaliatory action being taken against them. Therefore, while I find that no violation of the Election Rules has occurred in this situation, I also find that it is necessary to post a clarifying notice to dispel any misperceptions IBT members may have about the Funds' motives in investigating the complaint in question.

Accordingly, while I affirm the Election Officer's finding that there has been no retaliatory action taken against Mr. Delgado in this matter, I direct Mr. Secrest to prominently post the notice that is attached to this decision where it can be viewed by the Funds' employees for a period of 30 days. I also direct that within five days Mr. Secrest file an affidavit with the Election Office, with a copy to my office, affirming that he has posted the notice.

For the foregoing reasons, the Election Officer's decision is affirmed as modified herein.

Frederick B. Lacey
Independent Administrator
By: Stuart Alderoty, Designee

Dated: January 7, 1992

Administration directed [illegible]

NOTICE

An Election Rules protest was recently filed by Richard L. Delgado alleging that the IBT Central States, Southeast and Southwest Areas Health and Welfare and Pension Funds improperly investigated his work in retaliation for his exercise of his political rights in connection with the recently completed International Officer elections. The Election Officer found, and the Independent Administrator affirmed, that the Funds' investigation was not an act of retaliation against Mr. Delgado. However, to resolve any confusion that may exist regarding the purpose of that investigation, the Independent Administrator directed that this Notice be posted:

All IBT Union members had the absolute right to participate in the recently completed International Officer elections. Retaliatory action can not, and will not, be taken against any IBT member as a result of his or her political activities.

Date: _____

_____
David E. Secrest
Executive Assistant

This Notice must remain posted for a period of 30 days.