

# The Burger Court Opinion Writing Database

*Central States, Southeast & Southwest  
Areas Pension Fund v. Central Transport,  
Inc.*

472 U.S. 559 (1985)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

June 11, 1985

Re: No. 82-2157 - Central States, Southeast and Southwest  
Areas Pension Fund v. Central  
Transport, Inc.

Dear John,

I join.

Regards,



Justice Stevens

Copies to the Conference

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 31, 1985

No. 82-2157

Central States, Southeast  
and Southwest Areas Pension  
Fund, et al. v. Central Transport,  
Inc., et al.

Dear Thurgood,

I agree.

Sincerely,

Justice Marshall

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12

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 31, 1985

82-2157 - Central States, Southeast  
and Southwest Areas Pension Fund  
v. Central Transport, Inc.

Dear Thurgood,  
I agree.

Sincerely,



Justice Marshall  
Copies to the Conference

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To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Marshall**

Circulated: MAY 29 1985

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 82-2157

CENTRAL STATES, SOUTHEAST AND SOUTHWEST  
AREAS PENSION FUND, ET AL., PETITIONERS  
v. CENTRAL TRANSPORT, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SIXTH CIRCUIT

[May —, 1985]

JUSTICE MARSHALL delivered the opinion for the Court.

The issue presented is whether an employer who participates in a multiemployer benefit plan that is governed by the Employee Retirement Income Security Act of 1974, 29 U. S. C. §1001 *et seq.*, must allow the plan to conduct an audit involving the records of employees whom the employer denies are participants in the plan.

I

A

Petitioners are two large multiemployer benefit plans, the Central States, Southeast and Southwest Areas Pension Fund and the Central States, Southeast and Southwest Areas Health and Welfare Fund (hereinafter referred to collectively as "Central States").<sup>1</sup> Governed by §302(c)(5) of the Labor Management Relations Act, 29 U. S. C. §186(c)(5) and the Employee Retirement Income Security Act of 1974

<sup>1</sup>As the Court of Appeals noted, "The record . . . indicates that the Funds are among the largest Taft-Hartley trust funds in the United States, that more than 13,000 employers participate and that they serve more than 500,000 employees whose job classifications are covered in thousands of collective bargaining agreements." 698 F. 2d 802, 811, (1983). See also *Schneider Moving & Storage Co. v. Robbins*, — U. S. —, — n. 16 (1984).

STYLISTIC CHANGES THROUGHOUT

+ P. 13

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Marshall**

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2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 82-2157

CENTRAL STATES, SOUTHEAST AND SOUTHWEST  
AREAS PENSION FUND, ET AL., PETITIONERS  
*v.* CENTRAL TRANSPORT, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SIXTH CIRCUIT

[May —, 1985]

JUSTICE MARSHALL delivered the opinion for the Court.

The issue presented is whether an employer who participates in a multiemployer benefit plan that is governed by the Employee Retirement Income Security Act of 1974, 29 U. S. C. § 1001 *et seq.*, must allow the plan to conduct an audit involving the records of employees whom the employer denies are participants in the plan.

### I

#### A

Petitioners are two large multiemployer benefit plans, the Central States, Southeast and Southwest Areas Pension Fund and the Central States, Southeast and Southwest Areas Health and Welfare Fund (hereinafter referred to collectively as "Central States").<sup>1</sup> Governed by § 302(c)(5) of the Labor Management Relations Act, 29 U. S. C. § 186(c)(5) and the Employee Retirement Income Security Act of 1974

<sup>1</sup>As the Court of Appeals noted, "The record . . . indicates that the Funds are among the largest Taft-Hartley trust funds in the United States, that more than 13,000 employers participate and that they serve more than 500,000 employees whose job classifications are covered in thousands of collective bargaining agreements." 698 F. 2d 802, 811 (1983). See also *Schneider Moving & Storage Co. v. Robbins*, — U. S. —, — n. 16 (1984).

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STYLISTIC CHANGES THROUGHOUT

+ P. 22

Justice Brennan  
Justice White  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Marshall**

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3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 82-2157

CENTRAL STATES, SOUTHEAST AND SOUTHWEST  
AREAS PENSION FUND, ET AL., PETITIONERS  
v. CENTRAL TRANSPORT, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SIXTH CIRCUIT

[June —, 1985]

JUSTICE MARSHALL delivered the opinion for the Court.

The issue presented is whether an employer who participates in a multiemployer benefit plan that is governed by the Employee Retirement Income Security Act of 1974, 29 U. S. C. §1001 *et seq.*, must allow the plan to conduct an audit involving the records of employees whom the employer denies are participants in the plan.

I

A

Petitioners are two large multiemployer benefit plans, the Central States, Southeast and Southwest Areas Pension Fund and the Central States, Southeast and Southwest Areas Health and Welfare Fund (hereinafter referred to collectively as "Central States").<sup>1</sup> Governed by § 302(c)(5) of the Labor Management Relations Act, of 1947, 29 U. S. C. § 186(c)(5) and the Employee Retirement Income Security

<sup>1</sup>As the Court of Appeals noted, "The record . . . indicates that the Funds are among the largest Taft-Hartley trust funds in the United States, that more than 13,000 employers participate and that they serve more than 500,000 employees whose job classifications are covered in thousands of collective bargaining agreements." 698 F. 2d 802, 811 (1983). See also *Schneider Moving & Storage Co. v. Robbins*, 466 U. S. —, — n. 16 (1984).

Supreme Court of the United States  
Washington, D. C. 20543

June 25, 1985

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

MEMORANDUM TO THE CONFERENCE

Re: Case held pending our disposition of Central States v. Central Transport, No. 82-2157

Consolidated X-Ray Service Corp. v. Bugher, No. 83-421, is the only case held for our decision in Central States. The principal question raised in the petition concerned the Fifth Circuit's rejection of petitioner's claim that a dispute regarding the coverage of employee-benefit fund agreements must be submitted to the union for arbitration under the collective bargaining agreement before the trustees could bring suit in federal court. The same claim was rejected by this Court last Term in Schneider Moving and Storage Co. v. Robbins, No. 82-1860.

A secondary issue in the case is at best only arguably related to Central States v. Central Transport. Petitioner employer and respondents (employee benefit trustees and unions) were involved in a longstanding dispute over the employer's contribution obligations. Petitioner's contention was that it was obligated to contribute for only local union members and not for those doing bargaining unit work who were not members of the local union. The trustees rejected that interpretation and ordered an audit of petitioner's records to determine who was doing bargaining unit work. Petitioner allowed a partial audit, but withheld various documents essential to the audit's completion.

Based on the partial audit, respondents brought suit for delinquent contributions. The issue below was not the general scope of trustee audit power, as it was in Central States, but the extent of the petitioner's liability to the funds. The District Court held that the clear language of the collective bargaining agreement, as already interpreted in prior litigation, supported respondents. The court also awarded attorneys' fees. The Court of Appeals understood the attorneys' fees award to the union to be based on the petitioner's "bad faith" refusal to pay its clearly defined contribution obligations, and it cited, as one of a number of examples of petitioner's "bad faith," the petitioner's refusal to allow the requested audit.

The case is only related to Central States in the most indirect way. Petitioner argues that the Sixth Circuit's opinion in Central States stood for the proposition that an employer has

WJ ✓  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 6, 1985

Re: No. 82-2157, Central States, Southeast & Southwest  
Areas Pension Fund v. Central Transport, Inc.

Dear Thurgood:

Please join me.

Sincerely,

H.A.B.

Justice Marshall

cc: The Conference

✓

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 3, 1985

82-2157 Central States v. Central Transport, Inc.

Dear Thurgood:

Although my vote at Conference was tentatively to affirm, your carefully written opinion persuades me to join you subject to one clarification.

In Part V you limit the holding to the issue precisely before the Court, and leave open whether ERISA alone would authorize an extensive audit of the character involved in this case if the contract did not confer the necessary authority.

There is also language implicitly indicating that if the audit requested is unreasonable in its scope in a particular case, the employer would be free to challenge it. This was a point that one or more Justices made at Conference, and it helps me a great deal. If you would make this explicit either in the text of Part V or perhaps in footnote 23, I will be glad to join you.

Sincerely,

*Lewis*

Justice Marshall

lfp/ss

cc: The Conference

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 6, 1985

82-2157 Central States v. Central Transport

Dear Thurgood:

Please join me.

Sincerely,



Justice Marshall

lfp/ss

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 11, 1985

Re: 82-2157 - Central States, Southeast and Southwest  
Areas Pension Fund v. Central Transport, Inc.

Dear John:

Please join me in your opinion concurring in part and  
dissenting in part.

Sincerely,



Justice Stevens

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 4, 1985

Re: 82-2157 - Central States, Southeast  
and Southwest Areas Pension Fund  
v. Central Transport

Dear Thurgood:

Because I read the contract documents differently than you do, I will be circulating a brief dissent.

Respectfully,



Justice Marshall

Copies to the Conference

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: **Justice Stevens**

Circulated: JUN 11 1985

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-2157

CENTRAL STATES, SOUTHEAST AND SOUTHWEST  
AREAS PENSION FUND, ET AL., PETITIONERS  
*v.* CENTRAL TRANSPORT, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SIXTH CIRCUIT

[June —, 1985]

JUSTICE STEVENS, concurring in part and dissenting in part.

If an employer who participates in a multiemployer benefit plan enters into an agreement that authorizes the trustees of the plan to conduct an audit of the employer's personnel records, such an agreement is not prohibited by ERISA. That is the proposition of law that I understand the Court to announce today and I agree with it.

In my opinion, the right to conduct an audit of the kind involved in this case must be granted by contract; it is not conferred by ERISA itself. My disagreement with the Court is based on our differing interpretations of the particular contract documents in this case.

The Pension Fund trust agreements, as the Court accurately quotes, provide that "each Employer shall promptly furnish to the Trustees, upon reasonable demand" information concerning "the Employees." Pet. for Cert. A-46. The term "Employees," however, which is capitalized in the trust agreements, does not comprise *all* employees of respondent. Instead, article I §3 of the trust agreements expressly provide that "[t]he term 'Employee' as used herein shall include," in pertinent part, persons who are both employed pursuant to the collective bargaining agreement *and*

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

STYLISTIC CHANGES THROUGHOUT

SEE PAGES:

7.1

From: **Justice Stevens**

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2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 82-2157

CENTRAL STATES, SOUTHEAST AND SOUTHWEST  
AREAS PENSION FUND, ET AL., PETITIONERS  
v. CENTRAL TRANSPORT, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SIXTH CIRCUIT

[June —, 1985]

JUSTICE STEVENS, with whom THE CHIEF JUSTICE and  
JUSTICE REHNQUIST join, concurring in part and dissenting  
in part.

If an employer who participates in a multiemployer benefit plan enters into an agreement that authorizes the trustees of the plan to conduct an audit of the employer's personnel records, such an agreement is not prohibited by ERISA. That is the proposition of law that I understand the Court to announce today and I agree with it.

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The Pension Fund trust agreements, as the Court accurately quotes, provide that "each Employer shall promptly furnish to the Trustees, upon reasonable demand" information concerning "its Employees." App. to Pet. for Cert. A-46. The term "Employees," however, the first letter of which is capitalized in the trust agreements, does not comprise *all* employees of respondent. Instead, Article I, §3 expressly provides that "[t]he term 'Employee' as used herein shall include," in pertinent part, persons who are both employed pursuant to the collective-bargaining agreement

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

May 30, 1985

No. 82-2157 Central States, Southeast &  
Southwest Areas Pension Fund v. Central  
Transport, Inc.

Dear Thurgood,

Please join me.

Sincerely,



Justice Marshall

Copies to the Conference