

# Australian and International Pilots Association Casual Vacancy Election

## DECLARATION OF RESULTS FOR CONTESTED OFFICES

Results of the election for the following offices conducted in accordance with the provisions of the Workplace Relations Act 1996 and the rules of the organisation.

E2008/149

### Australian and International Pilots Association Committee of Management Member

<u>Candidates</u>	<u>First Preference Votes</u>	<u>Votes</u>
GUNDRUM, James L.	N/A	N/A
HOLT, David	N/A	N/A
WIRTH, James	N/A	N/A
Exhausted Votes		N/A
Loss/Gain by Fraction		N/A
Total votes	N/A	N/A
Formal ballot papers	N/A	N/A
Informal ballot papers	N/A	N/A

Applying Rule 20 the number of 'A' Pilots on the Committee of Management should be 3. There are currently 2 'A' Pilots on the Committee. Only one candidate James L Gundrum is an 'A' pilot. No ballot is therefore necessary. I declare James L Gundrum elected unopposed.

Noopur Madan  
Returning Officer  
Australian Electoral Commission

6 August 2008



## Workplace Relations Act 1996 – Schedule 1

### POST ELECTION REPORT

**Client:** Australian and International Pilots Association

**Contact details:** Peter Somerville  
General Manager  
Suite 601, Level 6 Coward St  
MASCOT NSW 2020

**Email:** office@aipa.org.au  
**Tel:** 02 8307 7777

**AIR contact officer:** Ken Ophel

**Email:** Industrial.elections@air.gov.au  
**Tel:** 03 8661 7984

#### ELECTIONS COVERED IN THIS REPORT

**Election Decision No/s:** E2008/149

#### RULES

**Rules used for elections Rule ID:** [127 N Incorporates alterations of 2/01/2008]  
[ D2006/58 & appeal decision[2007]AIRCFB 796]

**Rules difficult to apply/interpret:**

The rules are silent on the conduct of casual vacancy elections where the unexpired part of the term exceeds three-quarters of the term of office. The Returning Officer used their authority under s193 (1) (b) (ii) of Schedule 1 of the Workplace Relations Act 1996 to create election rules by applying *mutatis mutandis* the direct election provisions contained in Rule 20 and Rule 38.

#### ROLL OF VOTERS

As there was no ballot held, the Roll of Voters was not required.

#### ALLEGATIONS OF IRREGULARITIES RECEIVED

Details of written allegations of irregularities, and action taken by AEC:	None
Other irregularities identified, and action taken:	None

#### ATTACHMENTS

**A:** Declaration of Uncontested Offices

Noopur Madan  
Returning Officer  
8 August 2008

*Workplace Relations Act 1996*  
s.189 RAO Schedule - arrangement for conduct of an election

**Australian and International Pilots Association**  
(E2008/149)

T. NASSIOS  
DEPUTY INDUSTRIAL REGISTRAR

MELBOURNE, 9 APRIL 2008

*Arrangement for conduct of election.*

**DECISION**

[1] On 18 March 2008 the Australian and International Pilots Association lodged in the Industrial Registry the prescribed information in relation to an election to fill a vacancy in following office:

Committee of Management Member (1)

Following the receipt of informal objection to the making of arrangements for an election for the position, I invited a formal written submission on the matter. As no written submission has been received, and the time I allowed for forwarding such submissions has passed, I have proceeded to determine the matter.

A number of deficiencies in the rules which require urgent attention have become apparent during the consideration of this matter.

**Rules relating to casual vacancies on Committee of Management**

Rule 38(u) on its face provides for the filling of a vacancy on the Committee of Management by appointing a person chosen by reference to the results of a previous election, who would hold office “.. until the declaration of the next year’s election ..”. That provision, as it is set out in the rules, does not in my view offend the provisions of s146 of the Schedule 1 of the Workplace Relations Act 1996 (the “RAO Schedule”), as it would not permit a casual vacancy to be filled otherwise than by an ordinary election for a period which exceeds 12 months.

On 12 July 2006, I certified alterations to the rules of AIPA (R2006/236) which inserted a new rule 56A. One of the effects of Rule 56A is that rule 38(u) is now to be taken to provide that a person filling a casual vacancy on the Committee of Management will hold office “.. for the unexpired term of office of the person he is elected or appointed to replace.” (my underlining). Another effect is that elections are not necessarily now held every year. This arises from the phasing in of an increase in the term of office of committee of management members from two to three years.

If r38(u), as modified by rule 56A, were to be read as allowing a person appointed under r38(u)(i) to hold office for up to 3 years, that would in my view clearly offend RAO s146 as it would exceed 12 months or three-quarters of the term of the office (RAO s146(2)).

I believe the better view is that the reference to “the person he is elected or appointed to replace” should be read as meaning that in some cases a casual vacancy will be filled by election, and applying the presumption of regularity rule, that this should be the case at least where more than three-quarters of the term of the office remain.

While I am making arrangements for an election to fill a vacancy on this occasion, the fact is that the rules do not make explicit provision for the filling of casual vacancies where the unexpired part of the term exceeds three-quarters of the term of office. Further r38(u) does not appear to have ever provided for a situation where there is no “next highest polling candidate” to appoint, even in situations where the unexpired part of the term is less than three-quarters of the term of office.

### **Rules relating to other casual vacancies**

Similar issues to those referred to above apply to the filling of casual vacancies in the positions of President, Vice-President, Secretary, Assistant Secretary and Treasurer.

Rule 41 does not explicitly state how long a person appointed to fill a casual vacancy will hold office. This rule did not offend RAO s146 as long as the term of office of these positions was 1 year, however again the effect of Rule 56A is to extend the term of office for persons elected to these positions after 12 July 2006, in this case from 1 year to 2 years. A casual vacancy in these positions could now therefore be for a period which exceeds the 12 month period referred to in RAO s146(2).

The organisation should, as a matter of urgency, make such alterations to the rules as are necessary to provide for the filling of all casual vacancies in a manner which conforms to the provisions of the RAO Schedule.

I also urge the organisation to consider the incorporation of the “deeming” provisions in rule 56A into the relevant rules, so as to enable the rules in relation to elections to be more readily understood.

It may streamline the process if draft alterations were submitted to the Registry for comment before processing them through the relevant rule altering procedure in the organisation.

[2] I am satisfied that an election for the abovenamed office is required to be held under the rules of the organisation and, under subsection 189(3) of Schedule 1 of the *Workplace Relations Act 1996*, I am making arrangements for the conduct of the election by the Australian Electoral Commission.



18 March 2008

The Industrial Registrar  
Australian Industrial Registry  
Level 35, Nauru House  
80 Collins Street  
**MELBOURNE VIC 3000**

By email: [ken.ophel@air.gov.au](mailto:ken.ophel@air.gov.au)

**Att: Ken Ophel**

**Arrangements for the conduct of an election in accordance with section 189 of Schedule 1 to the Workplace Relations Act 1996**

Pursuant to Section 189(1) of Schedule 1 to the *Workplace Relations Act 1996* (~~%Act+~~) and Regulation 138 of the Workplace Relations (RAO) Regulations, I hereby lodge the following prescribed information concerning an election to fill a casual vacancy on the Committee of Management for the Australian and International Pilots Association (**AIPA**).

**Regulation 138(1)**

**(a) The name of each office in respect of which an election is required**

One member of the Committee of Management

**(b) The reason for the election**

- (i) Paul Martin, a member of the Committee of Management has resigned with immediate effect.
- (ii) Rule 38(u)(i) of the AIPA Rules provides, in part, that casual vacancies ~~%shall be filled by the next highest polling candidate below those elected from the ballot who is willing to accept the casual vacancy and whose status is such that the number of Flight Engineer Committeemen and "A" Pilot Committeemen specified in Rule 20 is maintained.+~~
- (iii) Paul Martin is not an ~~%A+~~Pilot or Flight Engineer Committeeman
- (iv) However, Clause 146 of Schedule 1 to the Act provides, in part, that:

*"146 Rules may provide for filling of casual vacancies*

(1) The rules of an organisation may provide for the filling of a casual vacancy in an office by an ordinary election or, subject to this section, in any other manner provided in the rules.

(2) **Rules made under subsection (1) must not permit a casual vacancy, or a further casual vacancy, occurring within the term of an office to be filled, otherwise than by an ordinary election, for so much of the unexpired part of the term as exceeds:**

(a) 12 months; or

(b) **three-quarters of the term of the office;**

*whichever is the greater.” [my emphasis]*

(v) Paul Martin was elected to the Committee of Management with effect from 12 November 2007 for a term of three years. The remaining term of office is 32 months in a 36 month term thus exceeding three-quarters of the total term of the office.

**(c) The number of offices**

One, as set out in (a) above.

**(d) The electorate of each office**

The electorate for a Committee of Management position is the total financial membership of AIPA.

**(e) The date and time of the commencement and expiration of the nomination period as set out in the rules of the organisation**

The AIPA Rules do not provide for an election to a casual vacancy and hence no mechanism for determining the commencement and expiration of the nomination period is included.

**(f) The day on which the roll of voters is to be closed**

The AIPA Rules do not provide for an election to a casual vacancy and hence no mechanism for determining the day on which the roll of voters is to be closed is included.

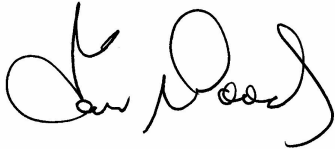
**(g) The voting system to be employed in the conduct of the election**

The voting system for a Committee of Management position will be a direct voting system. Elections are by secret postal ballot.

We look forward to receiving the Registrar's decision that an election for the abovenamed office is required to be held under AIPA's Rules and advice that arrangements are being made for the conduct of the election by the Australian Electoral Commission.

If you require further information or wish to discuss the matter, please contact Peter Somerville at the address shown above.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ian Woods', written in a cursive style.

**Capt Ian Woods**  
**President**

Ph: (02) 8307 7777  
Fax: (02) 8307 7799  
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