

Australian and International Pilots Association

Casual Vacancy COM E2010-2700

DECLARATION OF RESULTS FOR CONTESTED OFFICES

Results of the election for the following offices conducted in accordance with the provisions of the Fair Work (Registered Organisations) Act 2009 and the rules of the organisation.

E2011/2700

Australian and International Pilots Association

Total number of persons on the roll of voters	2500
Ballot papers issued	2497
Duplicate ballot papers issued	0
TOTAL BALLOT PAPERS ISSUED	2497
Ballot papers / envelopes returned for scrutiny	1018
Less ballot papers / envelopes rejected at preliminary	7
Adjusting Balance	0
TOTAL BALLOT PAPERS ADMITTED TO SCRUTINY	1011
Percentage of ballot papers returned to number issued	40%
Ballot papers returned as unclaimed mail	24
Ballot papers not returned	468

Committee of Management Member

<u>Candidates</u>	<u>Votes</u>
PAVLOU , Gregory	208
HOLT, David	141
ARTHUR, Darren	285
ROGGENKAMP , Mitchell	158
CASTELLINO, Brolin	210
Exhausted Votes	0
Loss/Gain by Fraction	0
Total votes	1002
Formal ballot papers	1002
Informal ballot papers	9

I declare Darren Arthur elected.

Noopur Madan
Returning Officer
Australian Electoral Commission

14 June 2011



Fair Work (Registered Organisations) Act 2009

POST ELECTION REPORT

Client: Australian and International Pilots Association

Contact details: Capt Steve Anderson
Secretary
Australian and International
Pilots Association
Locked Bag 747
BOTANY NSW 1455

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

AIR contact officer: Eve Anderson

Email: eve.anderson@fwa.gov.au
Tel: 03 8661 7929

ELECTIONS COVERED IN THIS REPORT

Election Decision No/s: E2010/2700

RULES

Rules used for elections Rule ID: [127 N Incorporates alterations of 14/01/2009]
[R2008/461]
Replaces rulebook dated 02/01/2008

Rules difficult to apply/interpret: Nil

ROLL OF VOTERS

Total number of voters on the roll	2500	
Number of apparent workplace addresses	0	0 %
Number of non-current addresses	0	0 %
Other Matters	Nil	

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 Contested Offices



FAIR WORK
AUSTRALIA

DECISION

Fair Work (Registered Organisations) Act 2009
s.189 – Arrangement for conduct of an election

Australian and International Pilots Association
(E2010/2700)

T. NASSIOS

MELBOURNE, 18 MARCH 2011

Arrangement for conduct of election.

[1] On 16 December 2010 the Australian and International Pilots Association (AIPA) lodged with Fair Work Australia the prescribed information in relation to an election to fill the following vacant office for the unexpired part of the term:

Member of the Committee of Management (1)

[2] On 10 January 2011 I declined to make arrangements for the conduct of an election by the Australian Electoral Commission¹. I was unable to conclude, on the material before me, that the resignation of Captain Glynn from the Committee of Management had been effected and I was not satisfied that an election was required to be held.

[3] On 11 March 2011 an appeal against my decision was upheld and the decision quashed². On 18 March 2011 Vice President Watson ordered Fair Work Australia to make the necessary arrangements for the conduct of an election to fill the casual vacancy³.

[4] Accordingly an election for the abovenamed office is required to be held under the rules of the organisation and, under subsection 189(3) of the *Fair Work (Registered Organisations) Act 2009*, I am making arrangements for the conduct of the election by the Australian Electoral Commission.



DELEGATE OF THE GENERAL MANAGER
FAIR WORK AUSTRALIA

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<Price code A, PR507702 >

¹ [2011] FWAD 121

² [2011] FWA1223

³ PR507696



FAIR WORK
AUSTRALIA

ORDER

Fair Work Act 2009
s.604 - Appeal of decisions

Australian and International Pilots Association

v

Captain Michael Glynn
(C2011/24)

VICE PRESIDENT WATSON

SYDNEY, 18 MARCH 2011

Appeal against decision [2011] FWA 121 of T Nassios at Melbourne on 10 January 2011 in matter number E2010/2700.

A. Further to my decision of 11 March 2011¹ and pursuant to s 604 of the *Fair Work Act 2009* I order as follows:

1. that the Appeal be allowed;
2. that the Decision of T Nassios, Delegate of the General Manager be quashed; and
3. that Fair Work Australia make the necessary arrangements for the conduct of the election to fill the Casual Vacancy to be carried out in accordance with the Rules of the Australian and International Pilots Association and the *Fair Work (Registered Organisations) Act 2009*.

B. This order will take effect from 11 March 2011.



VICE PRESIDENT WATSON

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¹ [2011] FWA 1223



FAIR WORK
AUSTRALIA

DECISION

Fair Work Act 2009
s.604 - Appeal of decisions

Australian and International Pilots Association

v

Captain Michael Glynn
(C2011/24)

VICE PRESIDENT WATSON

SYDNEY, 11 MARCH 2011

Appeal against decision [2011] FWA 121 of T Nassios at Melbourne on 10 January 2011 in matter number E2010/2700 - Fair Work (Registered Organisations) Act 2009 - Australian and International Pilots Association (AIPA) - notice of termination - resignation from elected office - withdrawal of resignation - casual vacancy - organisational rules.

Introduction

[1] This decision concerns an application under s 604 of the *Fair Work Act 2009* (the Act) by the Australian and International Pilots Association (AIPA) for permission to appeal against the decision of T Nassios, the Delegate of the General Manager of Fair Work Australia (the Delegate) on 10 January 2011 in matter number E2010/2700.

[2] The decision of the Delegate concerned a request from the AIPA for Fair Work Australia (FWA) to make arrangements for the conduct of an election to fill a Casual Vacancy for the unexpired part of the term of a Member of the AIPA Committee of Management (CoM). AIPA contended in their request to FWA that this Casual Vacancy had arisen on 23 October 2010 when Captain Michael Glynn tendered his resignation as Member of the CoM to take effect from the conclusion of the 2010 AIPA AGM and that his purported withdrawal of his resignation prior to the date of the AGM had not altered the effect of the resignation.

[3] The Delegate found that he was unable to conclude, on the material before him, that Captain Glynn's resignation had been effected leading to a Casual Vacancy on the AIPA CoM. As a result of this finding, the Delegate was not satisfied that it was necessary for AIPA to hold an election to fill Captain Glynn's position and declined to make the necessary arrangements for such an election with the Australian Electoral Commission (AEC).

[4] The Appeal was heard on 18 February 2011. AIPA was represented by Mr. J. Nolan, of Counsel, and Mr. J. Mallios. Captain Glynn appeared on his own behalf.

Background

[5] Captain Glynn was declared elected to the AIPA CoM for the term 2010-2013 by the Australian Electoral Commission on 15 October 2010. In accordance with rule 38(t)(i) of the AIPA Rules, Captain Glynn was to assume office at the 2010 AGM on 13 December 2010.

[6] Prior to the AGM, on 23 October 2010, Captain Glynn emailed Captain Barry Jackson (AIPA President) notifying him of his resignation from the AIPA CoM, effective from the completion of the 2010 AIPA AGM. In that email, Captain Glynn stated:

“Dear Barry,

I have re-considered my availability to take up my next term on COM, and hereby serve notice that I will resign from COM effective the completion of the AGM.

I will still be available to assist AIPA as the Chair of the OH&S sub-committee and am available to assist on the other sub-committees that I am currently a part of, subject to the will of the Exec.

Regards
Mike Glynn”

[7] Later that same day, 23 October 2010, Captain Steve Anderson (AIPA Secretary) sent an email to Captain Glynn, as follows:

“Dear Mike,

As secretary of AIPA I hereby accept your resignation from the Committee of Management to take effect on the 13th December 2010.

Please appreciate that as you are now no longer going to be on the CoM commencing after the AGM, you will be unable to vote or nominate for positions on the Executive.

I thank you for your time spent on the AIPA CoM as well as your time as VP and wish you all the best.

Rgds,
Steve Anderson”

[8] The following month, on 17 November 2010, Rachel Chapman-Oliver (AIPA Project Officer) emailed Captain Glynn requesting a signed letter from him confirming his resignation for the purposes of arranging an election through FWA and the AEC for the Casual Vacancy. In that email Ms Chapman-Oliver stated:

“Hi Mike,

Fair Work Australia requires a letter from you confirming your resignation from the CoM for 2010-2013 and the effective date, so that they can make arrangements with the AEC to conduct an election for the Casual Vacancy.

Would you please forward me a copy at your earliest convenience, so that I may send it with the letter from Steve. An attachment via email is fine, provided that it contains your signature.

Thanks and regards,
Rachel”

[9] On 2 December 2010, again prior to the AGM, Captain Glynn sought to withdraw his resignation in an email sent to Captain Anderson as follows:

“Dear Steve,

Due to the approaching EBA, the industrial climate and the current under-representation of A330 pilots on the new COM, I hereby withdraw the resignation, effective after the AGM, that I previously submitted. I believe I have much to offer the new COM and feel I must honour the choice of the people who voted for me.

Regards,
Mike Glynn”

[10] That same day, 2 December 2010, Captain Anderson replied to Captain Glynn in an email stating:

“Mike,

I am happy to withdraw as requested but I will have to get a ruling from FWA as to whether or not this is acceptable. As soon as I have a ruling I will come back to you.

Regards
Steve Anderson”

[11] On 3 December, Captain Anderson emailed FWA notifying it of the dates of Captain Glynn’s elected office, resignation and purported withdrawal. Captain Anderson also noted in the email that he had accepted Captain Glynn’s resignation prior to the date of Captain Glynn’s purported withdrawal. Captain Anderson then requested that FWA confirm with him that an election for one Casual Vacancy was required.

[12] AIPA provided further information in relation to the AIPA Rules relevant to Casual Vacancies on 14 December 2010. On 15 December, FWA emailed Captain Anderson requesting further information necessary to satisfy s 189(1) of the Fair Work (Registered Organisations) Act 2009 (the RO Act), the contents of which are set out in Regulation 138 of the Fair Work (Registered Organisations) Regulations 2009. This information was provided by the AIPA on 16 December 2010. There was no further correspondence between the AIPA and FWA prior to the decision issued by the Delegate on 10 January 2011.

The Decision under Appeal

[13] On 10 January 2011, the Delegate issued decision [2011] FWAD 121 under the descriptor 'Arrangement for conduct of election'. In the decision, the Delegate stated that on 16 December 2010 the AIPA had lodged with FWA the prescribed information in relation to an election to fill the vacant office of Member of the CoM for the unexpired part of the term.

[14] The Delegate then referred to the email exchange between the parties regarding the resignation, acceptance and purported withdrawal of Captain Glynn's resignation, the substance of which has been quoted in full above. The Delegate also referred to a letter that he had received from Captain Glynn which confirmed the substance of the email exchange but which also went on to state that he had never provided a signed resignation to the AIPA.

[15] The Delegate concluded that:

"On the material provided I am unable to conclude that the incumbent's notice of resignation from office was effected.

Accordingly, on the material before me I am not satisfied that an election for the abovenamed office is required to be held under the rules of the organisation and I decline to make arrangements for the conduct of the election by the Australian Electoral Commission".

Permission to Appeal

[16] Section 604(1)(b) of the Act requires that a person who is aggrieved by a decision made by the General Manager (including a delegate of the General Manager, as in this case) under the RO Act may appeal the decision with the permission of FWA.

[17] Section 604(2) provides that FWA must grant permission if it is satisfied that it is in the public interest to do so although, in a matter of this type, this is not the sole ground for granting permission to appeal.

[18] AIPA submits that it is in the public interest to grant permission to appeal for the following reasons:

1. the issue has the potential to affect rights of all AIPA members who might be eligible to stand for the vacated office; and
2. the decision is erroneous at law and will have ongoing effects for the term of office of the AIPA CoM; and
3. the impact of the decision – if not corrected – also raises the potential for further litigation in the nature of an election inquiry at the behest of any AIPA member who is dissatisfied with the Delegate's decision; and
4. the decision has significance generally for the approach taken to elections and organisations' rules where resignations from office occur.

[19] I am satisfied that the appeal raises important questions in the public interest and I grant permission to appeal.

Grounds of appeal

[20] AIPA appeals the decision of the Delegate on the following grounds:

1. The Delegate erred in finding that he was unable to conclude that the resignation had been effected from the material before him; and
2. The Delegate failed to apply accepted legal principles to Captain Glynn's resignation and its consequences at law; and
3. The Delegate failed to have regard to the requirements of the Rules of AIPA regarding resignations from an office; and
4. The Delegate failed to have regard to the provisions of the *Fair Work (Registered Organisations) Act 2009* that have relevance to the creation of casual vacancies in the office of a registered organisation; and
5. The Delegate failed to afford procedural fairness to the Appellant, which he was obliged to provide; and
6. The Delegate failed to provide proper or adequate reasons for his decision, which he was obliged to provide.

The validity of the Appeal

[21] Captain Glynn challenges the validity of the appeal on the basis that the Notice of Appeal was never approved by the AIPA CoM. In response, the AIPA submits that the President authorised the appeal and the AIPA Rules 23(b)(v) and 23(d) afford the President the necessary discretionary powers to commence and conduct proceedings on behalf of the AIPA without prior approval of the AIPA CoM.

[22] The rules of the AIPA express the powers of the various office holders and governing bodies in general terms. The CoM has the power to do all things necessary for achieving the objects of the organisation including the power to delegate to others. The President has responsibility for ensuring that policies and objectives are pursued and the rules are observed and performed. The President is specifically empowered to rule on any dispute over an interpretation of the rules and in the cases where the rules are silent, to direct the course to be taken.

[23] In my view the rules need to be interpreted in a practical manner. Unless an action taken by an officeholder is clearly taken without the authority of the organisation under its rules, the Tribunal should be slow to find that an action ostensibly made by the organisation is invalid. The institution of legal proceedings over the application of rules is a matter that falls generally within the President's authority. While that power is subject to any guidance or direction from the CoM, it has not directed that the appeal in this matter not be pursued. I find that the appeal is valid and turn to consider the merits of the appeal.

Was there an effective resignation?

[24] Captain Glynn submits that his email of 23 October 2010, reproduced in full above at [6], amounts to a conditional resignation with the condition precedent being the conclusion of the 2010 AIPA AGM. Captain Glynn submits that as he withdrew his resignation before this event occurred, his resignation never came into effect. He further submits that his resignation was of no effect as it was unsigned.

[25] AIPA submits that Captain Glynn's email of 23 October 2010 amounts to an unconditional resignation from his elected position as Member of the AIPA CoM and that the date of effect constitutes a notice period and not a condition precedent.

[26] The relevant legal principle is that a resignation from employment or office may be effected by the communication of proper notice. The length and content of the notice may be prescribed by the contract itself, by statute or where no express provision is made, by the provision of an implied term of 'reasonable notice'. Resignation is a unilateral act. It is not a legal requirement that a resignation be accepted by the other party despite this being common practice. The rationale for the provision of a notice period is explained in the well known decision of *Birrell v Australian National Airlines Commission* (1984) 9 IR 101 [at 110]:

"The purpose of providing in a contract for a period of notice of termination is to enable the party receiving the notice to make other arrangements. An employee given notice by his or her employer has a period of time in which to seek another job; an employer who receives notice has time to arrange for a substitute employee"

[27] The AIPA Rules are silent on the giving of notice by elected Members of the AIPA CoM when resigning from office. The RO Act is also silent on this point. An implied provision of reasonable notice therefore applies. Further, Captain Glynn states in his 23 October email:

"I ... hereby serve notice that I will resign".

[28] In my view, the proper construction of Captain Glynn's email of 23 October 2010 is that it amounts to a notice of termination. His advice that his resignation would take effect from the conclusion of the 2010 AIPA AGM constitutes a notice period and was not a condition precedent on which the effect of the resignation was dependent.

[29] I do not consider that the resignation needed to be personally signed. The email was sent by him on his own behalf with his name at the end of the email. In my view it was a valid resignation. For the reasons above, I find that Captain Glynn's resignation was effected when he emailed his resignation to Captain Anderson on 23 October 2010.

Was the notice withdrawn?

[30] The relevant legal principles in relation to withdrawal of notice from employment or office of an organisation are well established. Once a notice to terminate has been communicated, it cannot be withdrawn except by mutual consent of the parties. In *Birrell v Australian National Airlines Commission* (1984) 9 IR 101 Gray J said [at 110]:

“It would be harsh if arrangements so made during the running of the notice could be disrupted, and parties could be held to their contracts by unilateral withdrawal of the notice at the last minute. Such withdrawal, if possible, could lead to an employee being bound by contracts of employment to employers, or an employer being bound by contracts of employment with two employees, each being required to give notice to one or the other in order to be extricated from this position, or possibly to suffer the requirement to forfeit or pay wages for a period of time. In my view, I should lean against the adoption of any principle which could lead to such unfortunate consequences, and I should follow the authorities which tend to establish that withdrawal of a notice of termination of a contract of employment can only be effected by consent of both parties.”

[31] The general principle was recently restated by the NSW Court of Appeal in *New South Wales v Paige* [2002] NSWCA 235 [at 277]:

“Subject to any contractual or statutory provision to the contrary, the act of resignation from employment, or from membership of an organisation, is a unilateral act that takes effect in accordance with its terms and does not depend upon acceptance by the person or body to whom the resignation is directed. This common law principle is a reflection of the significance the common law has always attached to personal autonomy. Where this principle applies, unilateral withdrawal of a resignation or notice of termination is not possible”.

[32] As stated in the quote above, the principle is not confined to the context of paid employment and is applicable to positions of office in organisations¹.

[33] Only limited exceptions to the above principles apply. Parties may withdraw their notice without consent where notice was given ‘involuntarily’ⁱⁱ or ‘in the heat of the moment’ⁱⁱⁱ. Neither of these exceptions applies in this case. Therefore Captain Glynn was not able to unilaterally withdraw his resignation unless the withdrawal was accepted by the organisation. The question becomes whether this is what occurred in this case.

[34] Captain Glynn submits that Captain Steve Anderson accepted his withdrawal on 2 December 2010 on the condition that FWA approve that such a withdrawal was acceptable. Captain Glynn asserts that the decision of the Delegate fulfils this condition.

[35] The AIPA submits that Captain Anderson’s email merely indicated that he would make enquiries of FWA, it did not agree to permit the withdrawal and given the consequences of a resignation, nor could he do so.

[36] In order for there to be a valid withdrawal of a resignation, there must be a capacity of the organisation to agree to allow withdrawal of the resignation and there must be valid consent by an officer or body of the organisation authorised to give such consent. In my view neither requirement is satisfied in this case.

[37] The position of an office holder of an organisation is distinguishable from the contractual principles which apply in the employment context. Parties to a contract of employment are governed by the principles of contract law and the essential ingredients of a contract. They are free to enter and withdraw from contracts unless they contravene a law in doing so. The consequences of an acceptance of a request to withdraw a resignation from

employment are confined to the parties to that employment contract and the contractual relationship revived or recreated as a result of such consent. A resignation from an office of an organisation, on the other hand, has consequences under the rules of the organisation. It triggers a vacancy of that office, imposes obligations under the rules to fill that vacancy and creates rights of other members to stand for election and vote for a candidate in that election. In my view it is not open to any officer of the organisation to circumvent that process by accepting a withdrawal of a resignation.

[38] In any event, the circumstances do not establish consent to the withdrawal. Captain Anderson communicated a response to Captain Glynn on 2 December 2011 which in my view was equivocal and unclear in its meaning. It did not expressly communicate consent to the withdrawal but is properly construed as agreeing to look further into the matter and obtain advice. The subsequent written communications from Captain Anderson to FWA on 3 December sought confirmation that an election was required. It indicated that the resignation had been received, that it was accepted and that Captain Glynn had sought to withdraw the resignation. In no way was it indicated in that or in any future communication that Captain Anderson or AIPA consented to the withdrawal. In these circumstances it would be misconstruing the communications to interpret them as conveying consent.

[39] The assertion that the Delegate's decision satisfied the condition in Captain Anderson's email of 2 December 2011 fails to take into account the actual communications between Captain Anderson and FWA. The decision of the Delegate was not responsive to the communication of consent of AIPA and nor could it have been. It related to the communications from Captain Glynn and the conclusion that the resignation was not effected. I find that AIPA did not consent to the request to withdraw the resignation on a conditional basis or otherwise.

[40] It follows that the decision of the Delegate was in error and the appeal must be upheld.

Other grounds of appeal

[41] In the light of the above conclusions it is unnecessary that I consider the further grounds of appeal going to the provision of an opportunity for the organisation to make submissions to the Delegate and the adequacy of the Delegate's reasons.

Conclusions

[42] The effect of Captain Glynn's resignation and purported withdrawal has important consequences for the AIPA and its members, namely whether a Casual Vacancy was created and whether it must be filled in accordance with Rule 38(u)(i) of the AIPA Rules and s 146 of the RO Act.

[43] For the reasons above, I find that there was an error of law in the original decision in failing to find that the resignation of Captain Glynn created a vacancy in the position to which he was elected and making arrangements for an election of the vacant position.

[44] I allow the appeal and quash the decision of the Delegate. I will issue an order that FWA make the necessary arrangements for the conduct of the election to fill the Casual Vacancy to be carried out in accordance with the Rules of the AIPA and the RO Act.



VICE PRESIDENT WATSON

Appearances:

Mr. J. Nolan, of counsel, for the AIPA.

Captain Glynn, on his own behalf.

Hearing details:

2011
SYDNEY
18 FEBRUARY.

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ⁱ *Saddington v Building Workers Industrial Union of Australia and Anor* (1993) 49 IR 323; *De Costa v Ecob and Ors* (1992) 45 IR 19.

ⁱⁱ *Achal v Electrolux Pty Ltd* (1993) 50 IR 236.

ⁱⁱⁱ *NGO v Link Printing Pty Ltd* (1999) 94 IR 375.



FAIR WORK
AUSTRALIA

DECISION

Fair Work (Registered Organisations) Act 2009
s.189 – Arrangement for conduct of an election

Australian and International Pilots Association
(E2010/2700)

T. NASSIOS

MELBOURNE, 10 JANUARY 2011

Arrangement for conduct of election.

[1] On 16 December 2010 the Australian and International Pilots Association (AIPA) lodged with Fair Work Australia the prescribed information in relation to an election to fill the following vacant office for the unexpired part of the term:

Member of the Committee of Management (1)

[2] Contained with the prescribed information were copies of email exchanges between the incumbent and officers of AIPA, as follows:

- an email from the incumbent to the President of AIPA dated 23 October 2010 serving notice of resignation from the committee of management effective from the completion of the Annual General Meeting;
- an email from the Secretary of AIPA to the incumbent dated 23 October 2010 accepting the incumbent's resignation, taking effect from 13 December 2010; and
- an email from the incumbent to the Secretary of AIPA dated 2 December 2010 withdrawing his notice of resignation from the committee of management.

[3] On 24 December 2010 Fair Work Australia (FWA) sought further information from the incumbent.

[4] By letter dated 6 January 2011 the incumbent advised as follows:

- That on 23 October 2010 he emailed his resignation from the committee of management to take effect from the completion of the Annual General Meeting to be held 13 December 2010 (copy of email provided);
- That he received a request from AIPA for a signed resignation to be submitted, but that this was never submitted;
- That he withdrew his resignation by email on 2 December 2010 (copy of email provided);
- That he received an emailed reply to his withdrawal from the Secretary from AIPA which stated that the Secretary was 'happy to withdraw as requested but that [he] will have to get a ruling from FWA as to whether or not this is acceptable' (copy of email provided).

[5] On the material provided I am unable to conclude that the incumbent's notice of resignation from office was effected.

[6] Accordingly, on the material before me I am not satisfied that an election for the abovenamed office is required to be held under the rules of the organisation and I decline to make arrangements for the conduct of the election by the Australian Electoral Commission.



DELEGATE OF THE GENERAL MANAGER
FAIR WORK AUSTRALIA

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Advancing the interests of our members and the profession

Australian & International Pilots Association ABN 30 006 191 853

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14 December 2010

Eve Anderson
Fair Work Australia
GPO BOX 1994
MELBOURNE VIC 3001

By email: eve.anderson@fwa.gov.au

Dear Eve,

The Australian Electoral Commission recently completed the election process for twenty (20) positions on AIPA's Committee of Management for 2010 – 2013.

One of the members successful in obtaining a position on the Committee of Management, Captain Michael Glynn, has submitted his resignation effective 13 December 2010. As the AIPA Secretary, I have registered and accepted Captain Glynn's resignation.

According to Rule 38 (u) (i) of the AIPA Registered Rules which addresses Casual Vacancies on the Committee of Management, as the unexpired part of the term of office exceeds three quarters of the term of office, an election is required to fill the casual vacancy.

38 - NOMINATION AND ELECTION OF COMMITTEE OF MANAGEMENT OF THE ORGANISATION

(u) Casual Vacancies on the Committee of Management

(i) In the event of a casual vacancy occurring on the Committee of Management where the unexpired part of the term of office relating to the vacant position exceeds three-quarters of the term of the office, the casual vacancy will be filled by an election. The election will be conducted in accordance with the Rules relevant to the election to fill the Office so far as is practicable, and only a member eligible to nominate for and hold the Office may be elected.

We look forward to receiving advice from the Registrar confirming that arrangements are being made for the conduct of the election by the Australian Electoral Commission.

If you require further information please contact Rachel Chapman-Oliver on
(02) 8307 7750.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Anderson', followed by a period.

Capt Steve Anderson
Secretary

Ph: (02) 8307 7777
Fax: (02) 8307 7799
Email: office@aipa.org.au



FAIR WORK
AUSTRALIA

15 December 2010

Capt Steve Anderson
Secretary
Australian and International Pilots Association
Locked Bag 5747
Botany NSW 1455
By email: office@aipa.org.au

cc: Ms Rachel Chapman-Oliver
Project Officer
Australian and International Pilots Association
Locked Bag 5747
Botany NSW 1455
By email: Rachel.ChapmanOliver@aipa.org.au

Dear Capt Anderson

Re: Correspondence regarding casual vacancy on the AIPA Committee of Management (E2010/2700)

I write to confirm receipt of your correspondence requesting the arrangement of an election due to the resignation of Capt Michael Glynn from the Australian and International Pilots Association's Committee of Management. In order to effect this request [subsection 189\(1\)](#) of the *Fair Work (Registered Organisations) Act 2009* requires the lodgement of prescribed information. [Regulation 138](#) sets out the information that must be lodged:

138 Prescribed information for election (s 189 (1))

(1) For subsection 189 (1) of the Act, the following information is prescribed information for an election conducted for an office or for a position other than an office:

- (a) the name of each office or position for which an election is required;*
- (b) the reason for the election is that:*
 - (i) the term of the office or position has expired or is due to expire in the normal course of events; or*
 - (ii) a casual vacancy in the office or position has occurred (or will occur imminently); or*
 - (iii) a new office or position has been created; or*
 - (iv) the office or position was not filled at the previous election;*
- (c) if more than one of the offices or positions for which an election is required has the same name, and the number of offices or positions can, under the rules of the relevant organisation or branch, be determined before the prescribed day — the number of those offices or positions;*

(d) if the electorate comprises only members of a branch, section or other division of an organisation — the name of the branch, section or division;

(e) the date and time of the beginning and end of the period in which nominations of candidates will be called for or may be made under the rules of the organisation or branch in relation to the election;

(f) the day provided for in the rules of the organisation as the day on which the roll of voters is to be closed;

(g) the kind of voting system to be used in the conduct of the election is:

(i) a direct voting system; or

(ii) a collegiate electoral system.

(2) The prescribed information lodged by an organisation or branch under subsection 189 (1) of the Act must contain a statement, signed by an officer of the organisation or branch who is authorised to sign the statement, that the information is lodged under subsection 189 (1) of the Act.

(3) For subsection 189 (2) of the Act, the prescribed day is the day occurring 2 months before the first day when a person may, under the rules of the organisation or branch, become a candidate in an election.

Although your correspondence sets out some of the information prescribed by regulation 138, not all of the prescribed information is included. Further, the information must contain a statement signed by an officer that the information is lodged under subsection 189(1) of the *Fair Work (Registered Organisations) Act 2009*. Also, as your correspondence states that the reason for the election is that a casual vacancy on the Committee of Management has occurred, evidence of the casual vacancy (such as the letter of resignation from Capt Glynn and related correspondence) is to be lodged with the prescribed information.

The prescribed information containing a signed statement and supporting documentation can be emailed directly to me on eve.anderson@fwa.gov.au. If you have any queries I can be contacted on 03 86617929.

Yours sincerely



Eve Anderson

Team Manager

Tribunal Services and Organisations

Fair Work Australia

Tel: 03 86617929

Email: eve.anderson@fwa.gov.au

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16 December 2010

Eve Anderson
Fair Work Australia
11 Exhibition Street
MELBOURNE VIC 3000

By email: eve.anderson@fwa.gov.au

Dear Eve,

Arrangements for the conduct of an election due to a Casual Vacancy on the AIPA Committee of Management 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, we hereby lodge the following prescribed information required to conduct an Election for a Casual Vacancy on the Committee of Management for the 2010 – 2013.

Regulation 138(1)

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

1 Member of the Committee of Management

(b) The reason for the election

(i) A Casual Vacancy in the office has occurred

(c) The number of offices

As set out in (a) above.

(d) The electorate of each office

The electorate is all financial members of the Australian and International Pilots Association on the date on which the roll of voters is closed.

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

Nominations close not less than 21 days after nominations are called (Rule 39).

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

Rule 38 (u) (i) of the AIPA Registered Rules states that:

“The election will be conducted in accordance with the Rules relevant to the election to fill the Office so far as practicable, and only a member eligible to nominate for and hold the Office may be elected.”

Rule 38 (a) of the AIPA Registered Rules states that:

38. (a) The date on which the roll of voters closes is the 126th day prior to the second Tuesday in November in the particular year.

Therefore, it is impracticable for this Casual Vacancy to be conducted pursuant to 38 (a).

Therefore we request that Fair Work Australia nominate a date for the roll of voters to close. We would suggest that the roll of voters close 14 December 2010, this being the date from which the vacancy commenced.

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

The voting system for the Member of the Committee of Management position will be a collegiate electoral system. All elections are by secret postal ballot.

We look forward to receiving advice from the Registrar regarding the Casual Vacancy on the Committee of Management and confirmation that the arrangements are being made for the conduct of the election by the Australian Electoral Commission.

If you require any additional information, please contact Rachel Chapman-Oliver on (02)8307 7750.

Yours sincerely,



**Capt Steve Anderson
Secretary**

Ph: (02) 8307 7777
Fax: (02) 8307 7799
Email: office@aipa.org.au



Advancing the interests of our members and the profession

Australian & International Pilots Association ABN 30 006 191 853

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The information supplied to Fair Work Australia is lodged under subsection 189(1) of the *Fair Work (Registered Organisations) Act 2009*.

Captain Steven Anderson
Secretary
16 December 2010



FAIR WORK
AUSTRALIA

24 December 2010

To Captain Michael Glynn
c/- AIPA
Suite 6.01, 243-249 Coward Street
Mascot, NSW, 2020
By email: michael.glynn@aipa.org.au

Dear Captain Glynn

Re: Request to arrange for an election to fill a casual vacancy (E2010/2700)

I write with reference to prescribed information lodged with Fair Work Australia under section 189(1) of the *Fair Work (Registered Organisations) Act 2009* by the Australian and International Pilots Association (AIPA).

The prescribed information has been lodged for the purpose of arranging the conduct of an election to fill a casual vacancy on AIPA's Committee of Management. The Secretary of AIPA, Captain Anderson, has stated that a casual vacancy has arisen as a result of your resignation from the Committee of Management. The documents lodged with the prescribed information indicate that you gave notice of your resignation from the Committee of Management on 23 October 2010 to take effect from the completion of the Annual General Meeting of AIPA. I understand that the AGM was held on 13 December 2010. The documents lodged by Captain Anderson also indicate that you sought to withdraw your notice of resignation on 2 December 2010.

I therefore invite you provide further information regarding your current status as a member of the Committee of Management of the Australian and International Pilots Association. I request your written response by 10 January 2011. If you have any queries I can be contacted on 03 8661 7929 or via email on eve.anderson@fwa.gov.au

Yours sincerely

Eve Anderson
Team Manager
Tribunal Services and Organisations
Fair Work Australia
Tel: 03 86617929

Email: eve.anderson@fwa.gov.au