

**- Australian Education Union
Federal Office**

Declaration of Results for Uncontested Offices

Below are the 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.

National

Federal President

Candidates

HAYTHORPE, Correna

As the number of nominations accepted did not exceed the number of positions to be filled, I declare the above candidates elected.



Jeff Webb
Returning Officer
23 December 2014

Ms Susan Hopgood
Federal Secretary
Australian Education Union
PO Box 363
ABBOTSFORD VIC 3067

**Post Election Report For: Australian Education Union
Election E2014/254**

I refer to the above election for your organisation.

Section 197(1) of Schedule 1 of the Fair Work (Registered Organisations) Act 2009 requires the AEC to provide a written report on the conduct of the election to the Fair Work Commission and to the organisation or branch for whom the election was conducted. A copy of the report in relation to this election is attached.

Section 198 of Schedule 1 requires that if an organisation or branch is given a post election report under section 197 that identifies a rule that was difficult to interpret or apply, the organisation or branch must, within 30 days, give a written response to the AEC on that aspect of the report. The response must specify whether the organisation or branch intends to take any action in relation to the rule, and if so, what action it intends to take.

If the attached Report identifies a rule that was difficult to interpret or apply, you should forward your response to the AEC by email to 'industrial.elections@aec.gov.au' within thirty days of the date of the report.

Section 198 and the regulations also require an organisation to make the post election report and the organisation's response to the report (if applicable) available to members.

Further, Regulation 141(4) of the Fair Work (Registered Organisations) Act 2009 requires an organisation or branch to publish a notice on its web site advising members that a copy of the post election report is available upon request. If a website is not available, publishing a notice in a journal or newsletter would be considered appropriate.

Please contact me if you wish to clarify any aspect of this report.

Jeff Webb
Returning Officer

23 December 2014

Fair Work (Registered Organisations) Act 2009

POST ELECTION REPORT

Australian Education Union

ELECTION/S COVERED IN THIS REPORT

Election Decision No/s: E2014/254

RULES

Rules used for the election: [284v: Incorporates alterations of 7/7/2014 - R2014/31

(replaces 1/1/2014 - R2013/468 version)

Rules difficult to apply/interpret: None

Model Rule reference (if any): N/A

ROLL OF VOTERS

Total number of voters on the Roll: Nil

Number of apparent workplace addresses: Nil

Number of non-current addresses: Nil

Other matters pertaining to the roll of voters: Nil

IRREGULARITIES

Details of written allegations of irregularities, and action taken by AEC: Nil

Other irregularities identified, and action taken: Nil

ATTACHMENTS

1. Uncontested Declaration

Jeff Webb
Returning Officer

23 December 2014



DECISION

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

Australian Education Union
(E2014/254)

MR ENRIGHT

MELBOURNE, 3 DECEMBER 2014

Arrangement for conduct of election.

[1] On 20 November 2014 the Australian Education Union (the Union) lodged with the Fair Work Commission the prescribed information in relation to an election to fill a casual vacancy for the remainder of the term of office in the following office:

Federal President

[2] Accompanying the prescribed information was a copy of the resignation email given to the Union’s Federal Secretary by the Federal President. The email stated, in part, “I will be resigning as Federal President on January 31 2015”.

[3] The Federal Rules of the Union are silent as to the manner or form of resignation from office. As a consequence¹, the vacancy does not immediately arise. Rather the office will become vacant on or after 31 January next year. Because three quarters or less of the term of office remains, the Federal Executive can fill the office either by appointment or election².

[4] In pressing for a decision at this time, the Union submits:

It is important the election be conducted as soon as possible to enable the casual vacancy to be filled prior to the AEU Annual Federal Conference to be held on 20-22 February, 2015³.

[5] The Federal Conference is the supreme governing body of the Union⁴. Subject to a decision made by the Union’s members via plebiscite, the Federal Conference governs the affairs of the Union⁵. The Federal President plays a pivotal role at Federal Conference, conducting and presiding over the meeting and signing the minutes thereof⁶.

[6] Section 189 of the *Fair Work (Registered Organisations) Act 2009* relevantly provides:

(3) If:

(a) the prescribed information is lodged with the FWC by the organisation or branch...; and

(b) the General Manager is satisfied that an election is required to be held under the rules of the organisation or branch; and

...

the General Manager must arrange for the conduct of the election by the AEC.

[7] The reference to General Manager includes a reference to me, as the General Manager's Delegate, as a result of a delegation given to me under section 343A of the Act.

[8] The Union correctly points out that "it is usual for a decision regarding an election for a casual vacancy to be held after the date of resignation"⁷. However, the Union then refers to a decision of Vice President Watson as authority for the proposition that "a resignation is effective from the date of its submission"⁸.

[9] In *Australian and International Pilots Association v Captain Michael Glynn*⁹, the Vice President was dealing with an appeal against a refusal by Delegate Nassios to make arrangements for the conduct of an election to fill a casual vacancy. The appellant contended that the vacancy had arisen when a resignation was tendered. The resignation was tendered on 23 October 2010. By its terms it would take effect on 13 December 2010. The officer subsequently sought to withdraw his resignation. Delegate Nassios concluded that on the material before him, he was unable to find that a resignation had been effected and that a vacancy in the office had consequentially arisen.

[10] It is worth setting out His Honour's reasons in the appeal at length as they bear directly on the present matter:

[24] Captain Glynn submits that his email of 23 October 2010... 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.

...

[26] The relevant legal principle is that a resignation from employment or office may be effected by the communication of proper 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...

[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...

[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 organisations.

[33] ...Parties may withdraw their notice without consent where notice was given 'involuntarily' or 'in the heat of the moment'...

[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.

[37] ...A resignation from an office of an organisation... 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.

...

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

[11] In the present matter, notice of termination has been given by the Federal President. Although the notice is in email form, it was sent by him on his own behalf with his name at the end of the email. There is no suggestion that the notice was given involuntarily or in the heat of the moment. The rules of the Union are silent as to resignation from the office of Federal President. Having regard to the period of notice and the duties of the office, reasonable notice has in my view been given. The decision of the Federal Executive "[t]hat

the casual vacancy be filled by election by and from the Federal Conference in accordance with Federal Rule 37(3)(b)”¹⁰ is evidence of acceptance of the resignation by the Union. Because the rules are silent about resignation from the relevant office, including withdrawal of a resignation, those rules of the Union provide no capacity for the organisation to agree to allow withdrawal of the resignation and no officer or body of the organisation could be authorised to validly consent to a purported withdrawal in any event.

[12] It follows that an election is required to be held under the rules of the organisation or branch because a resignation has been effected and there is no capacity for that process to be reversed. This result is not altered by the fact that the notice period has not expired. That a person elected in the subsequent election will not immediately take up office does not mean that an election is not due under the rules in the present circumstances.

[13] As a result, 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 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

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¹ See for instance *Saddington v Building Workers Industrial Union of Australia and Anor*; Ryan J, 2 July 1993, 49 IR 323

² Australian Education Union Federal Rule 37(3)(d).

³ Prescribed information lodged by Susan Hopgood, Federal Secretary of the Australian Education Union; page 1.

⁴ Australian Education Union Federal Rule 23(1).

⁵ Australian Education Union Federal Rules 23(1), 29(8).

⁶ Australian Education Union Federal Rule 40(1)(a).

⁷ Prescribed information lodged by Susan Hopgood, Federal Secretary of the Australian Education Union; page 1.

⁸ Prescribed information lodged by Susan Hopgood, Federal Secretary of the Australian Education Union; page 2.

⁹ Vice President Watson; 11 March 2011; [2011] FWA 1223

¹⁰ Prescribed information lodged by Susan Hopgood, Federal Secretary of the Australian Education Union; page 1.



Copy of Signed Decision

Title of Matter: Application/Notification by Australian Education Union
Section: s.189(1) RO Act - Notification of elections for office - Casual vacancy or insufficient nominations
Subject: s.189 Fair Work (Registered Organisations) Act 2009 - Casual Vacancy: Federal President. Application granted
Matter Number(s): E2014/254

Dear Australian Electoral Commissioner via the Electoral Officer

Under subsection 189 of the *Fair Work (Registered Organisations) Act 2009*, please arrange for the conduct of the above election.

A copy of the Delegate's decision is attached for your information.

The relevant rules can be accessed via the [website](#).

Contact: Ms Susan Hopgood of the organisation, as per the prescribed information.

Please send the declaration(s) and post election report to the Fair Work Commission at orgs@fwc.gov.au.

Inquiries:

Any inquiries relating to this matter are to be directed to Mark Elliott through orgs@fwc.gov.au.

3 DECEMBER 2014

ELLIOTT, Mark

From: ELLIOTT, Mark
Sent: Wednesday, 3 December 2014 12:00 PM
To: 'Susan Hopgood'
Subject: Election decision - Federal President (E2014/245)
Attachments: E2014_254_decision.pdf

Good Morning Ms Hopgood,

The Delegate of the Fair Work Commission's General Manager issued a decision in the abovementioned matter today. A copy is attached for your information.

Regards,

Mark Elliott

Regulatory Compliance Branch

Fair Work Commission

Tel: 03 8661 7899

Fax: 03 9655 0410

mark.elliott@fwc.gov.au

11 Exhibition Street, Melbourne, Victoria 3000

GPO Box 1994, Melbourne, Victoria 3001

www.fwc.gov.au



Copy of Prescribed Information

Title of Matter: Application/Notification by Australian Education Union
Section: s.189(1) RO Act - Notification of elections for office - Casual vacancy or insufficient nominations
Subject: Casual Vacancy for Federal President
Matter Number(s): E2014/254

Attn: Electoral Officer

A copy of the Prescribed Information in relation to the above matter is attached for your information.

The election decision will be forwarded to your office in due course.

Inquiries:

Any inquiries relating to this are to be directed to: orgs@fwc.gov.au.

24 NOVEMBER 2014



Australian Education Union

Federal Office

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PO Box 1158, South Melbourne, Victoria, 3205
Federal Secretary : Susan Hopgood
Federal President : Angelo Gavrielatos

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Email : aeu@aeufederal.org.au
Web : www.aeufederal.org.au

20 November 2014

Ref: 031.001.001

Ms Bernadette O'Neill
General Manager
Fair Work Commission
GPO Box 1994
Melbourne VIC 3001
Email: orgs@fwc.gov.au

Dear Ms O'Neill,

Statement: Prescribed Information: Section 189(1) of the RAO Schedule of the Fair Work (Registered Organisations) Act 2009

In accordance with Section 189(1) of the Fair Work (Registered Organisations) Act 2009 and Regulation 138, I wish to lodge the following prescribed information in relation to an election which is required for the Australian Education Union.

I am the Federal Secretary of the AEU and am authorised to lodge this prescribed information.

Names of Office: Federal President

Term of Office 1 Feb 2015 – 31 Jan 2016

Reason for the Election:

This election is required due to the resignation of Angelo Gavrielatos from the position to take effect from 1 February 2015. The resignation is attached. Federal Rule 37(3) is the relevant rule for the filling of such a casual vacancy in particular, Federal Rule 37(3)(d) states that the Federal Executive may determine how the vacancy is filled, that is in accordance with paragraph (b) or by appointment of a financial member.

The Federal Executive has made a decision “That the casual vacancy be filled by election by and from the Federal Conference in accordance with Federal Rule 37(3)(b).” This decision will be affirmed at a face-to face meeting of the Federal Executive on 1 December 2014.

It is important the election be conducted as soon as possible to enable the casual vacancy to be filled prior to the AEU Annual Federal Conference due to be held on 20-22 February, 2015.

While it is usual for a decision regarding an election to be held for a casual vacancy to be made after the date of resignation, I refer to the decision by Vice-President Watson *Appeal by*

Australian and International Pilots Association against decision of Delegate Nassios of 10 January 2011 [[2011] FWAD 121] - Re: Glynn [2011] FWA 1223 (11 March 2011) to support this application for the election to be held prior to the date of the resignation. In this decision, His Honour, VP Watson confirmed that a resignation is effective from the date of its submission.

Date and Times:

Rules 37(3) specifies that a casual vacancy shall be filled using as far as practicable the same mode of election as described in Rule 38. Rules 38 and 39 specify the dates and times for the holding of the election of the Federal Officers (President). Nominations open no later than 15 days prior to the date on which nominations close.

Electorate:

The electorate is the Federal Conference Delegates elected for the term 2014 – 2015 and the Federal Secretary and Deputy Federal Secretary.

Voting System:

The voting system shall be a collegiate electorate system.

Yours sincerely,



Susan Hopgood
Federal Secretary

ELLIOTT, Mark

From: Sam Graziano [SGraziano@aeufederal.org.au] on behalf of Susan Hopgood [SHopgood@aeufederal.org.au]
Sent: Thursday, 20 November 2014 11:10 AM
To: Orgs; ELLIOTT, Mark
Subject: Prescribed Information - Election required for Federal President, Australian Education Union

Importance: High

Categories: Yellow Category

Attention:
Ms Bernadette O'Neill
General Manager
Fair Work Commission
GPO Box 1994
Melbourne VIC 3001

Dear Ms O'Neill

Attached please find Prescribed Information from Susan Hopgood, AEU Federal Secretary in relation to an election required for the position of Federal President.

Yours sincerely
Sam Graziano
(on behalf of Susan Hopgood, AEU Federal Secretary)

Sam Graziano
Australian Education Union
120 Clarendon Street
Southbank 3006
Telephone: (03) 9693 1808
Fax: (03) 9693 1805
Website: <http://www.aeufederal.org.au>

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Federal president
(Casual Vaca...