



FAIR WORK
AUSTRALIA

26 September 2012

Mr Peter Tighe
Divisional Secretary
Electrical, Energy and Services Division
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied
Services Union of Australia
PO Box 380
ROSEBERRY NSW 2018

Also by facsimile: (02) 9663 5599 and by e-mail: admin@nat.cepu.asn.au

Dear Mr Tighe

**E2012/357 - Casual Vacancy Election - Divisional Executive Member representing NSW
Divisional Branch - Electrical, Energy and Services Division, Communications, Electrical,
Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia**

I refer to the prescribed information dated and lodged 31 August 2012 for the conduct of a casual vacancy election for the office of Divisional Executive Member representing the New South Wales Divisional Branch. I also refer to the documentary evidence of the resignation of the holder of that office lodge on 12 September 2012.

The Delegate of the General Manager has determined that she cannot make arrangements for the conduct of the election under subsection 189(3) of the *Fair Work (Registered Organisations) Act 2009* in light of the findings made in *Gray v Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia* [2012] FCA 380.

Please see decision enclosed (*Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia* [2012] FWAD 8274).

Yours sincerely

James Hall
Advisor
Regulatory Compliance Branch
Fair Work Australia



DECISION

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

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia
(E2012/357)

AILSA CARRUTHERS

MELBOURNE, 26 SEPTEMBER 2012

Arrangement for conduct of election.

[1] On 31 August 2012, the Electrical, Energy and Services Division (the Division) of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU) lodged with Fair Work Australia the prescribed information in relation to a casual vacancy election, for the remainder of the term, for the office of Divisional Executive Member representing the New South Wales Divisional Branch (the NSW Divisional Branch).

[2] The casual vacancy arose due to the resignation of one of two Divisional Executive Members representing the NSW Divisional Branch declared to have been elected on 15 November 2011 by the relevant returning officer in matter E2011/2649.

[3] Rule 16.2 of the rules of the Electrical, Energy and Services Division of the CEPU provides that, in the event of the office of a Divisional Executive Member becoming vacant between meetings of the Divisional Conference, an election for that office will be conducted.

[4] On 6 September 2012, Fair Work Australia wrote to Divisional Secretary of the Electrical, Energy and Services Division of the CEPU requesting a copy of documentary evidence regarding the resignation of the relevant office holder.

[5] On 12 September 2012, the Divisional Secretary of the Electrical, Energy and Services Division of the CEPU provided such documentation.

[6] Pursuant to subsection 189(3)(b) of the *Fair Work (Registered Organisations) Act 2009* (the Act), the General Manager of Fair Work Australia must be satisfied that 'an election is required to be held under the rules of the organisation' in order to arrange for the conduct of the election by the Australian Electoral Commission.

[7] Rule 8.2.1 of the rules of the Electrical, Energy and Services Division of the CEPU (the Divisional Rules) provides that each Divisional Branch shall be entitled to representation on the Divisional Executive by one Executive member. Rule 8.2.2 further provides, however, that any Divisional Branch having in excess of 10% of the membership as calculated under sub rule 7.3.3 shall be entitled to one additional Executive member for each additional 10% of membership of the Division possessed by that Divisional Branch.

[8] Rule 7.3.3, which is concerned with determining the number of members of a Divisional Branch at meetings of Divisional Council, provides that "the receipts of such Divisional Branch for the preceding year from entrance fees and contributions" shall be divided by the dollar amount

charged by the Divisional Branch in the preceding year as an annual subscription rate. Rule 5.2.6, however, provides that any person who has paid subscriptions to the Electrical Trades Union of Australia, New South Wales Branch (being an organisation registered under the *Industrial Relations Act 1996* (NSW)) shall be exempt from payments of subscriptions under the rules to the extent of payment to the State registered union.

[9] The operation of rules 8.2.1, 7.3.3 and 5.2.6 of the Divisional Rules is discussed by his Honour Justice Perram in *Gray v Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia* [2012] FCA 380 (*Gray v CEPU*). Justice Perram examined in detail the arrangements between the New South Wales Branch of the Division and the State registered union regarding membership and payment of dues and concluded that dues are paid to the State registered union but not to the Divisional Branch in New South Wales. Justice Perram concluded at [52] that “[m]embers of the State Union who have paid their dues in the ordinary way ... have not paid dues to the Federal NSW Branch. But they are financial members nonetheless since they are exempt from any obligation to pay dues by r 5.2.6.” The result that flows from these circumstances is that, although they are financial members of the New South Wales Branch of the Division, regardless of their number the Branch’s members will only be entitled to be represented by one person on the Divisional Executive under Divisional Rule 8.2.2 (see [35]).

[10] Given the decision in *Gray v CEPU*, I cannot be satisfied that a casual vacancy election is required to be held under the rules of the Electrical, Energy and Services Division of the CEPU for a second office of Divisional Executive Member representing the NSW Divisional Branch. In the circumstances, I cannot make arrangements for the conduct of the election under subsection 189(3) of the Act as sought by the organisation.

 

DELEGATE OF THE GENERAL MANAGER
FAIR WORK AUSTRALIA

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12 September 2012

Mr James Hall
Fair Work Australia
Level 8
Terrace Tower
80 William Street
East Sydney NSW 2011

Dear Mr Hall

Re: Casual Vacancy Election – Divisional Executive Member

In response to your letter dated 6 September 2012, please find attached letter of resignation from Bernie Riordan. Bernie was the former ETU NSW Branch Secretary and a Divisional Executive Member of the ETU.

Could you please arrange for the election of an Executive Officer of our Electrical Division to fill the casual vacancy left by the resignation of Bernie Riordan.

Yours faithfully



Peter Tighe
Divisional Secretary

Attach.



The Electrical Division

of the Communications,
Electrical, Electronic, Energy,
Information, Postal, Plumbing
and Allied Services Union of
Australia (CEPU)

Peter Tighe
Divisional Secretary

Allen Hicks
Assistant Secretary

Suite 701, Level 7
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PO Box 380
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FAIR WORK
AUSTRALIA

6 September 2012

Peter Tighe
Divisional Secretary
Electrical, Energy and Services Division
Communications, Electrical, Electronic, Energy, Information,
Postal, Plumbing and Allied Services Union of Australia
PO BOX 380
ROSEBERY NSW 2018

Also by facsimile: (02) 9663 5599

Dear Mr Tighe

Casual Vacancy Election - Divisional Executive Member (E2012/357)

I refer to the prescribed information lodged and dated 31 August 2012 regarding a casual vacancy election for the office of Divisional Executive Member representing the New South Wales Divisional Branch of the Electrical, Energy and Services Division of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia.

In order for the Delegate to the General Manager to be satisfied that an election is required for the above office, could you please provide a copy of a letter of resignation from the previous holder of that office or some other form of cogent documentary evidence.

Upon receipt of such documentation, the Delegate to the General Manager will determine if the conduct of the election is to be arranged under s. 189 of the *Fair Work (Registered Organisations) Act 2009* in light of proceedings associated with, and the findings made in, *Gray v Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia* [2012] FCA 380.

Yours sincerely,

James Hall

HALL, James

From: HALL, James
Sent: Thursday, 6 September 2012 8:11 AM
To: 'Industrial Elections'
Subject: E2012/357 - Application/Notification by Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia - Electrical, Energy and Services Division (128V-ELE)
Attachments: CEPU Elec NSW E2012_357 PI lodged 31082012.pdf; 128V CEPU Electrical 128V-ELE_R2011_111.pdf

Dear AEC

Please find the prescribed information and a copy of the current rulebook for an upcoming casual vacancy election of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia – Electrical, Energy and Services Division (E2012/357).

Please note that this election may be affected by recent litigation particularly Perram J's decision in *Gray v Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia* [2012] FCA 380 which is currently the subject of an appeal.

FWA will consider the effect of such matters before issuing the decision granting the election.

I apologise about the delay in sending this material to the AEC.

Regards

JAMES HALL

Advisor
Organisations, Research and Advice - Sydney
Fair Work Australia

Level 8
Terrace Tower
80 William Street
East Sydney NSW 2011

Tel: 02 8374 6690
Fax: 02 8374 6990
Email: james.hall@fwa.gov.au

31 August 2012

Mr D Vale
Manager, Registered Organisations NSW
Fair Work Australia
Level 8, Terrace Towers
80 William Street
EAST SYDNEY NSW 2011



Dear David

**RE: Casual Vacancy Divisional Executive Member of the NSW Divisional Branch
of the Electrical, Energy and Services Division of the CEPU**

Pursuant to Sections 182(1) and 189 of The Fair Work (Registered Organisations) Act 2009, the Communications Electrical and Plumbing Union (Electrical Division) requests that Fair Work Australia arrange an election for an Executive Officer of our Electrical Division. The election relates to the casual vacancy of a New South Wales Divisional Branch representative on the Divisional Executive (pursuant to Section B Rule 15 and 16.2, of the CEPU Rules).

Attached is the prescribed information pursuant to Section 189(1) and Regulation 138. If you have any further queries, please contact the undersigned or Emily Johnson at our National Office.

Yours faithfully

A handwritten signature in black ink, appearing to read "Peter Tighe".

Peter Tighe
Divisional Secretary

The Electrical Division
of the Communications,
Electrical, Electronic, Energy,
Information, Postal, Plumbing
and Allied Services Union of
Australia (CEPU)

Peter Tighe
Divisional Secretary

Allen Hicks
Assistant Secretary

Suite 701, Level 7
5-13 Rosebery Avenue
PO Box 380
Rosebery NSW 2018

Ph: (02) 9663 3699
Fax: (02) 9663 5599

The Fair Work Australia (Registered Organisations) Act 2009
prescribed information pursuant to Section 189(1)

Casual Vacancy Election
NSW Branch Divisional Executive Member

- a. **Name of each office for which an election is required:**
NSW Branch Divisional Executive Member
- b. **Reason for the election**
Resignation, Casual Vacancy
- c. **Offices with the same name and the number of such offices**
NSW Divisional Branch Divisional Executive Member (1 Existing, 1 Vacant) (2)
- d. **Electorate**
The position is to be elected by the Divisional Councillors representing the NSW Divisional Branch.
- e. **Date of the commencement and expiration of the nomination period**
To be determined by the Returning Officer
- f. **The day on which the roll of voters is to be closed**
Opening of Nomination
- g. **Voting System**
Secret ballot by a vote of the Divisional Councillors representing the NSW Divisional Branch

The Fair Work Australia (Registered Organisations) Act 2009

prescribed information pursuant to Regulation 138 of (RAO) Regulations

I, Peter Anthony Tighe, state that I am the officer authorised to make a statement pursuant to S. 189(1) of Schedule 1B of *The Fair Work (Registered Organisations) Act 2009* with respect to the Casual Vacancy election of the Divisional Executive of the Electrical Division of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU).

The information required by reg. 138 is appended as Attachment '1'.

Signed:

A handwritten signature in black ink, appearing to be 'Peter Tighe', enclosed within a hand-drawn oval shape.

Peter Tighe
Divisional Secretary