

SEAMEN'S UNION OF AUSTRALIA

FEDERAL OFFICE

289 SUSSEX STREET, SYDNEY, 2000, AUSTRALIA • Telephone: 267 3801

Fax: 261 5897 Telex: 75948

In reply quote

REF: PG:w1 010

13th June, 1990

J. P. O'Shea
Industrial Registrar
Box 1994S
MELBOURNE VIC 3001

Dear Sir,

Re: THE SEAMEN'S UNION OF AUSTRALIA

APPLICATION UNDER s211 OF THE INDUSTRIAL RELATIONS ACT 1988
FOR AN ORGANISATION TO CONDUCT ITS ELECTIONS
APPLICATION FOR EXEMPTION FROM SECTION 210 (1)

I lodge herewith an Application under Section 211 of the Act.

Yours faithfully,

P. GERAGHTY,
Federal Secretary

INDUSTRIAL RELATIONS ACT, 1988

THE SEAMEN'S UNION OF AUSTRALIA
APPLICATION UNDER SECTION 211 OF
THE INDUSTRIAL RELATIONS ACT
FOR AN ORGANISATION TO CONDUCT
ITS ELECTIONS - EXEMPTION FROM
THE PROVISIONS OF S210 (1)

1. The Committee of Management of The Seamen's Union of Australia ("The Union") hereby lodges in the Industrial Registry an Application pursuant to the provisions of sub-section 211 (1) of the Act to be exempted from sub-section 210 (1) of the Act in relation to elections for offices in the Union.
2. The Committee of Management of the Union on 14th April, 1989 adopted the following resolution in accordance with the Rules of the Union:

"In consultation with the Union's legal adviser, the Union apply for the exemptions to conduct its own elections in accordance with the Union Rules."
3. The said Resolution of The Committee of Management was subsequently endorsed unanimously at the April, 1989 Stopwork meetings of members held throughout Australia in accordance with the Rules.
4. The Union publishes a journal entitled "The Seamen's Journal" that is circulated among its members. A notice of the making of the resolution by the Committee of Management was published in the May, 1989 edition of the said journal.
5. Grounds under which the exemption is sought are:
 - (a) Each election for offices in the Union has and will in the future be (if exemption is granted) conducted under the Rules of the Union and in a manner that has afforded and will afford members entitled to vote at such elections an adequate opportunity of voting without intimidation.
 - (b) The Rules of the Union covering elections are designed to meet the peculiarities of the maritime industry and the needs of members serving in various types of ships and vessels both within Australia and overseas. The election procedures ensure that seamen in port, at home, at outlying ports throughout Australia and on ships operating outside Australia, have the opportunity to vote and participate in the Union Election during the approximate four weeks the ballot is opened.

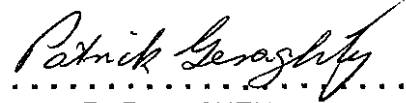
During the 1988-1990 Triennial Election conducted under the Union's Rules 70.91 percent of the financial members of the Union received ballot papers on application and 68.84 percent of the financial members returned the ballot papers to the Federal Returning Officer and participated in the Union Election.

- (c) The Union's Election Rules prescribed for the appointment of a Federal Returning Officer and Branch Returning Officers to conduct the Election.

In the conduct of their duties Returning Officers visit ships and areas of employment located in outlying parts of Australia, including North Western Australia, North Queensland and Tasmania as well as visiting engagement centres and make arrangements for seamen on overseas ships to receive ballot papers and vote in the election. This direct voting system plays a significant roll in the very high return the Union receives in its elections.

- (d) The 70.91 percent participation of financial members and returned by 68.84 percent financial members in 1988-1990 Triennial Election is recognised as being very high returns to compared to most trade union elections.
- (e) The Industrial Registrar on 18 July 1989 granted the Union an exemption from sub-section 198 (1) of the Industrial Relations Act 1988.
- (f) Such other grounds as may be advanced at the hearing to which the Industrial Registrar meet.

SIGNED



.....
P GERAGHTY

A MEMBER OF THE COMMITTEE OF
MANAGEMENT AND FEDERAL SECRETARY
OF THE UNION.

DATED

14TH JUNE, 1990

INDUSTRIAL RELATIONS ACT, 1988

THE SEAMEN'S UNION OF AUSTRALIA
APPLICATION UNDER SECTION 211 OF
THE INDUSTRIAL RELATIONS ACT
FOR AN ORGANISATION TO CONDUCT
ITS ELECTIONS - EXEMPTION FROM
THE PROVISIONS OF S210 (1)

STATUTORY DECLARATION PURSUANT TO SECTION 211 (3)

I, Patrick Geraghty, Trade Union Official of 289 Sussex Street, Sydney in the State of New South Wales, do solemnly and sincerely declare as follows:

1. That I am the Federal Secretary and a member of The Committee of Management of The Seamen's Union of Australia.
2. That to the best of my knowledge the facts as contained in the Application for Exemption from Section 210 (1) accompanying this declaration are true and correct.
3. That the conditions set out in Section 211 of the Act have been complied with.

And I make this solemn declaration by virtue of the Statutory of the Statutory Declaration Act, 1959, and subject to the penalties provided by the Act for the making of false statements in Statutory Declarations, conscientiously believing the statements contained in this declaration to be true in every particular.

DECLARED BY:

Patrick Geraghty
.....
PATRICK GERAGHTY

AT:

SYDNEY, IN THE STATE OF NEW SOUTH WALES

ON THE:

14TH DAY OF JUNE, 1990

BEFORE ME:

W. Sydney J.P.
.....
A JUSTICE OF THE PEACE



SEAMEN'S UNION OF AUSTRALIA

FEDERAL OFFICE

289 SUSSEX STREET, SYDNEY, 2000, AUSTRALIA • Telephone: 267 3801

Fax: 261 5897 Telex: 75948

In reply quote

ATTN: C. LAPIERE

Mr. J. P. O'Shea,
Industrial Registrar,
Box 19949, GPO,
MELBOURNE VIC 3001

19th June, 1990

Dear Sir,

RE: THE SEAMEN'S UNION OF AUSTRALIA

APPLICATION UNDER S211 OF THE INDUSTRIAL RELATIONS ACT 1988
FOR AN ORGANISATION TO CONDUCT ITS ELECTIONS
APPLICATION FOR EXEMPTION FROM SECTION 210 (1)

LIST OF OFFICES OF THE SEAMEN'S UNION OF AUSTRALIA IN THE
TRIENNIAL ELECTION TO BE HELD 1990.

Pursuant to the Rules of The Seamen's Union of Australia
Triennial Elections are to begin in 1990 for all of the offices
in the Union.

The Offices are as follows:

A. Electorate - By and From The Whole Membership

Federal Secretary
Assistant Federal Secretaries (three)
Queensland Branch Secretary
Queensland Branch Assistant Secretary
Newcastle Branch Secretary
Sydney Branch Secretary
Sydney Branch Assistant Secretary
Port Kembla Branch Secretary
Victorian Branch Secretary
Victorian Branch Assistant Secretaries (two)
South Australian Branch Secretary
Western Australian Branch Secretary
Western Australian Branch Assistant Secretary

B. Electorate - By and From The Members of the Committee of Management

Presiding Officer
Vice-Presiding Officers (2)

Yours faithfully,

A. Papaconstantinos per MS.

A. PAPACONSTANTINOS,
Acting Federal Secretary

THE SEAMEN'S UNION OF AUSTRALIA

NOTICE TO MEMBERS

Notice is hereby given that the Committee of Management of The Seamen's Union of Australia an organisation of employees registered under the Industrial Relations Act 1988, has made application to me for exemption from the requirements of subsection 210(1) of the Act in respect of all federal and branch offices.

Any member of the abovenamed organisation who desires to object to the application may do so by lodging in the Industrial Registry, not later than 28 days after publication of this notice -

- . a written notice of objection stating the grounds for objecting to the application; and
- . a written statement signed by the objector setting out the facts on which he or she relies to support the objection,

and by serving on the organisation not later than 7 days after the notice of objection has been lodged, a copy of the notice and of the written statement so lodged.

The address for lodging an objection is: Australian Industrial Registry, Nauru House, Level 35, 80 Collins Street, Melbourne, VIC 3000
(Postal Address: GPO Box 1994S, Melbourne, VIC 3001)
Please quote reference R No. 216 of 1990.

The address for service is: 289 Sussex Street, Sydney NSW 2000.

Note: Subsection 210(1) of the Industrial Relations Act 1988, states:

"Each election for an office in an organisation or branch of an organisation shall be conducted by the Australian Electoral Commission."

J.P. O'SHEA
Industrial Registrar



AUSTRALIAN INDUSTRIAL REGISTRY

PRINCIPAL REGISTRY

Ex 4 (i)

Our Ref.:

Your Ref.:

Mr P. Geraghty
Federal Secretary
The Seamen's Union of Australia
289 Sussex Street
SYDNEY NSW 2000

51 AUG 1990

Dear Mr Geraghty

Re: Application for exemption under section 211 of the Industrial Relations Act 1988 (R No. 216 of 1990)

I refer to your application dated 13 June 1990 seeking an exemption from the provisions of subsection 210(1) of the Act in respect of the conduct of elections for offices of your organisation.

Notice of receipt of the application has been published as required by the Act. After the close of objections the Industrial Registrar will set a date for the hearing of the application and any objection lodged.

Under subsection 213(1) of the Act the Industrial Registrar may give an exemption if he is satisfied:

- "(a) that the rules of the organisation or branch comply with the requirements of this Act relating to the conduct of elections; and
- (b) that, if the organisation or branch is exempted from subsection 201(1), the elections for the organisation or branch will be conducted:
 - (i) under the rules of the organisation or branch and this Act; and
 - (ii) in a manner that will afford members entitled to vote at such elections an adequate opportunity of voting without intimidation."

In connection with (a) above sections 197(1)(d)(ii) and (e)(ii) of the Act require, respectively, that rules provide for the duties of returning officers and the conduct of the ballot. It seems to me that the rules of the organisation concerning the election of the Presiding Officer and the Vice-Presiding Officers fail to comply with those requirements. Under subrule 36.16 those officers are elected by and from the members of the Committee of Management. Although subrule 36.16(d) requires that the returning officer conduct such election by secret ballot, the rules do not provide for:

- . the preparation and distribution of ballot papers;
- . the manner in which votes may be recorded; and
- . the scrutiny and counting of votes.

The following further matters are brought to your attention.

(1) Defective nominations

Section 197(1)(c) of the Act requires that rules

"shall provide that, if the returning officer conducting an election finds a nomination to be defective, the returning officer shall, before rejecting the nomination, notify the person concerned of the defect and, where practicable, give the person the opportunity of remedying the defect within such period as is applicable under the rules, which shall, where practicable, be not less than 7 days after the person is notified."

In my view, the provision in subrule 36.1 that a person be given the opportunity of remedying a defect in a nomination "within seven (7) days" after being so notified does not comply with the abovementioned section.

(2) Scrutineers

The rules also do not make sufficient provision for the conduct and duties of scrutineers as required by section 197(1)(e)(iii) of the Act.

(3) "Union accountants" - rules 36.9 and 36.10

I have some reservations about the appropriateness of ballot papers being addressed to the returning officer at the offices of the organisation's accountants. It seems to me that the use of a post office box would be preferable to safeguard against the likelihood of any irregularities occurring during the conduct of the ballot. I also have reservations about the participation of the organisation's accountants during the scrutiny, checking and counting of the ballot papers.

Your comments on these matters would be appreciated.

You may wish to consider lodging appropriate rule alterations for certification under subsection 205(1) of the Act prior to the hearing of the application. Should you decide that such action needs to be taken prior to the hearing, please let me know of your intentions.

If you wish to discuss the above matters, please contact Mr Clency Lapierre at this Registry on (03) 653 8354.

Yours sincerely


B.A. Holdoff
for INDUSTRIAL REGISTRAR

1 AUG 1990

M 1 7

IN THE MATTER OF AN
APPLICATION BY THE SEAMEN'S
UNION OF AUSTRALIA ("SUA")

R. NO. 216 OF 1990

OUTLINE OF SUBMISSIONS OF THE APPLICANT

The Application: (dated 14 June, 1990)

- (a) is lodged by the Committee of Management paragraph 1; s.211(1) Industrial Relations Act 1988 ("the Act"); Rules 11(c), (12);
- (b) is in writing signed by a member of the Committee of Management paragraph 2; Reg. 56(1)(a) Industrial Relations Regulations ("The Regs.");
- (c) states the grounds upon which the exemption is sought pp 1-2 paragraph 5; Reg. 56(1)(b) ("the Regs.");
- (d) is accompanied by a statutory declaration by a member of the Committee of Management stating that S.211(2) of the Act has been complied with paragraphs 3, S.211(3) of the Act.

The Exhibits

- 1. Statement of Patrick Geraghty.
- 2. Copy extract from Seamen's Journal : S.211(2)(b) of the Act, Regulation 55(2)(b).
- 3. Copy notice to members dated 28 June, 1990 S.211(4) of the Act, Reg. 56 of the Regs.
- 4. Sundry correspondence from
 - (i) The Industrial Registrar - (1.8.90)
 - (ii) Dixon & Co. - (22.8.90)
 - (iii) Ryan Carlisle Thomas - (9.8.90)
 - (iv) SUA - (22.8.90)

5. Application for exemption under S.198 of the Act - (26.5.89).
6. Certificate under S.198 of the Act - (18.7.89).
7. Certified copy of SUA Rules as at 12.9.90.

Relevant Rules

3, 6, 10, 11, 12, 19, 32, 33, 34, 35, 36, 49, 51.

Compliance with S.213(1)(a)

- (a) S.197(1)(a) - direct voting system for all offices except those of the Presiding Officers per se, in that case - one tier collegiate
See Rule 36(16)
See definition "direct voting system" S.4 of the Act.
All financial members are eligible to vote : see especially Rule 36(3), (4), (7).
- (b) S.197(1)(b) : Returning Officers are not the holder of any office in the Union and are not employees of the Union : See Rule 34(e).
- (c) S.197(1)(c) : Provision for remedying defects in nominations - Rule 36(1), (16)(b).
- (d)(i) S.197(1)(d)(i) Provision for the manner in which persons may become candidates.
Rule 32 : 3 years financial membership : permissible under the Act. See Bucknall v. PKIU (1981) 52 FLR 258, 263 per Toohy J. See Geraghty Statement (paragraph 6).
- (ii) S.197(1)(d)(ii) Provision for the duties of Returning Officers
Rule 34(c), (d) and (e), Rule 36 (1), (2), (3), (4), (6), (8), (10), (12), (13) and (14).
- (iii) S.197(1)(d)(iii) Provision for declaration of the result Rule 36(13), (14) and (15).

(e) Requirement for secret ballot.
Rules 34(c), 36(4) to (7) inc.

(e)(i) Absent voting - Rules 34(c) and 36(4) effectively impose a duty on Returning Officers to grant absent voting. Rule 36(4) permits the opportunity for members to apply to vote to facilitate the fullest participation in the ballot. See Grounds For Exemption and Geraghty statement (paragraphs 1 and 2). Lack of precision in Rules regarding absent voting is no bar to the grant of exemption.
Re CSIRO00A J2510 at p. ~~14~~⁴ c.f. here - not on attendance ballot simpliciter but a situation where an exemption has been granted from the secret postal provisions and there is widespread journal publicity regarding elections and the procedure facilitates the fullest participation in the ballot.

S26(4)
- 36(16)

(e)(ii) Provision for the conduct of the ballot - Rule 36

(e)(iii) Provision for the appointment, conduct and duties of Returning Officers.
Rule 36(10)(i), (11), (16)(b).

(f) Provision to ensure no irregularities in the ballot as far as is practicable.
Rule 34(c), Rule 36.

(g) Compliance with S.198(1) - exemption in force under S.198(3)

Compliance with S.213(1)(b)

(i) If the organisation is exempted from S.210(1) the elections will be conducted under the rules of SUA. S.213(1)(b)(i) of the Act.
There is no reason to assume otherwise.
Refer : history of the Union re elections : Geraghty statement, paragraphs 3, 4 and 5.

(ii) The elections will be conducted in a manner that will afford members an adequate opportunity of voting without intimidation.

S.213(1)(b)(ii) of the Act.

There is no reason to assume otherwise but this is a fortiori where an exemption under S.198 has been granted, relying in part on the same criterion. See S.198(3)(b)(ii) and terms of exemption.

IN THE MATTER OF AN
APPLICATION BY THE SEAMEN'S
UNION OF AUSTRALIA

R. NO. 216 OF 1990

STATEMENT OF PATRICK GERAGHTY

I, PATRICK GERAGHTY, Union Official of 289A Sussex Street, Sydney in the State of New South Wales say that :-

1. I refer to paragraphs 5(b) and (c) of the Grounds under which the exemption is sought and say that the Branch Returning Officers visit outlying ports to seek out financial members of the Union to give them the opportunity to vote. The Returning Officers take a note of the book number and name of the voter to guard against multiple voting. The voter marks the ballot paper in private and takes the other steps referred to in Rule 36(5).
2. Further, the Federal Returning Officer obtains a list of ships out of port during the election and makes arrangements for members crewing such ships to send their Union books to him. The Federal Returning Officer stamps the Union books then forwards ballot papers by airmail to the members concerned.
3. Contested elections are not usual in the Union.
4. There has been no inquiry into any election in the Union since the 1940-1941 ballot.
5. Each member of the Union receives a Union journal each month. Decisions of the Committee of Management are published in the journal.
6. There is traditionally a low turnover in membership in the Union of approximately 3% per annum. The provisions of Rule 32 would tend to disqualify only about 9% of the membership from eligibility to stand for office.

EXTRACT FROM SEAMEN'S JOURNAL

MAY, 1989

Seamen's Union Elections - Industrial Relations Act

The new Industrial Relations Act continues a provision exempting unions from the purely postal provisions of the Act. The Industrial Registrar has written stating the Union has been granted an exemption for its elections and the Act now provides for continuous exemptions.

Resolved:

In consultation with the Union's legal advisers, the Union apply for the exemptions to conduct its own elections in accordance with the Union Rules.

Ex 3

THE SEAMEN'S UNION OF AUSTRALIA

NOTICE TO MEMBERS

Notice is hereby given that the Committee of Management of the Seamen's Union of Australia, an organisation of employers registered under the Industrial Relations Act 1988, has made application to me for exemption from the requirements of subsection 210(1) of the Act in respect of all federal and branch offices.

Any member of the abovenamed organisation who desires to object to the application may do so by lodging in the Industrial Registry not later than 28 days after publication of this notice:

- a written notice of objection stating the grounds for objecting to the application; and
- a written statement signed by the objector setting out the facts on which he or she relies to support the objection.

and by serving on the organisation not later than 7 days after the notice of objection has been lodged, a copy of the notice and of the written statement so lodged.

The address for lodging an objection is: Australian Industrial Registry, North House, Level 15, 80 Collins Street, Melbourne, Vic. 3000. (Postal Address: GPO Box 19945, Melbourne, Vic. 3001.) Please quote reference R. No. 216 of 1991.

The address for service is: 281 Sussex Street, Sydney NSW 2000.

Note: Subsection 210(1) of the Industrial Relations Act 1988, states:

"Each election for an officer in an organisation or branch of an organisation shall be conducted by the Australian Electoral Commission."

J. R. O'SHEA
Industrial Registrar

AP 26/91A

RYAN CARLISLE NEEDHAM THOMAS
SOLICITORS

Ex A(11)

LEVEL 25, NAURU HOUSE, 80 COLLINS STREET, MELBOURNE
TELEPHONE 654 3844
AUSDOC DX 30820
FAX (03) 650 1020

YOUR REF

OUR REF JR:NJ SEA 003-43

Mr. P. Geraghty
Federal Secretary
Seamen's Union of Australia
289a Sussex Street
SYDNEY N.S.W. 2000.

9th August, 1990.

Dear Sir,

RE: APPLICATION UNDER SECTION 211 OF THE INDUSTRIAL RELATIONS ACT 1988
FOR EXEMPTION FROM THE REQUIREMENTS OF SUB-SECTION 210(1) OF THE
ACT.

We refer to the above Application and we confirm our oral advice tendered to you when we submitted the text of the Application and accompanying Statutory Declaration.

An election for an office in an organisation or branch of an organisation shall be conducted by the Australian Electoral Commission (Section 210)(1) of the Act).

The Committee of Management of the Union has lodged the Application for the Union to be exempted from sub-section 210(1) of the Act in relation to the elections for all of the offices in the Union.

The structure of the Seamen's Union of Australia is sui generis among the organisations registered under the Act. This results from its own particular role and its own history.

The Union is governed by the members in Annual General Meeting or in Special Meetings assembled and a Committee of Management carries out all instructions given by resolution of members of the Union in such meetings.

The meetings are conducted by the holding of meetings of the members of the Union on the appointed day in the ports of Brisbane, Newcastle, Sydney, Port Kembla, Melbourne, Port Adelaide and Fremantle. The votes of members of the Union at each such meeting are aggregated and the result is thereby determined.

On the last Tuesday in each month a General Meeting commonly known as the "Stopwork Meeting", is held in all the said ports for the purpose of transacting the business of the Union. All financial members of the Union have the right to speak and take part in and vote upon any question at any meeting of the Union. All the members of the Union in any one of the said ports at the time of a "Stopwork Meeting" are expected to attend the meeting and to remain until its end.

2/....

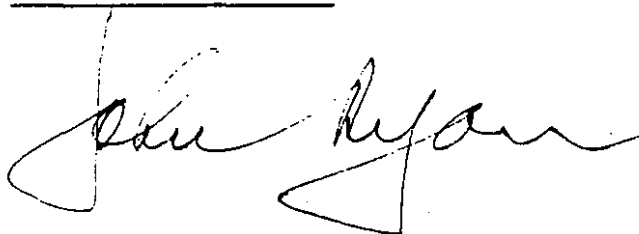
The Rules do not split the membership of the Union into separate aggregations of members each with discrete Committees of Management elected by and from its members for the control and management of its own distinct affairs and with a division of powers between it and the membership as a whole.

All officers of the Union are elected by the membership as a whole and any member with qualifications common to all members is eligible to nominate for any office except in the 1990 election members who are seafaring stewards, pantrymen and stewardesses only may nominate for three offices. This arrangement was made in the amalgamation of the Union with the Federated Marine Stewards' and Pantrymen's Association of Australasia.

The Rules use the word "branches" essentially to describe the presence of the Union in the seven ports on the continental littoral. That presence is manifestly that of the membership as a whole.

We advise that on the proper construction of its Rules as a whole the Union is not divided into branches for the purpose of Division 4 of part IX of the Act and that the application by the Union in relation to the elections for all offices within the Union is the only competent application under Section 211(1) of the Act.

Yours faithfully,
RYAN CARLISLE THOMAS

A handwritten signature in cursive script, appearing to read "Ryan Carlisle Thomas". The signature is written in dark ink and is positioned below the typed name.

F-4(ii)

JY:AA\SUAELE

22 August 1990

Mr. P. Geraghty,
Federal Secretary,
Seamen's Union of Australia,
239A Sussex Street,
SYDNEY NSW 2000.

Dear Sir,

RE : ELECTIONS IN THE SEAMEN'S UNION OF AUSTRALIA

I have noted the comments of the Industrial Registrar in his letter to you dated 1st August, 1990 under the heading "Union Accountants - Rules 36.9 and 36.10".

D.M. Dixon & Co. are the Auditors to the Seamen's Union of Australia appointed under the provisions of the Industrial Relations Act 1988.

This firm has been Auditors to the Seamen's Union of Australia since 1972.

The Auditors of the Union occupy an independent status and are seen by the members of the Union to perform an impartial role independent of the Executive of the Union.

The Federal Returning Officer appointed by the Union is responsible for the conduct of the Elections in the Union in accordance with its Rules.

Sub-rules 9 and 10 (i) of Rule 36 of the Rules of the Seamen's Union of Australia read :

"9. All ballot papers shall be addressed to the Federal Returning Officer, Seamen's Union of Australia, c/o Messrs. D.M. Dixon & Co., Chartered Accountants, 19 Bridge Street, Sydney, New South Wales, or such other accountants as may from time to time be accountants of the Union."

"10.(i) "The Federal Returning Officer shall in the presence of any scrutineers and the Union's Accountant remove the outside envelopes addressed to the Federal Returning Officer."

Continued .../2

Seamen's Union of Australia

22 August 1990

During a ballot, upon each delivery by Australia Post to the office of D.M. Dixon & Co. of envelopes addressed to the Federal Returning Officer, Seamen's Union of Australia, they are counted and immediately placed, unopened in a security box which is kept in the office of the Senior Partner. The key is retained by the Senior Partner. The receipt and safe keeping of these unopened envelopes is under the direct supervision of the Senior Partner.

The Federal Returning Officer has of course total control of the Electoral processes and all material is available to him at any time.

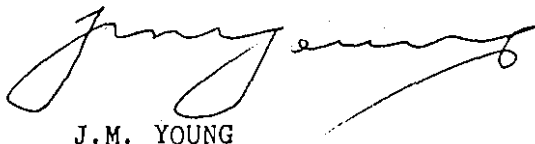
On the day after the conclusion of the ballot, that is on the Wednesday after the last Tuesday in November, the Federal Returning Officer and the Sydney Branch Returning Officer scrutinise, check and count the ballot in the office of D.M. Dixon & Co., again with the senior Partner present. There have been a number of Scrutineers appointed by individual candidates at some of the Triennial Elections and these persons are also present during the opening of envelopes and counting of the ballot.

My own personal involvement with the Seamen's Union of Australia elections has been since 1972 to the present day. In all this time, the Union has conducted its own elections in accordance with its Rules.

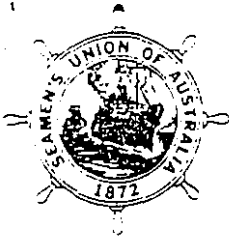
We have no reason to believe that any other arrangements which might be made for the receipt, safekeeping and counting of the ballot would be in any way improve or be seen to improve the conduct of the ballot.

Yours faithfully,

D. M. DIXON & CO.



J.M. YOUNG



SEAMEN'S UNION OF AUSTRALIA

FEDERAL OFFICE

289 SUSSEX STREET, SYDNEY, 2000, AUSTRALIA • Telephone: 267 3801

Fax: 261 5897 Telex: 75948

In reply quote

D325.

22nd August 1990.

PG:LD

Industrial Registrar,
Australian Industrial Registry,
"Nauru House",
80 Collins Street,
MELBOURNE. 3000.

Dear Sir,

Re Application for Exemption under Section 211
of the Industrial Relations Act 1988 (R. No 216 of 1990)

I refer to your letter to me dated 1st August 1990.

It is proposed to alter the rules of the Union so that they will conform with the requirements of the Industrial Relations Act 1988 in the areas you have particularised, namely, duties of Returning Officers, conduct of ballots, defective nominations and scrutineers.

I enclose a copy of the proposed alterations and I shall be glad if you will let me have any comments on them as soon as possible.

It is anticipated that the necessary alterations will be made in accordance with the rules and lodged for certification under Section 201 (1) of the Act by 31st August 1990.

With regard to the role of the "Union accountants" (Rules 36.9 and 36.10) I am enclosing for your consideration a letter dated 22nd August 1990 from D.M. Dixon and Company to me. At the time when they were brought into the Electoral procedures, the membership of the Union regarded it as of considerable importance that the Union's independent auditors be given this role. Their participation in this way continues to be so regarded. The responsibility and control of the Federal Returning Officer is not thereby impaired and the provisions do not appear to be in disconformity with the legislation.

The above application is lodged by the Committee of Management of the Union in relation to all offices in the Union.

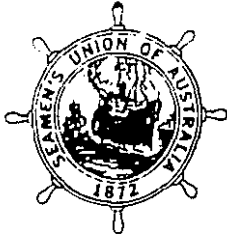
I am enclosing for your consideration in this regard a copy of the letter to me from Ryan Carlisle Thomas dated 9th August 1990 to the effect that this is the only competent application to be made under Section 211 (1) of the Act.

I shall be glad to discuss any of these matters with you at your earliest convenience.

Yours faithfully,

Patrick Geraghty

P. Geraghty,
Federal Secretary.



SEAMEN'S UNION OF AUSTRALIA

FEDERAL OFFICE

289 SUSSEX STREET, SYDNEY, 2000, AUSTRALIA • Telephone: 267 3801

Fax: 261 5897 Telex: 75948

Ex 5

In reply quote

D228.

26th May, 1989.

FG:LD

Mr. J. P. O'Shea,
Industrial Registrar,
GPO Box 1994S,
MELBOURNE. 3001.

Dear Sir,

Re: Seamen's Union of Australia - Triennial Elections
Application for Exemption from Postal Ballot
Industrial Relations Act 1988 Section 198.

Under Section 133AA (3) of the Conciliation and Arbitration Act The Seamen's Union of Australia applied for exemptions from the conduct of its Triennial Elections 1979-1981, 1982-1984, 1985-1987, 1988-1990 on the grounds that the election conducted in accordance with the Rules of the organisation was likely to result in a fuller participation by members in the ballot than would result from a postal ballot and would afford to members entitled to vote an adequate opportunity of voting without intimidation.

Mr. K.D. Marshall and Mr. J. MacMahon, Industrial Registrars, granted a certificate exempting the Seamen's Union of Australia from the provisions of Section 133AA for each election. Triennial Elections were carried out in accordance with the Rules of The Seamen's Union of Australia. The Federal Returning Officer's report on membership and voting percentages in the 1988-1990 Triennial Election showed a 70.91% of financial members participation, with a return of 68.84% of financial members returning ballot papers.

Sub-Section 47 (1) of the Industrial Relations (Consequential Provisions) Act 1988 (The C.P. Act) applies to the Seamen's Union of Australia with an exemption granted by John McMahon Industrial Registrar on 5th June 1987 (Attachment).

The Seamen's Union of Australia now seeks future Triennial Elections be conducted under the Rules of the Union in force at the commencement of the Industrial Relations Act Section 198 (1) on grounds that the election under these Rules would comply with sub-section (3) of Section 198 in giving greater participation than by postal ballot and that they provide the opportunity of voting without intimidation.

The following are details of the application:-

- (1) The Rules of The Seamen's Union of Australia governing the Triennial Election are designed to meet the peculiarities of the maritime industry and the needs of the members serving in various types of ships and vessels both within Australia and overseas.

The Seamen's Union of Australia election procedure ensures seamen in port, at home, at outlying ports throughout Australia and on ships operating outside Australia the opportunity to vote and participate in the Union Election during the approximate four weeks the ballot is open.

During the 1988-90 Triennial Election conducted under The Seamen's Union of Australia Rules 70.91% of the financial members of the Union received ballot papers on application and 68.84% of the financial members returned the ballot papers to the Federal Returning Officer and participated in the Union Election - Details of these figures were forwarded to the Industrial Registrar on 18th January 1988 and are attached to this correspondence in the Federal Returning Officer's Report.

- (2) The use of a full postal ballot as prescribed could result in the ballot paper following a seaman to ships around various Australian ports and beyond after being forwarded from his home or postal address.

The ballot papers would not reach many seamen in time to enable them to cast a ballot during the period set for the return posting of ballot papers.

- (3) Although there is no express provision for absent voting, Union Rule 34 (c) and Rule 36 (4) have been regarded as imposing a duty on Returning Officers to grant absentee votes.

Seamen have voted in this manner from outlying Australian ports and overseas ports.

- (4) The Seamen's Union of Australia roll records addresses of members at residences, Post Office box numbers, care of Post Offices, various Branches of the Union throughout Australia, hotels, caravan camps and various shipping companies.

As seamen change ships or move on to other ports it is possible ballot papers posted to some of these addresses could result in irregularities.

The roll is available for inspection by the Industrial Registrar or his representative.

- (5) The Seamen's Union of Australia Rules 32 to 37 inclusive prescribe the basis of the Election procedures.

It is difficult to find an alternate procedure to this election system which is the best method of obtaining the highest participation by The Seamen's Union of Australia members in the election of their officials.

- (6) The 70.91% participation of financial members and return by 68.84% of financial members in the 1988-1990 SUA Triennial Election is recognised as being very high returns compared to most trade union elections.

To the best of our knowledge The Seamen's Union of Australia Election figures reveal a fuller member participation than most other maritime unions have achieved in some of their elections which were conducted by postal ballot.

- (7) The Federal Returning Officer's Report attached to this correspondence records the conduct and procedure of The Seamen's Union of Australia 1988-90 Triennial Election which resulted in 68.84% of the financial members returning their ballot papers, voting without intimidation and taking part in the Union ballot.
- (8) The initial step in the 1991-93 Triennial Election is the opening of nominations on 25th September 1990.
- (9) The Committee of Management of the Union on 14th April, 1989 resolved:

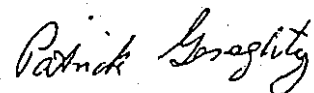
"In consultation with the Union's legal adviser, the Union apply for the exemptions to conduct its own elections in accordance with the Union Rules."

This resolution was endorsed unanimously at the April 1989 Stopwork Meetings of the Branches of the Union.

10. In making this application to you under Section 198, I assure you the procedures in respect to the Union Rules and absentee voting will be carried out.

A Union representative is available to elaborate this application should you wish this to be done.

Yours faithfully,



P. Geraghty,
Federal Secretary.



AUSTRALIAN INDUSTRIAL REGISTRY

PRINCIPAL REGISTRY

Our Ref: PH:SM:42
Your Ref:

Federal Secretary
The Seamen's Union
of Australia
289 Sussex Street
SYDNEY NSW 2000

Date: 20/7/89	
Viewed
Viewed K.S.L.
Referred
No.
File No.

Dear Mr Geraghty,

Re: Application for an exemption from subsection 198(1) of the Industrial Relations Act 1988

I refer to your application dated 26 May 1989, under subsection 47(2) of the Industrial Relations (Consequential Provisions) Act 1988 (the C.P. Act).

I enclose my certificate exempting The Seamen's Union of Australia from the provisions of subsection 198(1) of the Industrial Relations Act 1988, under subsection 47(2) of the C.P. Act.

Yours sincerely,

Paul Herrod
for INDUSTRIAL REGISTRAR

19 July 1989

Ex. 6


Industrial Relations (Consequential Provisions) Act 1988
s.47 application for exemption from postal ballots

The Seamen's Union of Australia
(R No. 89 of 1989)

CERTIFICATE

On 29 May 1989, The Seamen's Union of Australia, an organisation to which subsection 47(1) of the Industrial Relations (Consequential Provisions) Act 1988 applies, lodged in the Industrial Registry an application under subsection 47(2) for an exemption from subsection 198(1) of the Industrial Relations Act 1988.

I am satisfied that the rules of the organisation provide for the conduct of elections of the kind referred to in subsection 198(1) of the Industrial Relations Act 1988 by secret ballot other than postal ballot. I am also satisfied that the conduct of elections under those rules is likely to result in a fuller participation by members of the organisation in the ballot than would result from a postal ballot, and will afford to members entitled to vote an adequate opportunity of voting without intimidation. I therefore grant to the organisation, under subsection 47(2), an exemption from subsection 198(1) of the Industrial Relations Act 1988.


J.P. O'Shea
INDUSTRIAL REGISTRAR



18 July 1989

5.7.90

Grounds for Objection

REF R. NO 216 1990

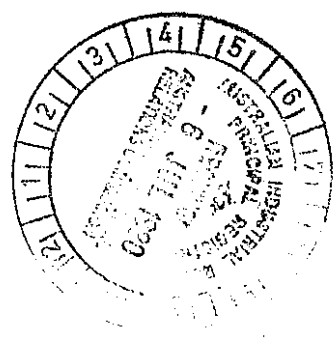
1. The returning officer being a member of the Teamans Union of Australia in my opinion would not be a fair and impartial returning officer to conduct such an election

2. Subsection 210 (1) of the industrial relations act 1988. "Each election for an office in an organisation or branch of an organisation shall be conducted by the Australian Electoral Commission. And as such I feel that the money included in the Teamans Union of Australia conducting its own election could be utilised in areas more beneficial to its membership.

3. It is my belief that the envelopes used for the conducting of the ballot number with members book number may lend itself with this system to those with a curious nature to be able to unfudge on the voters rights of secrecy in an election.

Yours Respectfully

Arthur Nugent No 9320



R 216 of 1990 / 5

Mr A. Nugent
7 Miami Court
SOUTH OAKLEIGH VIC 3167

Dear Mr Nugent,

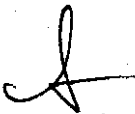
Re: Application by The Seamen's Union of Australia for exemption
under section 211 of the Industrial Relations Act 1988

Your objection to the abovementioned application was received on
6 July 1990. Objections closed on 31 July 1990.

I am required by section 212 of the Act to hear the application
and your objection. At this stage no date has been fixed for
such a hearing. You will be informed of such a date and the time
and place for such a hearing in due course.

Should you wish to discuss this matter please contact me on
6538354.

Yours sincerely



Clency Lapierre
for INDUSTRIAL REGISTRAR

8 August 1990

Our Ref.:
Your Ref.: CL:SM:18.18.3


Mr J. Ryan
C/- Ryan Carlisle Needham
Thomas, Solicitors
Level 28, Nauru House
80 Collins Street
MELBOURNE VIC 3000

Dear Mr Ryan,

Re: Application by the Seamen's Union of Australia for exemption
under section 211 of the Industrial Relations Act 1988

Please find enclosed a copy of the Industrial Registrar's
certificate and decision in respect of the abovementioned
decision.

Yours sincerely,


C. Lapierre
for INDUSTRIAL REGISTRAR

11 October 1990

19

Industrial Relations Act 1988
s.211 application for an organisation to conduct its elections

SEAMEN'S UNION OF AUSTRALIA

(R No 216 of 1990)

J P O'SHEA
INDUSTRIAL REGISTRAR

MELBOURNE
21 SEPTEMBER 1990

DECISION

This matter concerns an application by the committee of management of the Seamen's Union of Australia (the organisation) for exemption from the provisions of subsection 210(1) of the Industrial Relations Act 1988 (the Act).

Subsection 210(1) reads:

"Each election for an office in an organisation or branch of an organisation shall be conducted by the Australian Electoral Commission."

The Seamen's Union of Australia is an organisation registered under the Act.

An application pursuant to section 211 of the Act was lodged in the Registry in respect of the organisation on 15 June 1990. This application met the requirements of section 211 of the Act and regulation 55 of the Industrial Relations Regulations (the Regulations), in that:

- . the application was in writing signed by a member of the committee of management;
- . the application stated the grounds upon which the exemption was being sought; and
- . the application was accompanied by a statutory declaration by a member of the committee of management declaring that:
 - the committee of management had resolved to make the application, and
 - the committee of management had notified the members - by a means prescribed in Subregulation 55(2) of the Regulations - of the making of the resolution.

Notice of the application was published in accordance with subsection 211(4) of the Act and regulation 56 of the Regulations for the purpose of bringing the notice to the attention of members of the organisation.

One objection was received to the application by a member of the organisation.

As required by subsection 212(2) of the Act, I heard this application in Melbourne on 14 September 1990.

Under subsection 213(1) of the Act, I may exempt an organisation or branch from subsection 210(1) of the Act if I am satisfied:

- . that the rules of the organisation or branch comply with the requirements of the Act relating to the conduct of elections; and
- . that, if the organisation or branch is exempted from subsection 210(1), the elections for the organisation will be conducted under the rules of the organisation and the Act; and
- . that, if the organisation or branch is exempted from subsection 210(1), the election for the organisation or branch will be conducted in a manner that will afford members entitled to vote at such elections an adequate opportunity of voting without intimidation.

In the proceedings on 14 September, Mr S Marshall of counsel represented the applicant organisation. Mr A Nugent the objector was also present and was heard.

Mr Marshall's submission was that the rules of the organisation comply with the requirements of the Act relating to the conduct of elections. He took me to various rules in connection with the election of office bearers and submitted their compliance with the Act. He drew my attention to the characteristics of ballots in the organisation in submitting that the membership voting procedure did not involve an attendance ballot simpliciter, but a situation where an exemption has been granted from postal provisions, there is widespread journal publicity regarding the elections, and the procedure facilitates the fullest participation in the ballot. Reference was also made to the explicit provision for absent voting (rule 36(16)(d)(vi))in

respect of the election of Presiding Officer and Vice-Presiding Officers by and from the members of the Committee of Management.

Mr Marshall supported his submission with exhibits and evidence from Mr P Geraghty, the Federal Secretary of the organisation. Exhibit M1 specifies the provisions of the rules which are submitted to satisfy the relevant requirements of the Act. Mr Geraghty's evidence gave me information on the structure of the rules concerning elections in an organisation the members of which have a high degree of mobility. His evidence also covered the rules' design to attract high participation rates in elections within the organisation.

The Executive Officers of the organisation are the Presiding Officer, the Federal Secretary, Assistant Federal Secretaries and two Vice Presiding Officers (rule 11(b)). The Committee of Management consists of the Federal Secretary, Assistant Federal Secretaries, and the Secretary of each branch of the Union (rule 12).

The Presiding Officers and Vice Presiding Officers are elected by and from members of the Committee of Management (rules 11(b) and 36(16)(a)). The remainder of the offices are filled by a direct voting system (rule 36). Rule 32 enables any eligible member to nominate for any office whether federal or branch. The electorate in respect of federal and branch offices comprises the whole of the membership of the organisation. (rule 36)

The objections raised by Mr Nugent did not directly challenge the compliance of the organisation's rules with the provisions of the Act but went more to matters of policy or procedure.

One ground of objection by Mr Nugent concerned the ability to appoint a member of the organisation as returning officer.

The rules comply with the provisions of the Act in that the Federal Returning Officer and each Branch Returning Officer are precluded from being the holders of any other office in the organisation or an employee of the organisation (rule 34(e)). The appointment of a member of the organisation as returning officer is not contrary to the Act, so any objection on this ground cannot be sustained.

Having regard to the submissions made, the material before me and my examination of the rules of the organisation, I am satisfied that those rules concerning elections comply with the requirements of the Act relating to the conduct of elections and meet the standard set out in subsection 213(1) for the granting of an exemption.

Mr Nugent made reference to rule 63 which appears to provide for a plebiscite vote of members on "questions of matters of importance". He drew my attention to differences in the structure of this rule to rules concerning the distribution of ballot papers for elections of office-bearers and to the fact that rule 63 had not been used for elections of office-bearers which could be regarded as "matters of importance". Having found that the rules of the organisation comply with the provisions of the Act concerning elections, I can see no substantive argument here in Mr Nugent's distinction. The procedures for the conduct of elections are clearly found elsewhere in the rules and whatever the structure and incidence of use of rule 63, I am not concerned with it here.

I now turn to the requirement in subsection 213(1) that I be satisfied that, if an exemption is granted, elections will be conducted under the rules of the organisation and the Act.

In relation to this matter, I was assisted in coming to a conclusion by the submissions and exhibits of Mr Marshall on behalf of the applicant and the evidence given by Mr Geraghty.

It is clear that the Seamen's Union of Australia has membership characteristics not found in other unions. The procedures at elections are designed to meet these unusual characteristics. To quote from Mr Geraghty's statutory declaration accompanying the application:

"... The rules of the Union covering elections are designed to meet the peculiarities of the maritime industry and the needs of members serving in various types of ships and vessels both within Australia and overseas. The election procedures ensure that seamen in port, at home, at outlying ports throughout Australia and on ships operating outside Australia, have the opportunity to vote and participate in the Union Election during the approximate four weeks the ballot is opened.

During the 1988-1990 Triennial Election conducted under the Union's Rules 70.91 per cent of the financial members of the Union received ballot papers on application and 68.84 per cent of the financial members returned the ballot papers to the Federal Returning Officer and participated in the Union Election.

- ... In the conduct of their duties Returning Officers visit ships and areas of employment located in outlying parts of Australia, including North Western Australia, North Queensland and Tasmania as well as visiting engagement centres and make arrangements for seamen on overseas ships to receive ballot papers and vote in the election. This direct voting system plays a significant role in the very high return the Union receives in its elections.
- ... The 70.91 per cent participation of financial members and returned by 68.84 per cent financial members in 1988-1990 Triennial Election is recognised as being very high returns compared to most trade union elections."

Other considerations to emerge from the material before me include:

- the emphasis on rules and procedures to achieve the highest possible participation rate and return of completed ballot papers from members;
- the detailed nature of the rules in establishing a procedural framework for the conduct of elections (see rule 36);
- evidence that contested elections are not usual in the Union;
- a long standing and regular exemption secured by the organisation from the requirement for postal ballot;
- a statement advanced from D.M. Dixon & Co. (Auditors to the Seamen's Union of Australia) concerning procedures for the receipt, safekeeping and counting of the ballot;
- evidence that the person appointed as federal returning officer is invariably a long-term member of the union, is relatively well-known to people and works within the industry;
- evidence that there is a procedure for the federal returning officer to have an office and an independent staff and that he does all of his own material between himself and the branch returning officers. In addition, he contacts the branches by post and by telephone and issues instructions on how the election is to be conducted, what they are to do and that they are under his total control;

- evidence that the federal returning officer is given access to the rules of the organisation and the Act, and independent legal advice if required;
- the existence of a current certificate exempting the organisation from subsection 198(1) of the Act.

The objector, Mr Nugent, raised a number of matters concerning the conduct of elections but I am not persuaded that they have substance.

Mr Nugent drew attention to his perception of the Union's policy that candidates for office cannot campaign. Mr Geraghty responded that the Union has had a long-term policy of not having material issued at elections, but this cannot be prescribed in the rules and, in fact, some candidates had issued election material without repercussion. As there is nothing in the rules which limits or prohibits a candidate in this respect, it is not a relevant matter in considering the merits of the application. The means by which a candidate might choose to bring his policies to the attention of the electorate (and his remedies if he considers his efforts unfairly hindered) are not dependent on whether this current application is granted or refused.

Mr Nugent's objection that a member of the Seamen's Union of Australia would not be a fair and impartial returning officer to conduct elections was in no way substantiated.

Mr Nugent's other objection concerned a possible lack of secrecy in the conduct of the ballot by virtue of the requirement that "voting paper" envelopes (to be placed inside the return stamped envelope) carry the identity of the member voting. In my view, this is a reasonable provision, given the mobility of the electorate and the need to ensure the integrity of the ballot. The rules provide safeguards against voting secrecy being breached (rule 36(10)(i) - (iv)) and for the presence of scrutineers to ensure that all proper procedures are followed. Material provided by the Union's Auditors (Exhibit M1) provides additional reassurance on this point.

In summary, the material before me did not disclose any matters which would lead me to have doubts that the standards required in the Act would be applied.

Accordingly, I am satisfied on this aspect for the purposes of subsection 213(1).

Finally, I turn to the requirement in subsection 213(1) that I be satisfied that, if an exemption is granted, elections will be conducted in a manner that will afford members entitled to vote an adequate opportunity of voting without intimidation.

Mr Marshall led evidence that there has been no inquiry into any election in the Union since the 1940-41 ballot. Even allowing for the fact that contested elections are not usual in the Union, the calling of the members and the nature of the industry concerned make this a very significant factor. Because of the peculiarities of the industry and the absence of conventional postal voting, it might have been reasonable to expect a greater incidence of situations where election procedures and outcomes were challenged.

The objector, Mr Nugent, sought to cast doubt on some elements of the election process but did not substantiate his expressions of concern in any way. Nor did he advance any argument or evidence that the election procedures of the organisation had not provided any member an adequate opportunity of voting without intimidation.

In all these circumstances, I must have regard for the track record of the organisation and, on that basis, I have no reason to form doubts that the organisation will conduct elections in a manner that will afford members entitled to vote an adequate opportunity of voting without intimidation. In coming at this conclusion, I note again that an exemption from subsection 198(1) of the Act has been in force since 18 July 1989.

Accordingly, I am satisfied on this aspect for the purposes of subsection 213 (1).

One final matter for consideration involves another ground of objection taken by Mr Nugent; that "the money included in the Seamen's Union of Australia conducting its own election could be utilised in areas more beneficial to its membership". This is a matter of policy for the organisation. The rules make provision to fund the cost of elections and this is a matter for the organisation. The view advanced by the objector is not relevant to my consideration of the application.

In view of the foregoing, I have decided to grant an exemption, as sought, from the provisions of subsection 210(1) of the Act in relation to elections for offices in the Seamen's Union of Australia.

A Certificate to this effect will be issued separately in relation to the organisation.



J P O'Shea
INDUSTRIAL REGISTRAR



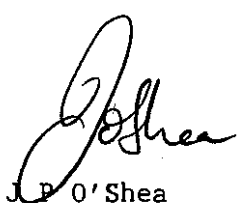
Industrial Relations Act 1988

s.211 application for an organisation to conduct its elections

Seamen's Union of Australia

(R No 216 of 1990)

I hereby certify that under subsection 213(1) of the Industrial Relations Act 1988, I have granted the abovenamed organisation an exemption from the requirements of subsection 210(1) of the Act.



J.P. O'Shea
INDUSTRIAL REGISTRAR

21 September 1990

