

**ORDER PURSUANT TO S.66
WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

CITATION : 2020 WAIRC 00786

CORAM : CHIEF COMMISSIONER P E SCOTT

**HEARD BY
WRITTEN
SUBMISSIONS** : MONDAY, 31 AUGUST 2020, THURSDAY, 3 SEPTEMBER
2020

DELIVERED : FRIDAY, 4 SEPTEMBER 2020

FILE NO. : PRES 4 OF 2020

BETWEEN : MICHAEL BARRIE CLANCY
Applicant

AND

THE AUSTRALIAN NURSING FEDERATION INDUSTRIAL
UNION OF WORKERS PERTH
Respondent

CatchWords : Industrial law (WA) – Elections for registered industrial organisation
– Delays in conducting election of councillors – Orders regarding
non-observance of rules of the organisation – Circumstances relating
to COVID-19

Legislation : *Industrial Relations Act 1979* (WA) s 6(ab), 6(f), 66, 69(2)

Result : Order issued

Representation:

Applicant : Mr M Clancy on his own behalf

Respondent : Mr S Barry

Reasons for Decision

- 1 According to rule 20 of the Rules of the Australian Nursing Federation Industrial Union of Workers Perth (ANF), the elections of officeholders are required to be held between 1 July and 30 August in the year in which they fall due.
- 2 This is an application by Michael Barrie Clancy, a member of the ANF, for an order pursuant to s 66 of the *Industrial Relations Act 1979* (WA) (the Act) waiving the requirement to comply with rule 20 to enable the ANF to conduct its 2020 elections later than the time required.
- 3 In support of the application, Mark Anthony Olson, the Secretary, has sworn an affidavit in which he set out that he wrote to the Registrar on 20 August 2020, requesting that an election be conducted for a number of positions on the ANF Council. The Registrar responded that the request had not been made in accordance with s 69(2) of the Act because it had not been made in sufficient time to enable the Electoral Commission to conduct the election within the time required by the ANF's Rules.
- 4 Mr Olson explained that the ANF had been unable to request that the election be undertaken within time due to a number of factors:
 - (a) the senior staff member previously responsible for arranging elections left the ANF in January 2020 and was unable to be replaced prior to the COVID-19 pandemic;
 - (b) the issues associated with the COVID-19 pandemic have resulted in an extremely busy workload for ANF staff, particularly for Mr Olson;
 - (c) the majority of ANF staff are still working remotely from the office and have been doing so since March 2020; and
 - (d) as a result of these factors, the request to the Registrar was unintentionally delayed.
- 5 Mr Olson says that this is the first time in his knowledge that the ANF's elections have been delayed outside the period stipulated in its Rules.
- 6 Mr Olson says that, if the application under s 66 of the Act is granted, the election will be conducted as soon as practicable. He also notes that he has appointed the ANF's Senior Industrial Officer to ensure that all future elections are conducted in accordance with the Rules and the Act.

Consideration and conclusion

- 7 Rule 20 – Elections, rule (1) of the ANF's Rules requires that the elections for the offices of President, Senior Vice-President, Vice-Presidents, Executive and Councillors shall be conducted between the first day of July and the thirty-first day of August in the year in which those positions become vacant pursuant to the Rules, providing that the Returning Officer may call for nominations prior to 1 July in the year of the election.
- 8 I am aware that in the last six months other industrial organisations have experienced difficulties in complying with their Rules in relation to conducting meetings and elections.
- 9 The ANF's members in particular will have been affected by the current COVID-19 emergency. This in turn will have affected the ANF in providing support and service to its members. The administrative arrangements outlined by Mr Olson demonstrate that the ANF,

like many organisations, has faced challenges in performing its functions. There is no suggestion that the circumstances have arisen due to neglect, but rather due to the current exceptional circumstances.

- 10 I also take account of the objects of the Act. Section 6 – Objects, subsections (ab) and (f) provide for the promotion of the principles of freedom of association and the right to organise, as well as the encouragement of democratic control of registered organisations and the full participation by members. Nothing before me suggests that the deferral of the elections by around three months on this occasion will undermine those objects.
- 11 It is necessary and desirable for the elections to take place as soon as possible. The ANF seeks an order which would expire on 1 December 2020. This means that the elections must be conducted before then.
- 12 In the circumstances, I intend to order that:
 - (a) observance of the requirement in Rule 20 of the ANF’s Rules, to hold elections between 1 July and 31 August 2020, be waived; and
 - (b) until the Returning Officer has declared the result of the election, those officers holding office due for election between 1 July and 31 August 2020, the subject of Rule 20 – Elections, are hereby deemed to continue to hold such offices and have authority to exercise the powers, duties and functions of the respective offices;
 - (c) unless this order is extended, varied or revoked, it shall operate until 30 November 2020; and
 - (d) there be liberty to the parties to apply.