

**OPENING STATEMENT**

**DENNIS P. WALSH**

**NOMINEE FOR POSITION OF CHAIRMAN, SPECIAL PANEL ON APPEALS  
SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE**

**APRIL 20, 2010**

Good afternoon. My name is Dennis P. Walsh, and I am honored to be appearing before you as the President's nominee for the position of Chairman of the Special Panel on Appeals. I would like to thank Senator Akaka, Senator Voinovich, and the other Members of this Committee for this opportunity to appear before you and to be considered for this important position. Also with me today is my wife, Barbara A. O'Neill, who is a prominent labor attorney and public servant in her own right on the legal staff of the National Labor Relations Board, and who has supported me throughout my career in the Federal government.

As you know, the Chairman of the Special Panel on Appeals is a position established by the Civil Service Reform Act of 1978 to address certain mixed cases that involve issues concerning both merit systems principles and anti-discrimination principles as applied to Federal employees. If a Federal employee appeals such a case to the Merit Systems Protection Board, and the MSPB decides the case, the employee can subsequently appeal the decision regarding the discrimination claim to the Equal Employment Opportunity Commission. If the EEOC issues a decision that differs from the MSPB's decision as to the discrimination claim, it refers the case back to the MSPB. The MSPB can concur in the EEOC's decision at that point, which makes it a final decision subject to judicial review. However, if the MSPB determines that the EEOC's decision conflicts with merit systems laws, rules, or policy directives, or that it does not apply such laws, rules or directives correctly to the facts of the case, it must certify the case to the Special Panel on Appeals. That is where this position comes into play. The Chairman of the Special Panel, who is a Presidential appointee, then convenes a Special Panel, consisting of him or herself, a Member of the MSPB, and a Member of

the EEOC. The Special Panel has 45 days to consider the case, and must decide if indeed the EEOC's decision is in violation of merit systems laws, rules, or directives, or if it applies those laws, rules or directives incorrectly. In making such a decision, the Special Panel must give due deference to the MSPB on issues involving merit systems principles, and to the EEOC on anti-discrimination principles.

In a nutshell, Senators, that is the position which the President has asked me to assume. I believe I am uniquely positioned to undertake this responsibility because of my extensive experience as an adjudicator of labor cases at the National Labor Relations Board, my experience as a Federal manager at the NLRB, and because of my present position as the Deputy General Counsel of the Federal Labor Relations Authority. As a Member of the National Labor Relations Board, I was called upon to decide cases involving labor law issues under the National Labor Relations Act as part of an ideologically divided, yet collegial body. Our job was to meld our various views together and decide cases as expeditiously as possible. The job of the Chairman of the Special Panel on Appeals, likewise, is to work together with Panel Members who may have disparate points of view, and to issue a decision within a very tight timeframe. My priority as a decision maker on the NLRB was always to decide cases quickly, while at the same time addressing all of the issues thoroughly and fairly. Those skills should serve me well if confirmed as Chairman of the Special Panel. As both a Chief Counsel and a Member of the NLRB, I was often confronted with issues involving both merit systems and anti-discrimination principles, since I was responsible for managing my own staff and also had co-responsibility with the other Board Members and the General Counsel for the overall management of the Board. And finally, in my current position as Deputy General Counsel of the FLRA, I am responsible for the overall management of a nationwide field staff of Federal employees. In this position, therefore, I am becoming even more familiar with the merit systems and anti-discrimination principles that the Chairman of the Special Panel on Appeals is charged with addressing.

The main priority of the Special Panel on Appeals is to decide cases presented to it fairly and expeditiously, within a tight 45-day timeframe. The statutory procedures that result in cases being presented to the Special Panel are complex. That is because those procedures are the product of a congressional compromise that was designed to maintain a delicate balance between merit systems and anti-discrimination principles by providing a third-party administrative tribunal that can reconcile them in a way that preserves the authority of both the MSPB and the EEOC over the areas in which each has the greatest expertise. It is therefore important to have fair and impartial decision makers on the Panel who understand the need both for careful legal rationales and expeditious decisions. I believe I have demonstrated my ability to accomplish both of those objectives in my extensive career as an adjudicator of labor cases.

I thank this committee for its consideration of my nomination, and I would be pleased to answer any questions that you may have.