

**NOMINATIONS OF HON. CAROL W. POPE AND  
THOMAS M. BECK**

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**HEARING**

BEFORE THE

COMMITTEE ON  
HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

ON THE

NOMINATIONS OF HON. CAROL W. POPE AND THOMAS M. BECK TO BE  
MEMBERS OF THE FEDERAL LABOR RELATIONS AUTHORITY

SEPTEMBER 11, 2008

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## **NOMINATIONS OF HON. CAROL W. POPE AND THOMAS M. BECK**

**THURSDAY, SEPTEMBER 11, 2008**

U.S. SENATE,  
COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 2:35 p.m., in room SD-342, Dirksen Senate Office Building, Hon. Daniel K. Akaka, presiding.

Present: Senator Akaka.

### **OPENING STATEMENT OF SENATOR AKAKA**

Senator AKAKA. This hearing will come to order.

Today the Committee on Homeland Security and Governmental Affairs meets to consider the nominations of Carol Waller Pope and Thomas Beck to be members of the Federal Labor Relations Authority (FLRA). Both Ms. Pope and Mr. Beck have had long careers dealing with labor-management relations—Ms. Pope working for the Federal Government at the FLRA and Mr. Beck working in the private sector at Jones Day. I want to welcome our nominees along with their families and friends to the Committee today.

Congress acted to allow Federal workers the right to bargain collectively because labor organizations and collective bargaining are in the public interest. The right of employees to unionize and bargain contributes to the effective conduct of public business and facilitates the amicable settlement of workplace disputes.

Because the FLRA is responsible for resolving disputes between labor unions and the government, the positions to which Ms. Pope and Mr. Beck have been nominated are among the most important to Federal employees and the ability of the Federal agencies to meet their missions. A well-managed organization understands the need to invest in its workforce. To be an employer of choice and promote high employee morale, employees must have input in management decisions.

When managers vet proposed changes to working conditions with affected employees, they better understand their practical impact on an employee's ability to do his or her job, and on workforce morale as well.

When managers restrict the ability of the employees to bring their concerns to the table and try to eliminate collective bargaining, they undermine their agencies' missions, lower employee morale, and make the organization an employer of last resort.

The FLRA is at a critical juncture given the shifting nature of the Federal labor relations system. As such, the positions to which Ms. Pope and Mr. Beck have been nominated will face new challenges and take on renewed importance.

Over the past 8 years, we have seen proposed changes to Federal labor law at the Departments of Homeland Security and Defense which would have significantly impacted the FLRA and Federal workers. If implemented, I believe that employees at those agencies will not be able to have their cases decided by an impartial adjudicator. In addition, the Administration proposed additional changes to the Federal labor-management system government-wide through the Working for America Act in 2005. These changes would have further eroded workers' rights. I am pleased that the Administration's proposals have not been enacted. However, these proposals sent the wrong message to Federal employees. It has diminished labor-management relations in the Federal Government and employee morale.

In my opinion, workplace changes are now viewed with more suspicion. Workplace disputes have taken on a more adversarial nature. The reinstatement of labor-management partnerships is essential, and I hope the next Administration will work with the FLRA to improve labor relations and alternative means to resolving disputes.

The challenges facing the Federal labor-management system have taken a toll on the FLRA. Like other Federal agencies, FLRA is facing a human capital crisis. The prospect of legislative changes significantly altering the functions and workload of the agency have left the FLRA with a high number of vacancies and low employee morale. In fact, the FLRA placed last among small agencies in the Partnership for Public Service 2007 Best Places to Work rankings. The new leadership at the FLRA must take action to address the agency's human capital crisis and make the FLRA an employer of choice.

I look forward to discussing these issues with the nominees to get their views on how to improve operations at FLRA and the state of labor-management relations in the Federal Government.

Ms. Pope and Mr. Beck, again, I welcome you and congratulate each of you on your nomination.

Now I would like to recognize Delegate Eleanor Holmes Norton. We are happy to have you with us today. Welcome to the Committee. I know you have a tight schedule, so please proceed with your introduction of Ms. Pope.

**TESTIMONY OF HON. ELEANOR HOLMES NORTON, DELEGATE  
OF THE DISTRICT OF COLUMBIA, U.S. HOUSE OF REP-  
RESENTATIVES**

Ms. NORTON. Well, thank you very much, Mr. Chairman, and I know about your schedule, and I am very appreciative that you have made time to get to this business before recess.

I am here to introduce Carol Pope, a Washingtonian, and a present member of the Federal Labor Relations Authority. You have spoken, I think, very well about the importance of this agency to hundreds of thousands of Federal employees and to the Federal

Government itself, so this is a nomination of some importance to the country.

Ms. Pope has been nominated by two Presidents—President Clinton and President Bush. You are familiar with her extensive qualifications. Suffice it for me to say that she is an attorney, admitted to the U.S. Supreme Court, and Federal Courts of Appeals. She began her career in the Office of the Solicitor, Department of Labor, in 1979, moving almost immediately in 1980 to the FLRA, and has spent most of her career there, indeed, including as Assistant General Counsel.

Mr. Chairman, it is always gratifying to see a career Federal employee rise through the ranks to become a member of the commission or of the governing authority itself. And that is what the record of Carol Pope has allowed her to do in the opinion of the two Presidents who have nominated her, and now she is being renominated for another term. I am very pleased and very proud of her and very pleased to offer her to you as an exceptionally well qualified candidate to be a member of the FLRA.

Thank you very much, Mr. Chairman.

Senator AKAKA. Well, thank you very much, Delegate Norton. I really appreciate your remarks and your support of Ms. Pope.

Ms. NORTON. Thank you.

Senator AKAKA. Thank you.

Ms. Pope and Mr. Beck have filed responses to a biographical and financial questionnaire, answered pre-hearing questions submitted by the Committee, and had their financial statements reviewed by the Office of Government Ethics. Without objection, this information will be made part of the hearing record, with the exception of the financial data, which are on file and available for public inspection in the Committee offices.

Our Committee rules require that all witnesses at nomination hearings give their testimony under oath. Therefore, Ms. Pope and Mr. Beck, I ask you to both please stand and raise your right hand. Do you solemnly swear that the information you are about to submit to the Committee is the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. POPE. I do.

Mr. BECK. I do.

Senator AKAKA. Thank you very much. Let it be noted in the record that the witnesses answered in the affirmative.

Ms. Pope and Mr. Beck, I know that your families and friends are here at this time, and I am glad I had the opportunity to say hello to them. I want to give you the opportunity to present them formally to the Committee. So, Ms. Pope, will you please introduce your family to the Committee?

Ms. POPE. Thank you, Mr. Chairman. I would like to introduce my brother-in-law, Wallace White; my sister, Lynda White, from Philadelphia; my niece, Evin Jethroe; and friend, Fred Grigsby.

Thank you.

Senator AKAKA. Thank you. Thank you very much.

Mr. Beck, will you please introduce your family?

Mr. BECK. Chairman Akaka, my wife, Amanda Beck, is here with us today. And her parents, Colonel and Mrs. Bruce J. Host, are

here from Tallahassee, Florida, and I want to thank them for coming here to be with me today.

Senator AKAKA. Thank you. Thank you very much and welcome to all of you. We are happy to have you here today. I can see that both of you have a lot of strong support, not only from family but friends as well here.

So, Ms. Pope, will you please proceed with your statement?

**TESTIMONY OF HON. CAROL W. POPE TO BE A MEMBER,  
FEDERAL LABOR RELATIONS AUTHORITY**

Ms. POPE. Thank you, Mr. Chairman.

Chairman Akaka, I am honored to appear before you today as the President's nominee to be a member of the Federal Labor Relations Authority. I would like to thank Congresswoman Norton for her support and her kind words on my behalf. Finally, I would like to thank the staff members of the Committee for their work and for their assistance in scheduling this hearing.

I appeared before this Committee over 8 years ago when I was first nominated and confirmed as a member of the Federal Labor Relations Authority. At my swearing-in, the youngest member of my family—my niece, Evin Jethroe—who was 10 years old at the time, held our family Bible. Today I am proud to say that Evin is here in Washington and here at this hearing because she is a freshman at George Washington University. I thank Evin and all of my family and extended family and friends for their support.

I also want to acknowledge my colleagues and friends from the Federal Labor Relations Authority who are here. There are those in the hearing room today and many more who are watching this proceeding through the live video feed. I commend all of the FLRA employees for their interest in this process and for their commitment to the mission of the agency.

In the 8 years that I have served as a member, the Federal sector labor relations landscape has changed. I note with sadness that today is the anniversary of one of the most horrific acts of domestic terrorism experienced in my lifetime. Federal employees, both personally and professionally, have, like the entire country, suffered from the impact of those tragic acts. In addition, during the last 8 years, the Department of Homeland Security was created, which consolidated functions from 22 separate agencies with separate bargaining units and collective bargaining agreements.

Legal issues regarding proposed personnel and labor relations systems at DHS as well as the Department of Defense dominated labor-management discussions at all levels over these years. Also during this time, numerous other pay and personnel reforms were contemplated, and some were instituted. Agency reorganizations, employee turnover due to the retirement bubble, and pay and personnel changes have tested and oftentimes strained the relationships between labor and management.

I pledged at my first hearing before this Committee and I pledge now, if I am confirmed, to ensure that the FLRA fulfills its important mission by adjudicating disputes fairly, impartially, and expeditiously, and by producing quality decisions that enhance the stability of labor-management relations in the Federal Government.

I also pledge my support to work with my colleagues, including presidential appointees and others, to assist the FLRA in discharging its statutory leadership role in establishing labor-management policies and guidance throughout the Federal sector. I greatly appreciate the opportunity to appear with Thomas Beck and look forward to welcoming him as chairman to the FLRA, which has been my professional home for the last 28 years.

Thank you very much. I am happy to answer any questions you might have.

Senator AKAKA. Thank you very much for your statement, Ms. Pope.

Now, Mr. Beck, your statement, please.

**TESTIMONY OF THOMAS M. BECK TO BE A MEMBER, FEDERAL LABOR RELATIONS AUTHORITY**

Mr. BECK. Chairman Akaka, thank you.

First of all, I want to say it is an honor to be here before you today, and I want to thank you for holding this hearing and permitting Ms. Pope and myself to appear here, and for your warm reception today as well. Thank you very much for that.

As you know, the FLRA has lacked a quorum since Chairman Cabaniss stepped down roughly 2 months ago, and I know that your prompt efforts since then to consider my nomination and that of Ms. Pope are appreciated by the people at the agency and by the parties that the agency serves. So thank you again for moving to hold this hearing.

I also want to join Ms. Pope in thanking the Committee staff who did help us work through this process quite quickly, and they were very kind and generous with their time and helpful to me, to whom this process is new, in understanding the process. And I also want to thank the folks from the FLRA who are interested and are here with us today to observe what we talk about today.

Senator Akaka, a working and productive FLRA is integral to the proper functioning of our Federal agencies. The FLRA's ultimate mission is to foster constructive labor relations in the Federal sector. It does so when it resolves impartially and expeditiously the disputes that are presented to it by Federal agencies and by the labor organizations that represent the employees of those agencies.

Currently, the FLRA has a backlog of close to 400 cases. If I am confirmed and designated chairman, my most pressing priority will be to address and to reduce this backlog of cases to the greatest extent possible, given, of course, that it seems, for the near term at least, the Authority will have two members rather than the full complement of three, most likely. And I suppose sometimes Ms. Pope and I will agree and sometimes we will disagree when it comes to the disposition of particular cases. But I believe that we will both work to try to do something about that backlog, which is larger than it should be.

If I am confirmed and designated chairman, another priority will be to assess the human capital needs at the FLRA. You referred to this, Senator Akaka, in your own statement a few moments ago, and I know that this is a pressing issue at the agency. And I understand it is a pressing issue for the parties that the agency serves as well.

The agency staff overall is substantially reduced from where it was 5 years ago, and in particular, the case-writing staff, which is so directly involved in the agency's core function of processing cases, as I understand it, is just slightly over half of what it was 5 years ago. Now, these very significant reductions in personnel do not correlate, so far as I know, to any concomitant reduction in the agency's statutory mission or its responsibilities. And so this raises the question, at least, as to whether the FLRA is adequately staffed. And as I sit here today, I do not know the magic number in terms of what the proper number of employees at the agency might be, but it is certainly a matter that I think warrants the immediate and serious attention of the FLRA's next chairman.

And I also just want to note with Ms. Pope here that I really very much look forward to working with her in a collaborative way to address these and the other challenges that face this agency. Ms. Pope generously reached out to me roughly a year ago when I was nominated and congratulated me on my nomination, and since then we have had several friendly, and I think productive, discussions. And what I have learned about Ms. Pope is that she is not just a bright and gracious individual, but she is also someone who really knows the ins and outs of this particular agency because she has served there in many positions over the years. And so if I am confirmed and am permitted to take on the role of chairman, I know that she will be an invaluable resource that I will look to to help me get acquainted with and understand the inner workings of this agency.

With that, Mr. Chairman, I want to thank you again for holding the hearing today, and I will be pleased to answer any questions you may have.

Senator AKAKA. Well, thank you very much for your statement, and I look forward to you working together.

I will begin with the standard questions this Committee asks of all nominees, and so I ask for your responses to these questions.

Is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Ms. POPE. No.

Mr. BECK. No.

Senator AKAKA. Do you know of anything, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Ms. POPE. No.

Mr. BECK. No.

Senator AKAKA. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted Committee of Congress if you are confirmed?

Ms. POPE. Yes, Mr. Chairman.

Mr. BECK. Yes.

Senator AKAKA. Thank you very much for your responses.

My first policy question is to both of you. As I mentioned in my opening statement, I believe that the state of labor relations in the Federal Government is at an all-time low. Several years ago, President Clinton established labor-management partnerships through-

out the Federal Government to improve cooperation between labor and management. In my view, these partnerships were a great success, but shortly after taking office, President Bush abolished them. Last year, I introduced legislation to reinstate the partnerships.

What are your views on the use of labor-management partnerships? And what role do you believe the FLRA should play in improving labor-management relations? Ms. Pope.

Ms. POPE. Thank you. As you stated previously, the FLRA had a leadership role in facilitating and assisting parties in developing productive labor-management partnerships after the Executive Order was enacted. We enjoyed a lot of success in collaboration with agency leadership and union leadership to facilitate the institution of partnerships as well as to facilitate the ongoing management of those partnerships. It certainly benefited the FLRA in that a lot of issues were resolved before cases were filed. In instances where the parties had filed numerous charges, we were able to employ the partnership principles to resolve some of those cases amicably without the need for additional resources of the FLRA or time away from the workplace for the employees engaged in those labor-management disputes.

So, in my view, there has been a lot of success in the past. Anecdotally, I understand that some labor-management partnerships continue today voluntarily in the absence of an Executive Order, and I certainly would welcome any legislation that would require agencies to take another look and engage in labor-management partnerships.

Senator AKAKA. Thank you. Mr. Beck.

Mr. BECK. Senator Akaka, I know that President Bush rescinded President Clinton's Executive Order. I do not think, however, that really affirmatively prohibits informal labor-management partnerships or discussions that may, and I think sometimes do, take place in agencies. And as a general proposition, I think more talking is probably good between parties who potentially could come into dispute with one another. I think it is better to talk and try not to let that dispute reach a head, if at all possible. And to the extent the management of agencies wants to talk informally and feels that it is a good idea to talk informally with labor organizations and that the labor organizations feel the same way, I think talking is a good thing.

And if they can avoid even having a dispute that they bring to the Federal Labor Relations Authority, I think that is great for all concerned. Then if they have a dispute that they cannot resolve before they bring it to the Authority, there are different aspects and avenues for alternative dispute resolution that the Authority can make available. Perhaps if and when I am there, I suppose I might make an assessment as to whether we ought to have a little more of that. Perhaps we should. But with my experience in the private sector, more talking between the parties is, generally speaking, a good thing. And even if they do develop a dispute, sometimes it makes a lot of sense to still talk informally and see if the dispute can be resolved, either through bilateral negotiations or through mediated settlement discussions, before full-blown litigation ensues.

As a general proposition, I am in favor of talking.

Senator AKAKA. Well, as I mentioned I have introduced legislation, S. 2197, to reinstate labor-management partnerships in the Federal Government. And I believe that bill would certainly help what you just mentioned in providing a process for talking to continue on these problems.

Mr. Beck, you have had extensive experience in the private sector representing corporations in disputes with labor unions. Will you please explain how you will make the shift from representing management in such disputes to being a neutral adjudicator?

Mr. BECK. Yes, Senator. Not an unexpected question given my background. It is true that I have spent the greater bulk of my legal career advocating for employers in the private sector when they have had disputes with their employees or with labor unions, and sometimes with the government as well. I was hired to do a job as an advocate, and I did it, hopefully fairly well most of the time, and had a little bit of success at that. But I understand full well that the job that I am nominated for is a different job, and it is a job where I am not being paid to be an advocate. I am being paid to try to be, as best I can, an impartial decider of cases in my role as a member of the Authority looking at cases that are presented to the Authority.

I am not ideological on this, Senator. My law firm made a policy decision many years ago before I arrived that we would represent management, and as far as I know, we have never represented labor unions. I certainly have not personally. But it is also true that I have never represented Federal agencies either, and so as I look at the job of member and chairman of the Federal Labor Relations Authority—I have never represented a labor union as an advocate. I have never represented a Federal agency as an advocate. And I suppose one might analogize in some ways the management of Federal agencies to the management of private sector employers that I have represented. But to me, Senator, a Federal agency is really a different animal from a private sector employer. I don't equate the two or really view them philosophically as equivalents.

And so this really will be a new milieu for me, getting into the Federal sector with Federal agencies and Federal sector labor unions. And so I am really quite confident I will be able to be impartial and look at these cases that are presented to me.

One more comment about my work in the private sector. I must say, although I have been doing it for several years, I am far from coming to a conclusion that all management is made up of good guys or all unions and union members are good guys, or the reverse. I have seen management be good guys and bad guys sometimes in different circumstances, and I have seen labor unions be good guys and, frankly, bad guys sometimes, too. And so I just do not really have a view that one is always right or one is always wrong.

Senator AKAKA. Mr. Beck, no organization can succeed without investing in its human capital. As you know, the FLRA placed last—and I mentioned that in my opening statement—in the most recent Best Places to Work rankings by the Partnership for Public Service, and it has a high number of vacancies. Since President Bush has indicated that he would designate you as chairman of the

FLRA if you are confirmed, please explain your strategy for addressing the FLRA's human capital challenges and improving employee morale.

Mr. BECK. Well, Senator, I do know that is one of the most important challenges that is facing this agency, and I think I noted in my opening remarks that there has been a substantial reduction in the personnel at this agency over the last few years, and you noted that as well. And I am very well aware of the study of small agencies in which the Authority, the FLRA, ranked dead last. It will absolutely be my mission to do something about that.

Obviously, I am not there yet, and so I do not think I can lay out in great detail exactly how I would do it step by step, but I must tell you that what I want to do, if and when I arrive at the Authority, is to go on a listening tour, if you will, and that is kind of a trite way to put it, perhaps, but I really want to talk to Ms. Pope in great detail about what she thinks is going on at this agency and what needs to be done in terms of human capital and other challenges. And I want to talk to the staff at all levels at the FLRA and find out what they think is going right and what they think is going wrong right now and what can we do about that.

In my experience, one way to improve employee morale and to get employees and staff on your side is to just really communicate in an open and fair way with them and let them know that you care about what they have to say and that you respect what they have to say. And I don't suppose I would always agree with what everyone on the staff says. I am sure there would be a great many different views and opinions about priorities and about what is working and what is not. But I intend to collect as much information as I can from the people who have been there much longer than I have been—because I have not been there at all, frankly—and try to find out what is going on and what we can do to improve morale. If morale is so poor, why is it so poor? And what is within our power to do to improve that? And I do not really know the answer in detail right now as I sit here, but I do know I am going to figure it out when I get over there. And I am going to look to the people, the person right next to me and the other people who are there, who know about what is going on in that agency and let them know I want to know what they think. We will do whatever we can within our power and within our budget to try to increase morale and make this, as you said in your opening remarks, an employer of choice, an employer that people want to go to, rather than an employer that people realize is last on the bottom of the employee morale list and so maybe they are not really eager to work there.

Senator AKAKA. Thank you.

Ms. Pope, you have been working at the FLRA since 1980. What do you believe are the biggest human capital challenges facing the FLRA? And what steps do you believe need to be taken to address these challenges and improve employee morale?

Ms. POPE. The biggest challenge in my view is the human capital issue. I believe what has happened over the years is the extensive vacancies and extended vacancies over a number of years at all levels have impacted morale. There is a real crisis, if you will, with regard to whether we have the appropriate level of staff and in

what positions to get our job done, to accomplish our mission effectively and efficiently.

What I have done over the years is to work with my staff to try to produce timely, quality decisions to meet the performance goals of the agency. I look forward to working with Mr. Beck, should he become chairman and we are both confirmed, to engage collaboratively to address the issues. One of the things that the survey talked about in terms of improving morale is the need for employee engagement. So I am very happy to hear his views with regard to how to address morale because I do believe and share the view that getting the stakeholders into the room and hearing their views and sharing information regarding budget constraints—getting employee engagement, developing strategic plans and performance goals, and creating the understanding that management is interested in giving them the tools to accomplish those goals—will go a long way in terms of improving employee morale at the agency and employee satisfaction.

I have been at the agency for 28 years, and it is disheartening to know that we rank last. It is disheartening to know that we are possibly an agency that cannot retain or recruit the best and the brightest to come to work with us. But I do know the FLRA has an important mission and one that is more critical as we move forward with potential pay reform and personnel changes.

So I look forward to working with Mr. Beck to address the issues and the challenges facing the agency.

Senator AKAKA. Thank you for that.

Other than issues relating to human capital, what do each of you believe are the biggest challenges facing the FLRA? And what steps do you plan to take to address them?

Ms. POPE. Mr. Beck referred to the issue that we have a significant backlog of cases in the agency, so the biggest challenge, in my view, is the fact that currently, because of staffing issues and other issues, we are not meeting our own performance goals. We are not providing our customers timely, quality resolution of their disputes. So I would like to work together with the chairman to address those challenges, to develop strategies to bring the case writers and the senior management in the room to talk about how best to develop and look at our work processes, to see where we can improve our productivity and address the quality and timeliness of our decisions.

Senator AKAKA. Thank you. Mr. Beck.

Mr. BECK. Senator, I did mention that backlog, and I think it is something that we need to take a very immediate and very serious look at. Let me put it this way: One of the questions I want to consider, if I am confirmed and go to the agency, is whether we can do a little more at the agency to help the development of the kind of disputes that they are bringing to us. One way to permit us to work on the existing backlog is to see if we can reduce the number of cases that are being filed. I don't know, but within the parameters of the statute, we may be able to do a little bit more to try to help agencies and their labor organizations to get along a little bit better, to play a little bit more nicely, to come to agreement on more issues that otherwise might become cases that come to the Authority for decision.

And as I understand it, the agency has several methods of alternative dispute resolution that can be brought to bear once a case is filed. I wonder if the statute permits us to reach out just a little bit further, to the point even before cases are filed. I honestly don't know the answer to that, perhaps the answer is no. But in a sense, the Authority seems to me under the statute to have some residual authority that might go beyond simply deciding the cases that are presented to it, and we may be able to provide some training or some education and information to managers, employees, and labor organizations that are out there in the Federal sector so that we can maybe avoid having some of the disputes arise in the first place.

Senator AKAKA. Thank you. Over the past 8 years, there have been numerous proposals to change the structure of the FLRA and its role and responsibilities. Both the Departments of Defense and Homeland Security proposed having internal agency panels decide labor cases instead of the FLRA. There was also a proposal by the Senior Executives Association to merge the FLRA, the Equal Employment Opportunity Commission (EEOC), and the Merit Systems Protection Board (MSPB) into a single Federal employee appeals agency.

What are your views on these proposals and do you believe that there are any structural changes that need to be made to the FLRA or the process for adjudicating unfair labor practices? Ms. Pope.

Ms. POPE. In my experience, it is the FLRA that is uniquely poised and trained to be the neutral arbiter of Federal workplace disputes. So I was concerned, obviously, about the legislation you mentioned that would have narrowed our jurisdiction in a lot of cases and eliminated our jurisdiction in many others.

I continue to believe that it is the FLRA in its current structure that should continue to have the jurisdiction over Federal workplace disputes. I believe with budget constraints—certainly internally the FLRA has an ongoing obligation to look to ensure that its structure is the most efficient, the most productive. Internally we may need to assess whether we have the right people in the right jobs, in the right positions, and the right work processes to get the job done effectively. There should be an ongoing strategic assessment which includes employees and their representatives and career and presidential management at all levels.

Senator AKAKA. Well, what about the process for adjudicating unfair labor practices?

Ms. POPE. I have not taken a personal position on the merger of the agencies, but I have been a part of the agency in the past when that has been presented as an issue to the FLRA by Congress. We worked with those other agencies to address and identify the areas where we have separate and distinct jurisdiction and separate and distinct expertise to address those issues. So, in my view, the work process that is currently a part of our regulatory structure is sufficient.

Now, one of the things we have done over the years is to look to see where our regulations could be revised to better serve the parties. And we have made changes, introducing formal Alternative Dispute Resolution (ADR) principles and policies, as well as pro-

viding opportunities for training, education, and facilitation in the area of representation cases and petitions before they are filed.

So, our own regulatory process could be reviewed and should be reviewed to address how charges are filed and where they are filed. And moving further to electronic filing and managing technology to more effectively handle our caseload and more effectively enable the parties to know how to file charges and what their rights are is something that I would endorse for internal review.

Senator AKAKA. Mr. Beck.

Mr. BECK. Senator, the proposals and the possibilities that you referred to—of course it is not in vogue to use this phrase, but I will anyway—would really be above my pay grade. If I become a member and chairman of the Authority, it will not be up to me to say whether such a merger should take place. Of course, that will be between the Congress and the next President.

As I look at that proposal that you mentioned of really merging the agencies and creating sort of a monolithic agency to deal with Federal sector employment issues, in my own mind I immediately think about the situation I am very familiar with in the private sector. And as you know, the FLRA is modeled on the National Labor Relations Board (NLRB), and in most ways structurally it functions like the National Labor Relations Board. And the EEOC also exists to be available to private sector employers and employees, and it deals with their disputes as well.

And so we really have an analogous system of divided responsibilities between the agencies in the private sector that I am very familiar with, and I am not aware of anyone who is seriously suggesting that the NLRB and the EEOC should be merged to deal with private sector employment issues. And based on my experience, it would not be a good idea. And so that is really the best viewpoint I think I could bring to bear my own self on the suggestion of merging the agencies in terms of Federal sector employment matters.

I suppose that as a matter of policy, of course, it would be for the Congress to make the policy decisions, but I suppose merging the agencies into a monolithic agency to deal with all issues might have the apparent virtue of simplicity. But I suppose the virtue of expertise might be lost as well, because as Ms. Pope said, the FLRA has particular expertise, and we all know that the MSPB has certain particular expertise as well, and it has a certain portfolio of responsibilities which is distinct. And the same is true for the EEOC.

And so, as I think this through while I am sitting here, it strikes me that quite a bit of beneficial expertise might be lost.

Senator AKAKA. In addition to proposing changes to the process for adjudicating unfair labor practices, the Administration has proposed changes to the substance of Federal labor law: The rights of labor unions, the rights of management, what matters can be negotiated, and what remedies are available.

What are your thoughts on these proposed changes? And what changes, if any, do you believe need to be made to the rights and protections afforded to employees and management under the Federal labor management statute?

Mr. BECK. I have made Ms. Pope answer every question first, so I guess I will take this one. My answer, unfortunately, has to be very brief to that, Senator, and I am certainly not one to duck questions. But I must say that I have given a lot more thought in recent years to private sector labor relations than I have to the somewhat different nuances of Federal sector relations. As I sit here, I just do not really feel like I am capable of opining on whether certain substantive changes to rights and responsibilities of management and labor would be a good idea or a bad idea.

If I go to the agency and I learn something more than I do know about Federal sector labor law in particular, I will be more than happy to come speak with you. I would love to testify again, Senator, if you think I might have anything of value to say on this subject, or meet with you and other Members of the Committee informally. Once I have developed a little more expertise on these questions, I certainly am quite willing to be a resource to you if that would ever be of benefit.

Senator AKAKA. Any comment, Ms. Pope?

Ms. POPE. I do not have any statutory changes and amendments that I would identify. I note that the statute has served us well for almost 30 years, and we have a significant body of case law elucidating the statute and the rights and responsibilities of the parties.

To the extent there may be pay and personnel changes that may test the statute that certainly were not contemplated when the statute was enacted, it will be up to the FLRA and their interpretation of the law to apply it to any current situations that were not contemplated at the time the statute was enacted. And with respect to other changes, the FLRA, at the direction of the chairman, at the direction of the Administration, would address and look to speak to any possible amendments that may be proposed by Congress or the Administration.

Senator AKAKA. Well, as you know, the chairman of the FLRA is to be the chief executive and administrative officer of the Authority. The Department of Justice Office of Legal Counsel has issued opinions stating that under such a designation the chairs of boards and commissions, like the FLRA, are responsible for the day-to-day administration of the policies of the boards. Substantive policy-making and regulatory authority is vested in the boards as a whole. However, these opinions recognize that any number of the day-to-day business practices may affect the board's policies and regulatory authority.

Could each of you comment on whether you draw the line between the responsibilities of a member of the FLRA and the chairman of the FLRA? Ms. Pope.

Ms. POPE. As a sitting member, I feel like I should go first in that answer. My response is I begin with the statute, which clearly delineates the role of a chairman and the role of a member. I believe and have benefited from Administrations that looked to be collaborative with members in addressing our statutory responsibility to provide leadership with respect to Federal sector labor-management relations. Also, there is a clearly defined role as the budget officer, having fiduciary responsibility, that rests with the chairman.

Senator AKAKA. Mr. Beck.

Mr. BECK. Yes, Senator. There are some clear distinctions, and I look forward, if I am confirmed, to learning more about the precise contours of those distinctions. But it is clear that Congress intended a distinction in some respects between the member who serves as chairman and the other non-chairman members of the FLRA. The statute was passed in the late 1970s originally and then was amended 4 or 5 years later because, as originally passed, it had not designated the chairman as the CEO and administrative officer.

And I think that certain Members of Congress, based on my review of the legislative history, such as Senator Stevens, for example, and Congresswoman Schroeder, came to the floor and said that we think that there is a lack of accountability and there is a certain amount of inefficiency going on at this relatively new agency because there is no individual who is clearly and unequivocally tasked with, say, budgetary responsibilities, human resources responsibilities, and purchasing responsibilities. So they did at that time add in that language that the chairman is the CEO and administrative officer. So, clearly, the chairman is supposed to have some duties and some responsibilities that are distinct from and greater than what the members do in terms of just managing the agency.

With that said, though, while one person needs to be accountable, one person does not need to make all decisions from on high unilaterally without any input from anyone else. And that is not my management style, and I do not think, generally speaking, it is an effective management style. And so I don't know what others who have gone before me may have done, but what I would like to try to do, if I become the chairman of this agency, is to work with Ms. Pope, and if we get another member at the agency, to work with that member as well, and to work with the staff and others in a very kind of open-door, communicative, collaborative way so that as much as possible we can get some kind of consensus, or near consensus, on what needs to be done, at least on the big picture items.

And if somebody has to decide how many paper clips are we going to buy this year, I will be happy to decide that, and probably other folks don't need to be bothered with that sort of question. But when it comes to major questions about managing this agency, I think that doing so in as collaborative a way as possible is obviously the way to go, and that is particularly true for me, frankly, because I have not spent the time at this agency that some other people have, that Ms. Pope has, for example.

Senator AKAKA. Well, I want to thank both of you for your responses. Before we close I would like to ask if either of you have any further remarks you would like to make about FLRA or your position in it, and what you would like to see come about at the FLRA. Ms. Pope.

Ms. POPE. I have always held in high regard the FLRA and its mission and the responsibilities of the presidential appointees at the agency. I look forward to continuing in that role, if confirmed, and would be extremely excited and proud to be a part of turning around the agency, so that if I ever had the fortune of coming before you again, we are not ranked 31st of 31 small agencies, but

we are ranked No. 1. So I am excited about the future of the agency and look forward to being a part of it, if confirmed.

Senator AKAKA. Mr. Beck.

Mr. BECK. I want to associate myself with Ms. Pope's remarks and say essentially the same thing, Mr. Chairman. I think some things need to be done at this agency, clearly, and I look forward, if confirmed, to figuring out in short order what they are and doing the best that all of us can to make whatever changes are going to bring this agency up in terms of not just employee satisfaction and engagement, but in terms of processing cases, carrying out our core function of processing cases and resolving impartially and promptly the disputes that the parties bring to the agency. And I would like to also ask that maybe if you don't mind too much, I will come knock on your door at some point, and maybe some of the other Members of this Committee who are interested in what is going on at the FLRA because you have been looking at this agency longer than I have. And I would really value, not only collaborating and hearing from the people who are at the agency, like Ms. Pope and other folks, folks who are on the staff over there, but I would like to maybe be able to sit down, formally or informally, with you, or any other Members who might be interested, to get your views as well.

Senator AKAKA. Well, let me respond to you and tell you my door is open.

Mr. BECK. Thank you, Senator.

Senator AKAKA. And I want to thank you both for your responses, and I feel your mission is a very important one. It is important because, as you succeed, there will be more productivity, people will be working better, and that is why we are all here. And so I want to thank each of you for being here today and congratulate you again on your nominations. I have no further questions at this time.

The hearing record will remain open until the close of business tomorrow for Members of this Committee to submit additional statements or questions they may have. I know you both are anxious for your nominations to move forward. It is my hope that the Committee and the Senate will take action in the near future. Again, I want to thank you for bringing your families and supporters here today, and thank you again for your responses. This will be helpful to us in dealing with your nominations. And I will talk to the Committee and try to make every effort to move them as quickly as we can.

Ms. POPE. Thank you, Mr. Chairman.

Mr. BECK. Thank you, Senator.

Senator AKAKA. Thank you very much. This hearing is adjourned.

[Whereupon, at 3:30 p.m., the Committee was adjourned.]



# APPENDIX

## BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

### A. BIOGRAPHICAL INFORMATION

1. **Name:** (Include any former names used.) Carol Waller Pope; Carol W. Pope; Carol Pope; Carol A. Waller
2. **Position to which nominated:** Member, Federal Labor Relations Authority
3. **Date of nomination:** March 12, 2007
4. **Address:** (List current place of residence and office addresses.)  
no office address.
5. **Date and place of birth:** August 21, 1952; Pittsburgh, PA
6. **Marital status:** (Include maiden name of wife or husband's name.) Divorced
7. **Names and ages of children:** None
8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.  
  
Northeastern University School of Law, Boston, MA – attended 9/1975 to 5/1978. Juris Doctor Degree awarded 5/1978  
  
Simmons College, Boston, MA – attended 9/1970 – 5/1974. B.A., Psychology and Education awarded 5/1974  
  
Westinghouse Junior and Senior High School, Pittsburgh, PA; 1964 – 1970. Diploma
9. **Employment record:** List all jobs held since college, and any relevant or significant jobs held prior to that time, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)  
  
See Attachment #1.
10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above.  
  
None

REDACTED

11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

See Attachment #2.

12. **Memberships:** List all memberships, affiliations, or and offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable or other organizations.

Member, Bar of the Commonwealth of Massachusetts; United States Court of Appeals for the First and Fifth Circuits; and the U.S. Supreme Court. American Bar Association; Society of Federal Labor Relations Professionals

13. **Political affiliations and activities:**

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None

(b) List all memberships and offices held in and services rendered to any political party or election committee during the last 10 years.

Volunteer, 1996 Clinton/Gore Campaign  
Volunteer, 2004 Kerry For President Campaign

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more during the past 5 years.

See Attachment #3

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognition for outstanding service or achievements.

See Attachment #4

15. **Published writings:** Provide the Committee with two copies of any books, articles, reports, or other published materials which you have written.

Article in Journal entitled, Careers and the Minority Lawyer, Spring 1999. A copy of the Article is attached as Attachment #5.

16. **Speeches:**

- (a) Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated. Provide copies of any testimony to Congress, or to any other legislative or administrative body.

See Attachment #6(a)

- (b) Provide a list of all speeches and testimony you have delivered in the past 10 years, except for those the text of which you are providing to the Committee. Please provide a short description of the speech or testimony, its date of delivery, and the audience to whom you delivered it.

See Attachment #6(b)

17. **Selection:**

- (a) Do you know why you were chosen for this nomination by the President?

It is my belief that President Bush selected me for this nomination because of my prior experience and expertise as a Member and career employee at the Federal Labor Relations Authority (FLRA). I possess keen knowledge of the law and its application; litigation and management experience; proven decision-writing expertise and a commitment to public service.

- (b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

See Attachment #7

**B. EMPLOYMENT RELATIONSHIPS**

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

Yes

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

No

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization, or to start employment with any other entity?

No

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Yes.

6. Have you ever been asked by an employer to leave a job or otherwise left a job on a non-voluntary basis? If so, please explain.

No.

#### C. POTENTIAL CONFLICTS OF INTEREST

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None.

2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.

None.

3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes.

**D. LEGAL MATTERS**

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No.

2. Have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.

No.

3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

No.

4. For responses to question 3, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

None

**E. FINANCIAL DATA**

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

**AFFIDAVIT**

Carol Waller Pope, being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

  
\_\_\_\_\_

Subscribed and sworn before me this 20 day of March,  
20 07

  
\_\_\_\_\_

Notary Public

Exp. 7-29-07

Carol Waller Pope  
Biographical and Financial Information

**INDEX OF ATTACHMENTS**

<b>Attachment #1</b>	<b>Response to Question #9, Part A, Biographical Information</b>
<b>Attachment #2</b>	<b>Response to Question #11, Part A, Biographical Information</b>
<b>Attachment #3</b>	<b>Response to Question #13(c), Part A, Biographical Information</b>
<b>Attachment #4</b>	<b>Response to Question #14, Part A, Biographical Information</b>
<b>Attachment #5</b>	<b>Response to Question #15, Part A, Biographical Information</b>
<b>Attachment #6(a)</b>	<b>Response to Question #16(a), Part A, Biographical Information</b>
<b>Attachment #6(b)</b>	<b>Response to Question #16(b), Part A, Biographical Information</b>
<b>Attachment #7</b>	<b>Response to Question #17(b), Part A, Biographical Information</b>
<b>Attachment #8</b>	<b>Response to Question #1, Part E, Financial Data</b>
<b>Attachment #9</b>	<b>Response to Question#7, Part E, Financial Data</b>

Carol Waller Pope  
Biographical and Financial Information

**ATTACHMENT #1 -- Employment Record**

**Member, Federal Labor Relations Authority**  
**Nominated by President William B. Clinton, confirmed by the Senate.**  
**Federal Labor Relations Authority, Washington, DC**  
**October 2000 to December 2006**

**Assistant General Counsel for Appeals, Office of the General Counsel**  
**Federal Labor Relations Authority, Washington, DC**  
**October 1998 to October 2000**

**Director of Appeals and Special Programs, Office of the General Counsel**  
**Federal Labor Relations Authority, Washington, DC**  
**June 1996 to October 1998**

**Executive Assistant to the General Counsel, Office of the General Counsel**  
**Federal Labor Relations Authority, Washington, DC**  
**July 1994 to June 1996**

**Attorney, Boston Regional Office, Federal Labor Relations Authority**  
**Boston, MA**  
**February 1980 to July 1994**

**Attorney, U.S. Department of Labor, Office of the Solicitor, Employee Benefits Division**  
**Washington, DC**  
**January 1979 to February 1980**

**Job Developer, New Careers in Mental Health Program, Boston University School of**  
**Medicine**  
**Boston, MA**  
**June 1974 to August 1975**

Carol Waller Pope  
Biographical and Financial Information

**ATTACHMENT #2 --Business relationships**

**Trustee, Simmons College, Boston, MA**

**Corporator, Simmons College, Boston, MA**

**Director, DC Employment Justice Center, Washington, DC (non-profit)**

**Director, Madison Park Development Corporation, Boston, MA (non-profit community housing)**

**Director, Lower Roxbury Community Corporation, Boston, MA (non-profit community housing)**

**Director, Madison Park Housing Corporation, Boston, MA (non-profit community housing)**

**Director, Madison Park Economic Development Corporation, Boston, MA (non-profit community housing)**

Carol Waller Pope  
Biographical and Financial Information

**ATTACHMENT #3 -- Political Affiliations and Activities**

2007

Tony Towns for DC City Council	50.00
21 <sup>st</sup> Century Democrats	25.00

2006

Democratic Legislative Campaign Committee	50.00
21 <sup>st</sup> Century Democrats	50.00
Democratic Leadership Campaign	35.00
Allyson Schwartz for Congress	50.00

2005

Tom Reilly Committee (Massachusetts Democratic Gubernatorial Primary Candidate)	250.00
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2004

Democratic National Committee	50.00
Allyson Schwartz for Congress	25.00
Kerry for President	2,000.00
Kerry for President Volunteer	

2000

Gore 2000	250.00
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Carol Waller Pope  
Biographical and Financial Information

ATTACHMENT #4 -- Honors and Awards

American Bar Association - Federal Service Leadership Award, 2005

Carol Waller Pope Leadership Scholarship Award (for students -- created by Simmons College in honor of my volunteer leadership), 2005

National Partnership for Reinventing Government Hammer Award, 1999

Office of Personnel Management, Federal Executive Institute, Commencement Speaker, 1997

Special Achievement Award, Federal Labor Relations Authority, 1981

Superior Accomplishment Award, Federal Labor Relations Authority, 1991, 1992, 1999

Sustained Superior Performance Award, Federal Labor Relations Authority, 1988, 1989, 1999

Sustained High Quality Performance, Federal Labor Relations Authority, 1997

Special Act Award, Federal Labor Relations Authority, 1997, 1998

Certificate of Appreciation, Federal Labor Relations Authority, 1999

Simmons College Alumnae Service Award, 1998

Commonwealth of Massachusetts State Senate Citation, 1993

Big Sister Association of Greater Boston, 1993

Carol Waller Pope  
Biographical and Financial Information

**ATTACHMENT #5 Published Writings**

Article on my career published in Journal entitled, "Careers and the Minority Lawyer,  
Spring 1999 (copy provided)

**ATTACHMENT #6(b)-Speeches – No copy provided**

1985 – 1999	Numerous training presentations and speeches to federal agencies and federal unions on their statutory obligations, rights and responsibilities under the Federal Service Labor-Management Relations Statute.
June 1998	Luncheon speech delivered to audience including Simmons College President and Alumnae upon receipt of Alumnae Service Award. Speech topic: my professional career and volunteer service.
June 2003	FPMI, Annual Conference, Speech entitled, Current Issues in Federal Sector Labor Law and Labor Relations Phoenix, AZ
February 2006	Speech to Simmons College students delivered at ceremonial dinner conferring Carol Waller Pope Leadership Award scholarship to student recipient. Speech topic: leadership.
October 2006	Luncheon speech to Administrative Law Judges Association. Luncheon topic was current issues in Federal sector Labor Law and the operation of FLRA.

Carol Waller Pope  
Biographical and Financial Information

**ATTACHMENT #7 Background and Employment Experience**

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**MAJOR CAREER ACCOMPLISHMENTS**

Presidential appointment and Senate confirmation to federal government leadership position (first Federal Labor Relations Authority career employee to receive appointment to Member position); Development and implementation of innovative peer review/quality review process to adjudicate annual caseload of over 400 appeals cases; led legal team to revise federal regulations to incorporate improved case filing/processing procedures and alternative dispute resolution; Awarded Vice-President Al Gore's Hammer Award for government innovation; Led design and implementation of strategic plan, a plan recognized as a model plan by the federal government small agency council; Development of ethical conduct for employees policy; Public speaker and trainer in areas of federal sector labor law, employee relations and dispute resolution.

**PROFESSIONAL EXPERIENCE**

**MEMBER, FEDERAL LABOR RELATIONS AUTHORITY. OCTOBER 2000 -- PRESENT**

Appointed by President William J. Clinton and confirmed by the Senate in October 2000, to a five-year term.

**Responsibilities:** One of three Members of the Federal Labor Relations Authority responsible for administration of the Federal Service Labor-Management Relations Statute which regulates labor-management relations for over 1.2 million federal, non-Postal service employees worldwide.

Issue final administrative decision to: resolve negotiability disputes; resolve appeals of arbitration awards; resolve appeals of administrative law judge decisions involving unfair labor practice complaints; and determine the appropriateness of units for labor organization representation. Authority decisions are subject to judicial review in the United States courts of appeals and the United States Supreme Court. Key dissenting case decisions I authored have been upheld by the DC Court of Appeals.

Manage and supervise the work and professional development of a staff of seven employees, including six attorneys. Twenty-five years of experience in labor and employment law and policy and labor relations; rule-making, senior management experience in strategic planning and assessment, policy and program development and implementation, alternative dispute resolution, facilitation and training.

Carol Waller Pope  
Biographical and Financial Information

**ASSISTANT GENERAL COUNSEL, OFFICE OF THE GENERAL COUNSEL,**  
Federal Labor Relations Authority, Washington, DC, August 1996 to October 2000.

- Managed caseload of over 400 appeals of unfair labor practice charge dismissals
- Managed design, implementation and assessment of five year strategic plan
- Public speaking, training and facilitation to resolve disputes and to improve labor-management relationships

**EXECUTIVE ASSISTANT TO THE GENERAL COUNSEL,** Federal Labor  
Relations Authority, Washington, DC, July 1994 – August 1996

- Policy development and assessment
- Led team of Administrative Law Judges, Regional Counsels and Attorneys in revision of FLRA Rules and Regulations
- Recipient of Vice-President Al Gore's Hammer Award

**ATTORNEY,** Federal Labor Relations Authority, Boston, MA,  
February 1980 – July 1994

- Investigated and prosecuted unfair labor practice charges
- Designated Hearing Officer in representation case hearings

**ATTORNEY,** U.S. Department of Labor, Office of the Solicitor, Employee Benefits  
Division, Washington, DC, January 1979 – February 1980

- Represented Deputy Solicitor in employee compensation claims before  
Administrative Law Judges and in U.S. courts of appeal
- Litigated Federal Tort Claims

**U.S. Senate Committee on Homeland Security and Governmental Affairs  
Pre-Hearing Questionnaire for the Nomination of  
Carol Waller Pope to be a Member of the Federal Labor Relations Authority**

**I. Nomination Process and Conflicts of Interest**

1. Why do you believe the President nominated you to serve as a Member of the Federal Labor Relations Authority (FLRA)?

**I currently serve as a Member. I have held this position since my nomination by President William J. Clinton and confirmation by the Senate in October 2000, except during a brief period just prior to my 2007 nomination by President George W. Bush, when I was retired from the FLRA. I believe that my nearly 30 years' experience working in various capacities in the Federal Labor Relations Authority makes me uniquely qualified to be a Member of the FLRA.**

**I began my professional career, and spent nearly 20 years, in the FLRA's Office of the General Counsel. There, I was responsible for investigating and prosecuting alleged unfair labor practices as well as processing petitions for elections and other representation matters. I also worked in the Office of the General Counsel Headquarters Office, culminating in my position as Assistant General Counsel for Appeals. Throughout my tenure in the FLRA Office of the General Counsel, I witnessed the benefits that result when labor and management understand their rights and responsibilities under the Federal Service Labor-Management Relations Statute, 5 U.S.C. §§ 7101-7135 (Statute), and form productive relationships.**

**As Member, I have been responsible for resolving labor-management disputes filed with the Authority under the Statute, including arbitration, negotiability, representation, and unfair labor practice cases. I have endeavored to interpret and apply the Statute fairly and impartially in each case. This has resulted in several decisions where I disagreed with a majority of the Authority Members and wrote in dissent. Of the 15 Authority decisions that, according to the FLRA Office of the Solicitor, received "unfavorable" review in Federal Courts of Appeals during the past 5 years, I dissented in 11 of the decisions. I have also been responsible for managing my office consistent with the FLRA's strategic plan and performance goals and objectives. I am pleased to report that from 2000 until 2007, during which time the Authority was organized in a way that required each Member to manage an office responsible for processing one-third of the Authority's caseload, my office met or exceeded relevant performance goals, thereby contributing to agency-wide performance. As an example, during the most recent fiscal year (FY06) when I managed a separate Member staff, my staff was responsible for closing 46 percent of all the cases closed on the merits by the Authority.**

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

No.

3. What specific background and experience affirmatively qualify you to be a Member of the FLRA?

**The role of a Member, consistent with § 7105 of the Statute, is to serve as a part of a quasi-judicial body known as the "Authority."<sup>1</sup> A Member must adjudicate cases that come before the Authority fairly, impartially and expeditiously, and provide leadership in establishing policies and guidance to Federal agencies, unions and employees, to enhance their understanding of their rights and responsibilities under the Statute.**

**As an employee of the FLRA in both a career and political capacity for almost 30 years, I have developed an understanding of the law and have contributed to the development of a significant body of case law interpreting the Statute. My knowledge of the law coupled with a practical understanding of the important roles both labor law and labor relations have in an effective and efficient government qualify me to serve as a Member.**

4. Have you made any commitments with respect to the policies and principles you will attempt to implement as a Member of the FLRA? If so, what are they and to whom have commitments been made?

No.

5. If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures you will use to carry out such a recusal or disqualification.

No.

## **II. Role of a Member, FLRA**

6. What is your view of the role of the FLRA?

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<sup>1</sup> The term "Authority" refers to the component of the FLRA that consists of the three Members who have adjudicatory responsibility. The term "FLRA" refers to the entire agency, which is comprised of the Authority, the Office of the General Counsel and the Federal Service Impasses Panel.

**The FLRA is an independent, administrative Federal agency that was created by the Statute. The Statute allows certain non-postal Federal employees to organize, bargain collectively, and participate through labor organizations of their choice in decisions affecting their work lives.**

**Section 7105 of the Statute, 5 U.S.C. § 7105, *Powers and duties of the Authority*, states in part:**

**The Authority shall provide leadership in establishing policies and guidance relating to matters under this chapter, and, except as otherwise provided, shall be responsible for carrying out the purpose of this chapter.**

**The primary statutory responsibilities of the FLRA include: (1) resolving complaints of unfair labor practices, (2) determining the appropriateness of units for labor organization representation, (3) adjudicating exceptions to arbitrator's awards, (4) adjudicating legal issues relating to duty to bargain/negotiability, and (5) resolving impasses during negotiations.**

7. What is your view of the role of a Member of the FLRA?

**The role of a Member, consistent with § 7105 of the Statute, is to serve as a part of the quasi-judicial body known as the Authority. A Member must adjudicate cases that come before the Authority fairly, impartially and expeditiously, and provide leadership in establishing policies and guidance to Federal agencies, unions and employees, to enhance their understanding of their rights and responsibilities under the Statute. Members, pursuant to the Statute, also appoint an executive director and such regional directors, administrative law judges and other individuals necessary for the proper performance of agency functions.**

**Under the leadership and direction of the Chairman, as CEO of the FLRA, a Member may also provide input regarding policy and guidance affecting the operation of the FLRA and government-wide labor-management relations.**

8. In your view, what are the major challenges currently facing the FLRA and the Authority? What did you do as a Member, and what do you plan to do, if confirmed, to address these challenges?

**In my view, the major challenges currently facing the FLRA and the Authority are: (1) improving the productivity, quality and timeliness of case decisions; (2) assessing whether, when and how to fill vacant positions; (3) addressing the effects of jurisdictional/organizational uncertainties; and (4) improving employee morale overall. These challenges are, to some degree, interrelated.**

Since becoming a Member in 2000, my focus has been to manage my staff and office resources to issue quality, timely decisions consistent with the Statute, Authority precedent and the Authority's performance goals. From 2000 until 2007, during which time the Authority was organized such that each Member was required to manage an office responsible for processing one-third of the Authority's caseload, my office met or exceeded relevant performance goals, thereby contributing to agency-wide performance. As an example, during the most recent fiscal year (FY2006) when I managed a separate Member staff, my staff was responsible for closing 46 percent of all the cases closed on the merits by the Authority. If confirmed, I will continue to work with the other Members to issue quality, timely decisions that operate to inform and assist Federal employees, unions and managers in understanding and exercising their rights and responsibilities under the Statute.

As a Member, I do not have independent hiring authority. Instead, with the limited exceptions noted below in connection with Question 12, decisions to fill vacancies and the classification and grade level of those positions, if filled, are made solely by the Chairman, as CEO of the agency. I did and will continue, in consultation with my Chief Counsel, routinely assess whether and when to request authorization to fill vacant positions within my authorized staffing levels in order to maintain case productivity to meet the Authority's performance goals. Previously, when additional staff was justified, I requested authority to recruit and select in accordance with the hiring protocol designated by the Chairman. When my office caseload did not support additional staff, I did not request authorization to increase my office staff. If confirmed, I will continue to manage my caseload and human resources responsibly and I will work with the Chairman and other Member, as directed by the Chairman, to provide input to determine staffing levels needed to fulfill the FLRA mission.

Career vacancies and vacancies at the leadership level throughout the FLRA have adversely affected employee morale, in my view. In addition, morale has been affected by the uncertainty of possible legislative and regulatory changes at agencies such as the Department of Homeland Security (DHS) and the Department of Defense (DoD) that would operate to reduce FLRA's statutory jurisdiction and caseload. If confirmed, I will work at the direction of the Chairman to successfully address these challenges.

In my view, the FLRA should undertake efforts to develop strategies to: (1) assess and improve work processes to maximize technology, minimize costs and improve timeliness and quality consistent with the Statute and the President's Management Agenda; (2) enhance alternative dispute resolution techniques and services for timely and meaningful case disposition; (3) review existing regulations for possible revision; (4) develop recruitment and internal training tools; (5) manage attrition through leadership development and succession planning; and (6) improve employee morale.

9. What will be your long-term priorities a Member of the FLRA?

**If confirmed, my long-term priorities will include working with the other Member and Chairman to issue timely, quality decisions in accordance with the Authority's annual performance goals and providing input, upon request by the Chairman, to develop strategies to address the challenges set forth in the previous question.**

10. Describe your vision of what the relationship should be between the FLRA, the Merit Systems Protection Board, and the Equal Employment Opportunity Commission. In your view, do the current relationships between the FLRA and these agencies reflect your vision? If not, what would you seek to do to change the current relationships?

**Congress has established each of the listed agencies with a distinct statutory mission in the area of Federal sector employee and labor relations. I have no basis to consider any changes in the respective missions of the agencies or their relationship.**

11. What do you believe is the appropriate role of a Member of the FLRA, and how does that differ from the role of the Chairman?

**The role of a Member, consistent with § 7105 of the Statute, is to serve as a part of the quasi-judicial body known as the Authority. A Member must adjudicate cases that come before the Authority fairly, impartially and expeditiously, and provide leadership in establishing policies and guidance to Federal agencies, unions and employees, to enhance their understanding of their rights and responsibilities under the Statute.**

**In addition to performing the adjudicatory responsibilities of a Member, the Chairman has additional administrative and fiduciary duties as the FLRA's Chief Executive and Administrative Officer. The Chairman has ultimate budget responsibility and accountability.**

12. The federal sector labor management relations statute provides that the Chairman is the "chief executive and administrative officer of the Authority." To what extent and in what respects do you believe a Chairman should fulfill this role in collaboration with the other Members of FLRA? For example, in what circumstances do you believe the Chairman should make hiring and other management decisions by consensus, under what circumstances after consultation, and under what circumstances unilaterally and without consultation? Do you believe Members of the FLRA should have access to all information pertaining to the organization and administration of the FLRA?

**A Chairman, as the Chief Executive and Administrative Officer of the FLRA, has ultimate decision making authority in virtually all administrative and fiduciary matters. The manner in which those decisions are reached and implemented will**

vary, depending upon the nature of the issue and the needs of the Chairman. With respect to the development of FLRA policies and guidance, collaboration among the Presidential and career management of the FLRA may be useful. In addition, depending on the issue, collaboration with other stakeholders, such as employees and their representative may prove useful. I note that collaboration, in this regard, appropriately can be limited to information gathering and sharing and does not necessarily require consensus decision-making. In that regard, a Chairman retains ultimate decision-making authority. Although hiring decisions involving regional directors, the executive director and administrative law judges require, by Statute, involvement of all of the Members, other hiring decisions can be made unilaterally, with input from other Members at the election of the Chairman.

Members, along with the other Presidential leadership of the FLRA, should be informed of matters affecting the performance of their statutory responsibilities. It is up to the Chairman to determine when and how such information should be provided. Historically, prior Chairmen have found collaboration in the gathering and sharing of information as well as consensus decision-making effective in the development, management and assessment of strategic plans and performance goals for the Agency. However, not all information related to the operation of the Agency can or should be shared with the Members. For example, confidential matters involving the Inspector General, the Administration, and/or pending litigation involving the agency or agency employees cannot always be shared with the Members. It is incumbent upon the Chairman to determine when and how to collaborate with the Members and others and when the dissemination of information will prove useful in the development and/or implementation of a policy or decision.

### III. Policy Questions

13. In a study of federal-employment satisfaction, the Partnership for Public Service determined that the FLRA ranks last – 31st out of 31 small agencies. Why do you believe employee satisfaction is so low at the Authority, and what would you do, as a Member, to address this situation?

The 2007 Federal Human Capital Survey Report revealed that FLRA's overall index score was 18.1, resulting in a ranking of 31 out of 31 small agencies that participated in the survey. This ranking was based on low rankings in eight out of ten key indicators: (1) Employee Skills/Mission Match; (2) Strategic Management; (3) Teamwork; (4) Effective Leadership; (5) Performance Based Rewards and Advancement; (6) Training and Development; (7) Support for Diversity; and (8) Work/Life Balance.

It is my belief that employee satisfaction has been adversely affected by extended vacancies at all levels of the agency and by employee uncertainty regarding possible

**office closures and a projected reduction in case filings if the DHS and the DoD personnel system changes were to be implemented.**

**If confirmed, I will work at the direction and under the leadership of the Chairman to improve employee morale and satisfaction by developing and implementing strategies to address the areas recommended by the survey analysis: employee engagement; effective leadership; increased employee participation; increased feedback on work; and employee involvement in decisions affecting the work.**

14. One way to reduce case processing time is to reduce the number of adjudicated cases. Are there opportunities to reduce case filings or to resolve without the need for a decision matters brought to the Authority? What would be the advantages and disadvantages of pursuing those opportunities? Please explain.

**I believe that there are opportunities to reduce filings and/or to resolve cases without the need for a decision. For example, FLRA regulations provide that a post-petition conference will be conducted by the FLRA to narrow and possibly resolve the issues raised in a petition for review of negotiability issues. The post-petition conference has been used successfully to resolve some issues presented by the petition and in some instances, to resolve the entire case without the need for a decision by the FLRA.**

**In addition, I believe that training provided by the FLRA to customers can, by facilitating parties' understanding of their rights and responsibilities under the Statute, reduce the number of case filings and/or reduce the issues presented in the filings. Historically, the FLRA routinely offered such training, including training for arbitrators who resolve disputes in the Federal sector, and such training was uniformly well received.**

**Finally, the advantages of pursuing ADR, to resolve or, in some instances, prevent disputes, are many. In most cases a voluntary settlement reached by the parties operates to settle the immediate dispute in a more timely fashion than a decision, thereby preserving resources of the Authority to address other cases through issuance of more timely decisions. In addition, ADR processes often operate to improve communications between the parties and enhance the labor-management relationship, which can, in turn, reduce future case filings.**

15. There has been increased use of alternative dispute resolution (ADR) to deal with disputes in the federal workplace, including those arising under federal service labor-management law. Some have pointed to the success of ADR in bringing about interest-based resolutions while reducing the adversarial nature of the process and improving relations between labor and management. Others have said that, although ADR is a useful tool, an emphasis on the use of ADR could create undue pressures to reach settlements. What are your views on the use of ADR to resolve federal workplace disputes?

**The FLRA has successfully employed ADR to assist the parties in voluntarily resolving their disputes for many years. The FLRA has formally integrated ADR processes in its representation, unfair labor practice and negotiability regulations. In addition, the FLRA introduced an ADR mechanism known as the "settlement judge program" to facilitate the resolution of cases pending before the Office of Administration Law Judges. As a result, the FLRA provides voluntary settlement opportunities at various phases in the processing of a case. ADR assistance can also be requested prior to the filing of a representation petition.**

**Participation in all of the FLRA's ADR processes is completely voluntary. No undue pressure is applied to the parties to enter into a settlement agreement.**

**In my experience ADR is a useful tool. Although not all issues can be resolved voluntarily, where ADR is successfully employed, the full cost of litigation, including employee time away from their jobs, is spared.**

16. What is your assessment of the current state of Federal labor-management relations? If you believe that improvements can be made, in what areas should there be improvement and how can this be accomplished?

**I am unable to assess the current state of Federal labor-management relations. In moving forward, it may be appropriate for the FLRA to conduct a survey, similar to ones conducted in the past, to attempt to assess this and develop strategies to make improvements.**

17. The Committee has received complaints that an extraordinary percentage of FLRA cases in recent years have been overturned on appeal, and that almost all of the appeals have come not from agencies but from unions. Do you believe this description of the situation is correct, and, if so, what do you believe are the reasons for this situation?

**According to the FLRA Office of the Solicitor, during the most recent 5 fiscal years (beginning in FY2004 and to date in FY2008), there have been 35 decisions issued by Federal Courts involving Authority decisions. Of this total, 15 decisions (43 percent) were unfavorable to the Authority. Looking at the statistics on a fiscal year basis, 84 percent of the judicial decisions issued during FY2004 were unfavorable to the Authority. During FY2005, 42 percent of the decisions were unfavorable and during FY2006, 28 percent were unfavorable. During FY2007, 67 percent of the judicial decisions were unfavorable to the Authority; so far this fiscal year, only two judicial decisions have been issued and both were favorable to the Authority. Of the 15 unfavorable judicial decisions issued during the most recent 5 fiscal years, all but one resulted from a union appeal. I note that in 11 of the 15 cases that resulted in unfavorable judicial decisions, I dissented to the underlying Authority decision.**

The reasons for unfavorable treatment of Authority decision in the courts vary. A few common threads emerge from the court decisions, however. In particular, in several cases, the Authority decision was not upheld because the Authority majority had failed in its decision to adequately address precedent that conflicted with the decision. See *NFFE, FD-1, IAMAW, Local 951 v. FLRA*, 412 F.3d 119, 124 (2005) (“In sum, though the FLRA must either follow its own precedent or ‘provide a reasoned explanation for’ its decision to depart from that precedent . . . here it has done neither.”); *NTEU v. FLRA*, 404 F.3d 454, 457-58 (D.C. Cir. 2005) (“The Authority’s failure to follow its own well-established precedent without explanation is the very essence of arbitrariness.”); *NTEU v. FLRA*, 399 F.3d 334, 340 (D. C. Cir. 2005) (“The Authority’s decision fails to address this precedent.”); *NFFE, FD-1, IAMAW, Local 1442 v. FLRA*, 369 F.3d 548, 552 (D.C. Cir. 2004) (“We are unable to reconcile the Authority’s reasoning with its own case law.”). In two other decisions, the courts found that the Authority majority based its decision on findings that were not supported in the record. See *NTEU v. FLRA*, 437 F.3d 1248, 1255 (D.C. Cir. 2006) (“Because the Authority’s determination . . . is based on findings that are not supported by the record and, in fact, appears to be contradicted by it . . . we reverse[.]”); *NAGE Local RS-136 v. FLRA*, 363 F.3d 468, 477 (D.C. Cir. 2004) (Court stated that Authority majority “finding is not supported by substantial evidence[]” and “looks like an ill-conceived afterthought.”). Finally, in two of the foregoing cases, the courts found that the Authority majority’s decisions were inconsistent with basic principles of collective bargaining embodied in the Statute. See *NFFE, FD-1, IAMAW, Local 951 v. FLRA*, 412 F.3d 119, 125 (2005) (“the FLRA has produced a result precisely opposite to the one Congress intended; it has restricted collective bargaining and converted the management rights provisions from ‘narrow exceptions’ into majority obstacles to collective bargaining.”); *NFFE, FD-1, IAMAW, Local 1442 v. FLRA*, 369 F.3d 548, 554 (D. C. Cir. 2004) (“We believe the Authority’s reasoning in this case reflects an inappropriate willingness to erect barriers to collective bargaining that are inconsistent with the text and purposes of the [S]tatute. Thwarting Congress’s intent to promote collective bargaining, such barriers are not ‘in the public interest’ because they hamper realization of the benefits that such bargaining produces.”).

18. Do you believe that improvements can be made to the Federal Service Labor-Management Relations statute? If so, what improvements can and should be made?
- It is the purview of the Administration and Congress to determine what, if any, changes should be made to the Statute.**
19. What kinds of effects, if any, do you believe a blended workforce of federal employee and federal contract personnel is having on federal labor-management relations?

**I am not aware of the effects of a blended workforce on labor-management relations in the Federal sector. I note that, under the Statute, 5 U.S.C. § 7106(a)(2)(b), management has the right to “make determinations with respect to contracting out,” and that, occasionally, cases arise requiring the Authority to interpret and apply this section of the Statute. See, e.g., *NAGE Local R1-203*, 55 FLRA 1081, 1086-88 (1999) (Authority held that agency was not required to bargain over a proposal prohibiting the agency, in certain circumstances, from contracting out work within 1 year of the date of a reduction-in-force).**

**IV. Relations with Congress**

20. Do you agree without reservation to respond to any reasonable request or summons to appear and testify before any duly constituted committee of the Congress, if confirmed?

**Yes**

21. How do you plan to communicate and work with Congress in carrying out the FLRA's responsibilities?

**If confirmed, I will communicate and work with Congress in response to any request by Congress. It is the responsibility of the Chairman, as Chief Administrative and Executive Officer to timely file reports with Congress that are required by government-wide rules and regulations.**

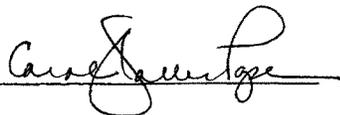
**V. Assistance**

22. Are these answers your own? Have you consulted with the FLRA or any other interested parties? If so, please indicate which entities.

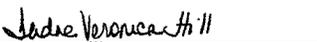
**Yes. I have consulted with FLRA managerial employees in the Authority component, the Office of the Executive Director and the Office of the Solicitor.**

**AFFIDAVIT**

I, Carol Waller Pope, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

  
\_\_\_\_\_

Subscribed and sworn before me this 05 day of September, 2008.

  
\_\_\_\_\_

Notary Public  
Deldre Veronica Hill  
Notary Public, District of Columbia  
My Commission Expires 4/30/2013



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

March 21, 2007

The Honorable Joseph I. Lieberman  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510-6250

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Carol W. Pope, who has been nominated by President Bush for the position of Member of the Federal Labor Relations Authority.

We have reviewed the report and have also obtained advice from the Federal Labor Relations Authority concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is a letter dated January 22, 2007, from Ms. Pope to the agency's ethics official, outlining the steps Ms. Pope will take to avoid conflicts of interest. Unless a specific date has been agreed to, the nominee must fully comply within three months of her confirmation date with any action she agreed to take in her ethics agreement.

Based thereon, we believe that Ms. Pope is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert I. Cusick".

Robert I. Cusick  
Director

Enclosures

**BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES**

**A. BIOGRAPHICAL INFORMATION**

1. **Name:** (Include any former names used.) Thomas Martin Beck
2. **Position to which nominated:** Member, Federal Labor Relations Authority
3. **Date of nomination:** June 28, 2007
4. **Address:** (List current place of residence and office addresses.)
  - Home: **REDACTED**
  - Office: Jones Day  
51 Louisiana Avenue, NW  
Washington, D.C. 20001
5. **Date and place of birth:** April 25, 1966; Louisville, Kentucky
6. **Marital status:** (Include maiden name of wife or husband's name.)
  - Wife: Amanda H. Beck (formerly Amanda T. Host)
7. **Names and ages of children:** n/a
8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.

University of Virginia School of Law; attended 1990-92;  
JD received May 1992

George Mason University School of Law; attended 1989-90

University of Virginia; attended 1984-88; BA received May 1988

Kentucky Country Day High School; attended 1980-84;  
diploma received June 1984

9. **Employment record:** List all jobs held since college, and any relevant or significant jobs held prior to that time, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

Partner, Jones Day, Washington, DC, January 2003 to present

Associate, Jones Day, Washington, DC, August 1992 through December 2002

Summer Associate, Jones Day, Washington, DC, summer 1990

Law Clerk to the Chairman, Occupational Safety and Health Review Commission, Washington, DC, summer 1990

Legal Assistant, Spriggs and Hollingsworth, Washington, DC, August 1988 to August 1989

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above.

n/a

11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

Partner, Jones Day

Director, Kentucky Metal Products, Inc. (now dissolved)

12. **Memberships:** List all memberships, affiliations, or offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable or other organizations.

Member, American Bar Association

Member, Fairfax Bar Association

Member, Republican National Lawyers Association

Member, Federalist Society

Member, National Rifle Association

Member, Kappa Alpha Order

Co-Founder and Outside General Counsel,  
Wave of Courage Foundation, Inc.

Volunteer and outside legal counsel, Fairfax Court Appointed  
Special Advocates

Supervising Attorney, George Mason University School of Law  
Clinic for Legal Assistance to Servicemembers

13. **Political affiliations and activities:**

- (a) List all offices with a political party which you have held or any public office for which you have been a candidate.

n/a

- (b) List all memberships and offices held in and services rendered to any political party or election committee during the last 10 years.

Currently working for the McCain 2008 presidential campaign as a founder and organizer of the Lawyers for McCain network.

- (c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more during the past 5 years.

\$500 to Citizens for Arlen Specter

\$250 to Friends of George Allen

\$2,300 to John McCain 2008

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

n/a

15. **Published writings:** Provide the Committee with two copies of any books, articles, reports, or other published materials which you have written.

Provided separately.

16. **Speeches:**

- (a) Provide the Committee with two copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated. Provide copies of any testimony to Congress, or to any other legislative or administrative body.
- (b) Provide a list of all speeches and testimony you have delivered in the past 10 years, except for those the text of which you are providing to the Committee. Please provide a short description of the speech or testimony, its date of delivery, and the audience to whom you delivered it.
- Confidentiality: Sharing and Accessing Case Information, presentation sponsored by the Virginia Court Improvement Program, June 1, 2007
  - Assisting Students With Disabilities in the 21st Century, panel discussion, sponsored by American University's Washington College of Law, March 8, 2007
  - Employment Law Developments in the Health Care Industry, presentation, Symposium on Labor and Employment Law for Health Care Providers, February 5, 2007
  - How to Prepare for Labor's New Initiatives-Corporate Campaigns and Traditional Organizing, American Society for Healthcare Human Resources Administration seminar, October 14, 2006
  - Medical Records Confidentiality, presentation to Fairfax Court Appointed Special Advocates, September 28, 2006
  - Occupational Safety and Health Law in the United States, presentation to officials from Zhejiang Province, China, September 12, 2006
  - How to Succeed in Settlement Negotiations, live presentation and webcast to the Washington Metro Area Corporate Counsel Association, June 14, 2006
  - Legal Ethics for the Litigator: A Case Study, Lecture at the Syracuse University College of Law, April 3, 2006

- Overview of U.S. Labor Law, presentation to representatives from the Chinese Ministry of Labor and Social Security, sponsored by the National Committee on U.S.-China Relations, October 10, 2005
- Employment Law Developments in the Health Care Industry, presentation, Symposium on Labor and Employment Law for Health Care Providers, February 24, 2005
- Retaliation Claims in Employment Law, presentation, American Conference Institute Seminar for Employment Practices Insurers, January 31, 2005
- Emergency Preparedness and Community Right-to-Know Act (EPCRA) and the Occupational Safety and Health Act (OSHA), presentation, Environmental Law Institute's Annual Boot Camp, November 13, 2002

17. **Selection:**

- (a) Do you know why you were chosen for this nomination by the President?
- (b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

I believe that I was selected for, and am qualified for, this position principally because of my extensive experience in matters of labor law and labor relations. Since graduating from the University of Virginia School of Law 15 years ago, I have been involved in the private practice of law with the global law firm Jones Day. The vast majority of that time has been spent in the area of labor and employment law. During this time, I have had the good fortune to work with – and against – some highly capable labor lawyers, and I have been called upon by large, sophisticated clients to help them solve some of their thorniest labor problems. I have extensive experience in dealing with grievances, arbitrations, and other disputes between unions and management; unfair labor practices; and collective bargaining and related questions of negotiability and impasse – many of the same issues that are presented to the Authority.

**B. EMPLOYMENT RELATIONSHIPS**

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

Yes.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

No, aside from possibly continuing to teach one class per year at the George Mason University School of Law as an adjunct professor on an unpaid basis.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization, or to start employment with any other entity?

No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Yes.

6. Have you ever been asked by an employer to leave a job or otherwise left a job on a non-voluntary basis? If so, please explain.

No.

### **C. POTENTIAL CONFLICTS OF INTEREST**

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None of which I am aware.

2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.

In my capacity as a private citizen, I have occasionally written to my Congressman and Senators to express my views on pending legislation and matters of public policy.

3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes.

#### D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No.

2. Have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.

In 1985, when I was a 19-year-old college student at the University of Virginia, I was arrested by the University Police and charged with disorderly conduct. I was acquitted in the Circuit Court.

3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

In 1997, I was the petitioner in my uncontested divorce proceeding in the Circuit Court for Fairfax County, Virginia. The divorce was granted in August 1997.

In 1995, in response to the Secret Service's unannounced closure of Pennsylvania Avenue near the White House, I filed a complaint in the United States District Court for the District of Columbia challenging the Government's authority to

implement such a street closure in such a fashion. Very shortly after filing this complaint – that is, within two or three days, as I recall – I reconsidered my action, concluded that it was impetuous and probably pointless, and voluntarily dismissed the complaint before the Government responded.

- 4. For responses to question 3, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

n/a

- 5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

n/a

**E. FINANCIAL DATA**

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee’s files and will be available for public inspection.)

THOMAS M. BECK being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Thomas M. Beck 7-5-07

Subscribed and sworn before me this 5<sup>th</sup> day of July, 2007

Brenda S. Vaccaro  
Notary Public  
My Commission Expires  
7/31/09

**U.S. Senate Committee on Homeland Security and Governmental Affairs  
Pre-Hearing Questionnaire for the Nomination of  
Thomas M. Beck to be a Member of the Federal Labor Relations Authority**

**I. Nomination Process and Conflicts of Interest**

1. Why do you believe the President nominated you to serve as a Member of the Federal Labor Relations Authority (FLRA)?

I believe the President nominated me for this position principally because of my experience in matters of labor law and labor relations. Since graduating from the University of Virginia School of Law 16 years ago, I have been involved in the private practice of law with the global law firm Jones Day. Most of my work over those 16 years has been in the area of labor and employment law. During this time, I have had the good fortune to work with and against some highly capable labor lawyers, and I have been called upon by sophisticated institutional clients to help them resolve some of their thorniest labor problems. I have extensive experience in dealing with the grievance and arbitration process; unfair labor practices; and collective bargaining and related questions of negotiability and impasse -- many of the same issues that are presented to the FLRA.

It's possible that the President also took into account certain other aspects of my background, such as my volunteer work as a Court Appointed Special Advocate for abused and neglected children, and my teaching on legislation and public policy at George Mason University School of Law. While these sorts of activities do not increase my knowledge of labor law, they widen my perspective and enhance my ability to deal with a wide variety of challenges and individuals.

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

No.

3. What specific background and experience affirmatively qualify you to be a Member of the FLRA?

As I stated in response to Question 1, I have spent the last decade and half dealing directly with the very types of labor relations disputes that come before the FLRA. I have handled dozens of labor arbitrations; have represented clients in numerous unfair labor practice proceedings; and have advised clients about countless issues relating to collective bargaining and the interpretation and enforcement of collective bargaining agreements.

In my many years of representing clients in labor and employment matters, I have

never represented a federal agency and have never represented a labor union. I am confident that I will be able to decide cases in an unbiased manner.

4. The President has indicated his intention to appoint you as Chairman of the FLRA if you are confirmed as a Member. What specific background and experience affirmatively qualify you to serve as Chairman?

In addition to deciding cases impartially and expeditiously as a Member of the Authority decisional component of the FLRA, the Chairman is also, by law, the agency's chief executive and administrative officer. As CEO, the Chairman bears overall administrative responsibility (e.g., budget, human resources, purchasing, Congressional relations) for all components of the FLRA, including the Authority decisional component, the Office of the General Counsel, and the Federal Services Impasse Panel. The Chairman should empower and lead the FLRA's staff in accomplishing the mission of the agency effectively and efficiently. My experience in private practice has taught me how to lead a team of professionals toward a common goal, most typically in situations where I have managed teams of lawyers (often in different cities) working on complex litigation.

5. Have you made any commitments with respect to the policies and principles you will attempt to implement as a Member of the FLRA? If so, what are they and to whom have commitments been made?

I am committed to increasing both the morale and the productivity of the agency and to the principle that the FLRA should issue fair and impartial decisions promptly. However, I have not made commitments to anyone about specific policies or principles that I would implement as Chairman.

6. If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures you will use to carry out such a recusal or disqualification.

I do not anticipate that the need will arise for me to recuse myself on any issue due to an actual or perceived conflict of interest. That said, if any possible conflict were to present itself, I would seek advice from ethics counsel and err toward recusing myself if there appeared to be a real or perceived conflict of interest.

## **II. Role and Responsibilities of the Chairman of FLRA**

7. What is your view of the role of the FLRA?

Ultimately, the role of the FLRA is to promote labor relations in the federal sector

by impartially and expeditiously resolving disputes between federal agencies and the labor unions that represent the employees of those agencies.

8. What is your view of the role of the Chairman of the FLRA?

As noted above in response to Question 4, in addition to being a Member of the quasi-judicial Authority component of the agency, the Chairman is the agency's chief executive and administrative officer, tasked with oversight of the administrative operations of all components of the FLRA. As the CEO, the Chairman must ensure that the agency has the resources and processes in place -- and that the staff is properly guided, trained and motivated in the use of those resources and processes -- to accomplish its mission.

9. In your view, what are the major challenges currently facing the FLRA and the Authority? What do you plan to do, specifically, to address these challenges?

I do not yet have an insider's perspective on the operations, effectiveness or current challenges of the FLRA. However, there seems to be a prevailing view that the single greatest challenge facing the agency is the backlog of undecided cases. Presently, there is a backlog of close to 400 cases, the great majority of which have been pending for more than 120 days. The core of the FLRA's mission is to decide disputes that are brought to it, and it appears not to be as productive as it could or should be in that regard.

It has been suggested to me that two other challenges that may be factors in the backlog have to do with human capital needs and agency morale. The number of employees currently at the FLRA is down by roughly one third compared to five years ago. More specifically, the number of Senior Attorneys and Case Writers that are integral to the process of rendering decisions has decreased from 16 to nine over the same period. In the 2007 "Best Places To Work" survey conducted by the Partnership for Public Service, the FLRA ranked 31<sup>st</sup> out of 31 small federal agencies. If the results of this survey are to be credited, they suggest that more can be done to engage the agency's employees.

Because I have not yet joined the FLRA, it is difficult to specify in detail the steps that I would take to address the current challenges. I would certainly seek to create an atmosphere of open communication and collaboration among the Members, between Members and staff, and among the various agency components. I would also immediately assess human capital needs, fill critical gaps in staffing, and consider whether any restructuring of the staffing functions might enable the agency to become more productive. Further, I would set measurable performance goals and put into place the methods and procedures that would enable to agency to meet those goals.

If confirmed, I will seek the views of those within the FLRA who, by virtue of their tenure and position, are familiar with the current challenges and are likely to have useful insight about how best to meet those challenges. I will also invite constructive criticism from the Congress and from the FLRA's constituencies -- the federal agencies and unions that come before the agency.

At every step, my ultimate aim would be to create an environment conducive to the impartial and expeditious resolution of disputes that are presented to the agency.

10. What will be your long-term priorities as Chairman of the FLRA?

My long term goals are generally outlined in my response to Question 9, above. If confirmed, I hope to enhance the productivity of the FLRA and the morale of its employees so that it can better accomplish its ultimate goal of promoting federal sector labor relations.

11. Describe your vision of what the relationship should be between the FLRA, the Merit Systems Protection Board, and the Equal Employment Opportunity Commission. In your view, do the current relationships between the FLRA and these agencies reflect your vision? If not, what would you seek to do to change the current relationships?

The FLRA, MSPB and EEOC have distinct mandates and missions under law. They address different problems. For example, the FLRA adjudicates disputes between federal agencies and labor unions, while the MSPB resolves disputes about prohibited personnel practices that affect individual employees. Yet each of these agencies is involved in matters affecting the federal workplace and whether it operates in a fair and positive manner.

Because I have not yet joined the FLRA, I am not in a position to opine in detail about the relationship between it and the MSPB and/or EEOC. In general, I suspect that a certain degree of cooperation and information sharing among these agencies would be beneficial and appropriate, so long as such cooperation does not overstep statutory boundaries between the agencies. Collaboration with regard to providing information and training about workplace practices and about the respective missions of the agencies may also be useful to the federal workforce that these agencies serve.

12. What do you believe is the appropriate role of a Member of the FLRA, and how does that differ from the role of the Chairman?

As noted above in the response to Questions 4 and 8, the Chairman is, by law, the chief executive and administrative officer of the FLRA. Members are not given that role. A Member's principal role is to bring his or her independent judgment to bear in considering and deciding cases. Nevertheless, my own belief is that the

Chairman should consult regularly with his Member colleagues about the administration of the FLRA. In my case, in particular, as someone new to the FLRA, I would expect to consult often with the other Member or Members, who may have more experience and familiarity with the history and functioning of the agency.

13. The federal sector labor management relations statute provides that the Chairman is the “chief executive and administrative officer of the Authority.” If confirmed and appointed as Chairman, to what extent, and in what respects, would you fulfill this role in collaboration with the other Members of FLRA? For example, would you try to make key hiring and management decisions by consensus with the other Members, would you make such decisions after consultation with them, or would you make such decisions unilaterally and without consultation?

When the Statute was originally passed in 1978, it made no distinction between the Chairman and the other Members in terms of their authority or role in managing the agency. The Statute was amended in 1984 to specify that the Chairman is the chief executive and administrative officer because Congress perceived that the lack of a single CEO had resulted in inefficiency and a lack of accountability. It is clear that final authority for the management of the agency rests with the Chairman; this is what Congress intended. Nonetheless, I view collaboration and consultation as useful tools, not as burdens to be avoided. I believe that collegiality and open communication among all three Members is of great benefit to the agency and its constituents. I anticipate that, if confirmed, I would actively seek the views of the other Members on significant management decisions.

14. Do you believe Members of the FLRA should have access to all information pertaining to the organization and administration of the FLRA, and would you, as Chairman, ensure that they are provided such information?

Yes.

### **III. Policy Questions**

15. The FLRA revised its strategic plan for Fiscal Year 2004-09 and in doing so reduced the number of strategic goals from four to one. The single goal is to resolve disputes impartially and promptly. Please explain your understanding of this goal, in particular, that part of the goal relating to prompt resolution.

- a. What role do you see for yourself in helping achieve this goal?

As stated above in response to Questions 8 and 9, the Chairman must ensure that the FLRA has in place the resources and processes, in conjunction with a

motivated and well-trained staff, to decide cases fairly and promptly. The current backlog of cases indicates that there is room for improvement in terms of promptly resolving cases. If confirmed, my role will be to see that this happens.

- b. Do you believe FLRA should have any additional goals? If so, please specify what those goals would be and briefly what you believe FLRA should do to achieve them.

Because I have not yet joined the FLRA, I am not currently in a position to form clear opinions as to whether the FLRA should have additional goals. Further, any significant extension of the the FLRA's authority or mission must come from Congress.

Perhaps, working within its current statutory authority, the FLRA may seek to play a greater role in the resolution of labor disputes through alternative dispute resolution or labor relations training offered to unions and federal agencies. If confirmed, I would explore this possibility and determine whether it would be helpful to the FLRA's constituencies.

16. One way to reduce case processing time is to reduce the number of adjudicated cases. Are there opportunities to reduce case filings or to resolve without the need for a decision matters brought to the Authority? What would be the advantages and disadvantages of pursuing those opportunities? Please explain.

As noted above in response to Question 15, perhaps case filings might be reduced if ADR or improved labor relations training were provided to the management of federal agencies and federal sector labor unions. Through these modalities, the parties might be better able to resolve incipient disputes short of formal case filings. If confirmed, I will be in a position to better assess the relative advantages and disadvantages of this approach.

17. There has been increased use of alternative dispute resolution (ADR) to deal with disputes in the federal workplace, including those arising under federal service labor-management law. Some have pointed to the success of ADR in bringing about interest-based resolutions while reducing the adversarial nature of the process and improving relations between labor and management. Others have said that, although ADR is a useful tool, an emphasis on the use of ADR could create undue pressures to reach settlements. What are your views on the use of ADR to resolve federal workplace disputes?

In my 16 years of private practice, I have often seen ADR used to good effect. Other things being equal, litigation is expensive and tends to exacerbate labor-management tensions rather than relieve them. On the other hand, I have also observed that, when parties are not fully engaged in or committed to ADR, it can be a waste of time and resources. It's difficult to know beforehand whether ADR will be beneficial.

I personally have not observed that ADR creates undue pressure to reach settlement. In my experience, if the parties negotiate terms that they find agreeable, they settle. If not, they do not settle and they proceed with litigation. Whether in the private or federal sector, settlement should be voluntary. If confirmed, I will assess the effectiveness of existing ADR programs and explore whether there are opportunities to implement different or additional ADR programs.

18. What is your assessment of the current state of Federal labor-management relations? If you believe that improvements can be made, in what areas should there be improvement and how can this be accomplished?

Because my own experience thus far is in private sector labor-management relations, I am not in a position to opine about the state of federal labor-management relations. I suspect it is relatively healthy and constructive at some agencies, relatively poor at others, and susceptible of improvement everywhere. Whatever the current state of federal labor-management relations, if I am confirmed, I will do everything within my power and within the legal mandate of the FLRA to improve the current state of affairs.

19. Do you believe that improvements can be made to the Federal Service Labor-Management Relations statute? If so, what improvements can and should be made?

Because I have not yet joined the FLRA and have not operated within the confines of the Statute, I am not in a position to opine about whether it can be improved. Further, changes to the Statute are within the purview of the Congress, not the FLRA or its Chairman. If I am confirmed and gain experience working with and under the Statute, I will be pleased to offer to the Congress my views on the Statute if invited to do so.

20. What kinds of effects, if any, do you believe a blended workforce of federal employee and federal contract personnel is having on federal labor-management relations?

I understand that, as a general proposition, some federal sector labor unions object to the increasing use of federal contract personnel. As a lawyer currently practicing in the private sector, this is not an issue about which I have formed clear opinions. If I am confirmed to the FLRA and this question comes before me in some fashion, I will consider it carefully and impartially.

**IV. Relations with Congress**

21. Do you agree without reservation to respond to any reasonable request or summons to appear and testify before any duly constituted committee of the Congress, if confirmed?

Yes.

22. How do you plan to communicate and work with Congress in carrying out the FLRA's responsibilities?

If confirmed, I would hope to have open and regular communications with the Congressional committees and Members who have interest in and oversight responsibilities for the FLRA. I will make myself available to testify or to confer on a less formal basis as requested, and will welcome the views of interested Members who wish to comment on the management and operations of the agency.

**V. Assistance**

Are these answers your own? Have you consulted with the FLRA or any other interested parties? If so, please indicate which entities.

The foregoing answers are my own. I obtained some information about the historical and current situation at the FLRA from its staff.

**AFFIDAVIT**

I, THOMAS M. BECK, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Thomas M. Beck 8-31-08

Subscribed and sworn before me this 31 day of Aug, 2008.

M. E. Warren 7023604  
Notary Public



MARY E. WARREN  
Notary Public  
Commonwealth of Virginia  
My Commission Expires 11/31/2010



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

July 9, 2007

The Honorable Joseph I. Lieberman  
Chairman  
Committee on Homeland Security and  
Governmental Affairs  
United States Senate  
Washington, DC 20510-6250

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Thomas M. Beck, who has been nominated by President Bush for the position of Member of the Federal Labor Relations Authority.

We have reviewed the report and have also obtained advice from the Federal Labor Relations Authority concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is a letter dated June 27, 2007, from Mr. Beck to the agency's ethics official, outlining the steps Mr. Beck will take to avoid conflicts of interest. Unless a specific date has been agreed to, the nominee must fully comply within three months of his confirmation date with any action he agreed to take in his ethics agreement.

Based thereon, we believe that Mr. Beck is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert I. Cusick".

Robert I. Cusick  
Director

Enclosures