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## HEARING BEFORE THE COMMITTEE ON LABOR AND PUBLIC WELFARE UNITED STATES SENATE NINETY-FOURTH CONGRESS

SECOND SESSION

ON

JOHN A. PENELLO, OF MARYLAND, TO BE A MEMBER OF  
THE NATIONAL LABOR RELATIONS BOARD

JULY 21, 1976

Printed for the use of the Committee on Labor and Public Welfare



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(II)

## NOMINATION

WEDNESDAY, JULY 21, 1976

U.S. SENATE,  
COMMITTEE ON LABOR AND PUBLIC WELFARE,  
Washington, D.C.

The committee met at 10:10 a.m., in room 4232, Dirksen Senate Office Building, Senator Harrison A. Williams, Jr. (chairman), presiding.

Present: Senators Williams, Kennedy, Stafford, and Taft.

The CHAIRMAN. We will come to order.

This morning the committee is meeting to hear John A. Penello, who has been renominated for the position on the National Labor Relations Board for a term of 5 years.

Mr. Penello has been a member of the Board since 1972, has a total service with the National Labor Relations Board of 39 years. All right. John, do you want to come up? Mrs. Murphy, would you like to join John at the table?

I would like to note that the Labor Board itself only this last year celebrated its 40th anniversary so that our nominee this morning brings to this agency an exceptionally long continuity with the labor relations' policies under which employers and employees join together for collective bargaining.

During this long service with the Labor Board, Mr. Penello has distinguished himself as a man of great ability and integrity.

I would like to insert a copy of Mr. Penello's biography at this point. [The material referred to follows:]

(1)

BIOGRAPHICAL RESUME

NAME: John A. Penello

HOME ADDRESS: 55 Boone Trail  
Severna Park, Maryland 21146

BORN: Norfolk, Virginia - August 26, 1909

EDUCATION: Elementary and High - Norfolk, Virginia  
B.S. Degree - College of William & Mary - Majored in  
Economics and Accountancy  
LL.B. Degree - College of William & Mary Law School  
Member of Virginia Bar

PROFESSIONAL CAREER: Field Examiner - Baltimore, Maryland 1937-1944  
Chief Examiner - New York, New York 1944-1948  
Regional Director - St. Louis, Minneapolis and Baltimore,  
Maryland 1948-1958  
Associate General Counsel, Washington, D.C. 1958  
Regional Director, Baltimore, Maryland 1959-1972  
Appointed Member of National Labor Relations Board  
December, 1971

MARITAL STATUS: Married to Doris Ridgely of Dover, Delaware

CHILDREN: Three daughters, Anne, Doris and Cristine

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The CHAIRMAN. This is a particularly critical time in the development of the law under the National Labor Relations Act with the expanded jurisdiction and with increasing reliance by arbitrators, by State and other Federal agencies on the precedent of the Board's decisions. It is clear that what the Board says and does affects greater and greater numbers of American workers.

For this reason, the Board's interpretation of the law must be marked by the same generosity of the spirit that marks the legislation itself.

The National Labor Relations Board's decisions must reflect both the letter and the spirit, and it is truly a remarkable piece of legislation.

This committee and millions of American workers are affected no less.

I know that Chairman Murphy is here both to support and to introduce Mr. Penello, and we are pleased to hear from Mrs. Murphy, and then we will turn to Mr. Penello.

**STATEMENT OF BETTY SOUTHARD MURPHY, CHAIRMAN,  
NATIONAL LABOR RELATIONS BOARD**

Mrs. MURPHY. Thank you, Mr. Chairman.

I want to bring you greetings from my other colleagues on the Board and to tell you that the Board appreciates all you have done this past year, Mr. Chairman, in many different areas for our agency.

We appreciate the fact that you held a speedy hearing and obtained quick confirmation for Member Walther and General Counsel Irving. This morning Member Fanning, Member Jenkins, and Member Walther asked me to tell you they appreciate the fact that you are conducting a quick hearing, and we hope that you will also obtain speedy confirmation, for Mr. John Penello.

This committee, and particularly you, Mr. Chairman, have the power to insure that we have five members on the Board and that we have a General Counsel at all times.

I think everyone on this committee knows and the Board is well aware of how important it is to have speedy resolution of industrial disputes. We cannot do this with four members.

I am very honored to tell you, Mr. Chairman, that during the past year, which was my first as Chairman, the five-member Board has broken all previous records in our 41-year history. We issued a total of 1,673 contested decisions this last fiscal year. We achieved a productivity increase of 30 percent. This is the highest productivity increase that the agency has ever experienced, and we think that it is in no small part, and very sincerely, due to the help and assistance that we have had from you, Mr. Chairman, from Senator Taft, Senator Javits, and other members of this committee. We appreciate all you have done, and we are grateful for it.

The CHAIRMAN. Do you recommend that we approve the nomination for reappointment?

Mrs. MURPHY. Of course, Mr. Chairman.

The CHAIRMAN. Why?

Mrs. MURPHY. Why?

Well, Mr. Chairman, you have already mentioned all of the points in John Penello's background.

I would also like to repeat that the Board is concerned about speedy resolution of disputes and that John's staff is the fastest staff at the Board, but the Chairman's staff is catching up. I have a goal to beat him, but as of now he gets the decisions out faster than anybody else. And I think for that reason alone, although there are other reasons, this committee, which is very concerned about having the cases processed quickly, should quickly insure his confirmation.

The CHAIRMAN. Do you have any general remarks, Senator Stafford or Senator Taft, have anything before we turn to the members?

Senator STAFFORD. No; I do not, Mr. Chairman.

I met Mr. Penello. I am glad he is here.

The CHAIRMAN. Senator Taft.

Senator TAFT. May I ask the Chairman, you have five members on the Board?

Mrs. MURPHY. Yes; we do.

Senator TAFT. Do you have any breakdown of the number of cases that are decided 3 to 2 or 2 to 3 or 3 to 1 or 4 to 1?

Mrs. MURPHY. Yes.

I think we had about 60 cases waiting for Peter Walther when he came on, and his confirmation, by the way, was the fastest of any Board member's confirmation other than the incumbent or my own confirmation as Chairman, in the history of the record.

Let me say that the majority of our decisions, Senator, are unanimous. I think about 90 percent of our decisions are unanimous, really, and only 10 percent are split. And sometimes these cases are divided

2 to 2 so we need five members. But of equal importance, Senator, we have the Board, right now, moving along with a very high morale. The staff has great morale.

We have only met our budget goal obligations three times in 25 years. This year was one of the 3 years. We are really moving and we think that it would be a great setback if our fifth member is not confirmed.

Senator TAFT. Is that immediately, or have you been held up when you have had a vacancy before?

Mrs. MURPHY. I think when Member Penello came on, it was almost a year before he came on, and that has been the history of the Board. It usually is several months, almost a year, between appointments, and that is why we have gotten behind. It is really shameful to have to wait a year for a fifth member.

Senator TAFT. What happens to a member when he is—what happens to the staff?

Mrs. MURPHY. A new member inherits the staff of the predecessor.

Mr. PENELLO. While waiting for the new member, they are assigned to the Chairman's staff.

Senator TAFT. OK.

Mrs. MURPHY. You see, under our statute, Senator Taft, when Member Penello's term is up, he goes—we are not like the EEOC and FCC and the other agencies where the Commissioner or Board members continue to sit until his or her successor is appointed.

Under our legislation, when a term terminates, it is up. You go. And that is why we have been without a member for over a year.

Senator TAFT. I hesitate to bring up a particular decision, but I think I might like to bring it up, the decision with regard to the hospital legislation, section 8(g).

The CHAIRMAN. Shall we wait until we hear any opening statement that John Penello might have?

Senator TAFT. The only reason I brought it up is, I think, Mr. Chairman, and Mr. Penello differ from their interpretation.

The CHAIRMAN. Could we just start with Mr. Penello and would you remain, Mrs. Murphy.

Mr. PENELLO. First, Mr. Chairman and members of the committee, I appreciate the opportunity—

The CHAIRMAN. Excuse me a moment.

I think it appropriate, before you begin, to include in the record a letter addressed to me from Senator Beall, who did present you at the time of your last appointment.

Mr. PENELLO. Yes.

The CHAIRMAN. At the time of your appointment, and he wanted to be here, but just had a conflict. And in support of this nomination, Senator Beall's letter will be included in the record at this point.

Mr. PENELLO. Thank you.

The CHAIRMAN. He is a member of this committee, as you know. [The letter referred to follows:]

J. GLENN BEALL, JR.  
MARYLAND

**United States Senate**  
WASHINGTON, D.C. 20510

COMMITTEES:  
BUDGET  
COMMERCE  
LABOR AND PUBLIC WELFARE  
SENATE SELECT COMMITTEE  
ON SMALL BUSINESS  
SPECIAL COMMITTEE ON AGING

July 21, 1976

The Honorable Harrison A. Williams, Jr.  
Chairman, Labor and Public Welfare Committee  
United States Senate  
Washington, D.C., 20510

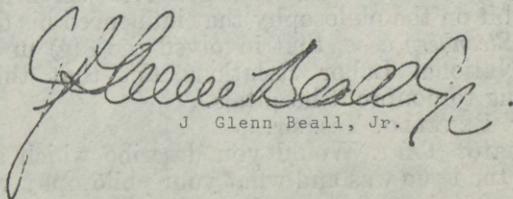
Dear Mr. Chairman:

I am pleased to offer my full support for the nomination of Mr. John A. Penello of Severna Park, Maryland for a second term on the National Labor Relations Board. Mr. Penello has, in my opinion, contributed significantly to this Board's decision-making processes and, therefore, should be appointed for a new four-year term.

Although it was my pleasure to be able to introduce him at his last hearing, a previous commitment has prevented me from attending today's hearing. He has my full support for reappointment to this Board and I would appreciate your favorable consideration of this reappointment.

With best wishes, I am

Sincerely yours,



J. Glenn Beall, Jr.

The CHAIRMAN. Mr. Penello, you may proceed.

**STATEMENT OF JOHN A. PENELLO, NOMINEE FOR REAPPOINTMENT  
TO THE NATIONAL LABOR RELATIONS BOARD**

Mr. PENELLO. First of all, I want to thank you, Chairman Williams and the committee for the opportunity to appear and to present my views and to answer questions.

I understand that you wish some of my background and my present philosophy and record as a member of the Board.

I am a Democrat. I am a native of Norfolk, Va., the son of immigrant Italian parents.

I was educated in the schools of Norfolk, Va., and attended William & Mary College, where I received my undergraduate degree and law degree. I am a member of the Virginia bar.

Upon graduating from law school, I entered the service of the National Labor Relations Board where I have been for the past 39 years.

I entered into the service of the Board as an Examiner in Baltimore, and then occupied successively the positions of Chief Examiner in the New York Office, Regional Director in St. Louis, Regional Director in Minneapolis, Regional Director in Baltimore, and Associate General Counsel in Washington, in charge of operations, and for the past 4½ years, a member of the Board.

It has been a challenging and deeply satisfying life. If I had it to do over I would do it again. I know of nothing that I would rather do except possibly being a member of the U.S. Senate. I think I would like that, too.

During my tenure on the Board, I tried to carry out the basic philosophy that I have had during my entire lifetime with the Board, that is to approach cases with a completely unbiased and impartial mind.

I have tried to set aside any personal ideological philosophy or personal feelings I may have about the case or the parties involved.

Split cases reveal where individual Board members stand with respect to important issues. It is on very important issues that the Board usually splits. In split cases, my vote has been pretty much divided evenly between management and the labor unions. That is my record.

I would be happy to answer any questions the Senators may wish to ask.

The CHAIRMAN. So I could judge our timing here this morning, are there any in the audience that are here to make a statement, to testify on this nomination?

This morning is all yours. Why do we not get right down to this, Senator Taft, if you want to—you were halfway into a question.

Senator TAFT. I was just going to ask Mr. Penello to expand a little bit on the philosophy that influenced his decision in the so-called *Lien-Steenberg* case, that involved the 8(g) under the amendment to the National Labor Relations Act that this committee enacted relating to nonprofit hospitals.

Mr. PENELLO. Yes, sir.

Senator TAFT. Would you describe which side you were on and what the issue was and what your philosophy was with regard to that case?

Mr. PENELLO. The issue was whether or not picketing at a construction site at a hospital in a dispute, which does not involve the employees of the hospital, whether the picketing was subject to 8(g) of the act requiring that before any picketing occurs, the hospital is entitled to 10 days' notice.

It was a difficult case.

The Board found 4 to 1 that the union was in violation by not giving the required notices. I was on the majority, along with Chairman Murphy and Peter Walther.

It was our position that under the clear terminology of the statute that any picketing at a hospital would require the 10 days' notice. It was the position of the majority that even though the controversy did not involve hospital employees, there was a potentiality to involve hospital employees. Hospital employees may honor the picket line and disrupt the operation of that hospital just as effectively as if the dispute involved the hospital employees themselves.

So we took the language of the statute literally that any picketing at the hospital required the giving 10 days' notice. We thought that the congressional intent to prevent interruption to the care of the sick, dictated this result in addition to the plain terms of the statute.

Senator TAFT. Thank you very much.

One other case that was recently decided by the Supreme Court, the Board acted on previously, and I refer specifically to the *Buffalo-Forge* case.

This was decided, and what effect do you think the Supreme Court case in the *Buffalo-Forge* case may have upon labor relations, particularly upon contracts in which no-strike clauses exist?

Mr. PENELLO. I am not sure I am familiar with the issue in that case.

Senator TAFT. The issue involved the Supreme Court deciding in the *Buffalo-Forge* case in what I would consider to be a departure from the already existing Board's decision on the effect of no-strike clause, that the union with a no-strike clause might honor a picket line of another union at the site, at least to the extent that the arbitrable issue did not reverse the question of whether or not the no-strike clause covered the situation such as the one I have described, with arbitrable conditions.

What effect do you think that may have on non-strike clauses in collective bargaining?

Mr. PENELLO. I think it may have the effect of requiring a more specific delineation of the type of strikes that no-strike clauses cover.

The case came as somewhat of a surprise to many of us who had other thoughts. It is in an area where the law has been unclear, but I am not quite sure that the decision makes it clearer.

Senator TAFT. Thank you very much.

The CHAIRMAN. Senator Stafford.

Senator STAFFORD. Mr. Chairman, I have no questions of Mr. Penello.

I had a chance to chat with him some time ago, and I am prepared to support his approval.

Senator TAFT. Mr. Chairman, I might just say that I have viewed Mr. Penello's record and I know it well, and I feel he is very well qualified for the position he is holding, and has at least held with great distinction, and I would also be very glad to support his renomination.

The CHAIRMAN. Thank you very much.

Mr. Penello, coming back to the hospital case that Senator Taft mentioned, this was a construction union?

Mr. PENELLO. Yes.

The CHAIRMAN. Picketing, and there was a separate gate?

Mr. PENELLO. There was a separate gate.

The CHAIRMAN. Was the construction at another operating part of the hospital, or was it a new construction?

You said it would involve an interruption of the hospital.

Mr. PENELLO. It was an addition to the hospital, new construction.

The CHAIRMAN. You came to the conclusion that this would adversely impact on the operations of the hospital, and that was a factual judgment, is that right?

Mr. PENELLO. It could have an impact. There was nothing to prevent the hospital workers from honoring the picket line. The potential was there. In many situations, workers do not cross picket lines, no matter whose it is, particularly if it is at his place of employment.

The CHAIRMAN. There is a sketchy outline of the facts here, but, in the outline, it says that there was a separate gate for these construction workers. Is that right?

Mr. PENELLO. Yes.

The CHAIRMAN. It had nothing to do with the operation of the hospital. It was off on a part of a new construction, and it was over there that had nothing to do, it seems to me, with the factual situation.

Mr. PENELLO. But it was a part of the hospital complex.

The CHAIRMAN. It struck us that it did not fit the pattern of intent, and it was 10-day notice, special provision for a hospital—

Mr. PENELLO. That is right.

The CHAIRMAN [continuing]. Special hospital provision on the 10-day notice, and that is what the case came to, is that right?

Mr. PENELLO. It might very well be in a situation similar to this, there would be no separate gate. There is no guarantee that there be a separate gate in the future cases. If there is not a separate gate, the hospital's position will be vitally affected if employees cross the picket line. This would have the same effect that Congress was concerned with in enacting 8(g).

All the union was required to do was to give a notice that was a simple administrative act, and they would be in compliance with the law.

The CHAIRMAN. So the effect of that was—what was it, a 4-to-1 decision?

Mr. PENELLO. Four to two.

The CHAIRMAN. Three to two?

Mr. PENELLO. It was 3 to 2.

The CHAIRMAN. Three to two.

The effect of that decision is to put all employees at a hospital site on notice that the special provision dealing with hospitals apply to them, is that it?

Mr. PENELLO. That is right, that anyone who intends to conduct picketing at a hospital must first give 10-days notice under the provision of 8(g).

The CHAIRMAN. The other hospital case that also brings into question the legislative intent, and that is the units and the coverage of the act, and dealt with the residents, interns in another group, as I recall, clinical fellows. I guess they are called. And this was a question of whether—put another way, in our deliberations in excluding from coverage certain people employed in the operation of the hospital, we were separating the working group from the supervisory group. We did not include the residents and the interns in the exclusion of the supervisory group, but you came up with your decision to say that that was not the question. It is a question of whether they were students or not, and you came to the conclusion they were students, therefore not covered. Is that right?

Mr. PENELLO. That is right.

The CHAIRMAN. So there was no legislative history and analysis whether they should be excluded because of being students?

Mr. PENELLO. That is right, sir.

The CHAIRMAN. We had only, as I say, considered them in the context of supervisors. That was 3 to 2 also.

Mr. PENELLO. Four to one.

The CHAIRMAN. Four to one.

Mr. PENELLO. We had extensive oral argument on the issue. We were very much concerned with the issue.

After reading of the record and considerable debate we came to this conclusion, 4 to 1.

The CHAIRMAN. And the dissenter was Mr. Fanning?

Mr. PENELLO. Member Fanning; yes.

The CHAIRMAN. And his attitude was they were not excluded as supervisors. They were excluded as employees?

Mr. PENELLO. That is right.

The CHAIRMAN. Did he rely—did you look at all the records that indicated the intention of Congress in passing the special provisions?

Mr. PENELLO. Did he?

The CHAIRMAN. Did all of you?

Mr. PENELLO. Yes, sir. Legislative history is always part of our deliberations, particularly new legislation such as this.

The CHAIRMAN. I think in a report—the committee report and the conference report occurred in your deliberations as legislative history?

Mr. PENELLO. Yes; except we did not give too much weight to postlegislative history.

The CHAIRMAN. I missed that. Say that again.

Mr. PENELLO. We did not give too much weight to postlegislative history.

The CHAIRMAN. In our report we say that the committee saw no need to specifically exclude residents and interns from the definition of supervisors. And it evidently dealt with that because of approaches that have been observed in previous Board decisions.

I gather we concluded inferentially interns and residents be covered as employees having dealt only specifically with an exclusion on the one point.

Mr. PENELLO. Yes.

The CHAIRMAN. Nobody raised the exclusion on another point of students, therefore we considered it could be inferred that we considered it was four to one the other way.

Mr. PENELLO. We were troubled by that, but finally reached the conclusion that there was no specific legislative statement of intent. In view of the lack of a definitive statement or amendment to the definition of employee under the statute, we looked at it as a strictly student-employee issue.

It was a difficult case, and the decision did not come easily, I can assure you, Senator.

The CHAIRMAN. I wonder if you could trace the Board's thinking on the successorship doctrine. These days with mergers and acquisitions, about change of ownership, it is a big question.

Mr. PENELLO. Yes.

The CHAIRMAN. It is a big question.

Mr. PENELLO. Yes, sir.

The CHAIRMAN. The Board has had it, it has gone to the Supreme Court, legislation has been introduced to deal with it.

Are you familiar with the legislation that has been introduced?

Mr. PENELLO. Yes, sir.

The CHAIRMAN. Could you trace the Board's history on this?

Mr. PENELLO. Well, the Board has had considerable trouble with successorship. We have had a series of cases beginning with Howard Johnson.

As you know, the Board first ruled that the successor must take over the contract of the predecessor, but the Supreme Court overruled the Board. We then had to consider at what point, there was an obligation to bargain by the successor.

It has been very troublesome to determine at what point the successor is obliged to bargain with the union.

The Supreme Court in the *Burns* case said that when the successor has evidenced a clear intent to hire all of the employees of the predecessor, at that point he must bargain with the union, and cannot take unilateral action.

There has been a split on the Board as to what that means. Member Fanning and I take the position that the Supreme Court meant exactly what it said.

When there is a clear manifestation of intent to hire all of the employees of the predecessor, the successor is not privileged to take unilateral action in changing wages and working conditions, and he must bargain with the union.

The majority disagreed with Fanning and me. They held that until the successor actually hires the majority of the predecessor's employees, he has no obligation to bargain. That has been the major point of contention between the majority and minority in successorship cases.

The CHAIRMAN. Earlier in this discussion you said all employees, and most recently you said majority—after he has hired a majority.

Mr. PENELLO. That is right.

The CHAIRMAN. What is the numerical business?

Mr. PENELLO. Well, Member Fanning and I have also taken the position that he does not necessarily have to hire a majority of the predecessor's employees, only a significant complement.

The CHAIRMAN. Is that the Board now, when you say "you," you and Fanning, or the Board?

Mr. PENELLO. Fanning and I.

The CHAIRMAN. I see, the minority.

Mr. PENELLO. Yes; a substantially significant proportion of the predecessor company.

The CHAIRMAN. Rather than an arbitrary—

Mr. PENELLO. A majority of all of the predecessor employees.

The CHAIRMAN. It is the intention of continuity, is that the idea—

Mr. PENELLO. Yes.

The CHAIRMAN. Of the work force?

Mr. PENELLO. Yes.

The CHAIRMAN. Rather than shut it off at exactly one more than half, why you give it that flexibility to get the spirit of continuity.

Mr. PENELLO. That is right.

The CHAIRMAN. At any rate, this is now the law that applies, the Supreme Court law.

Mr. PENELLO. Yes.

The CHAIRMAN. Their last decision, as I recall it, so clearly said that there is a gap in the law, and until Congress fills the gap, why this is the way we are deciding the cases, and that was the message to me.

I introduced the bill that was designed to fill the gap.

Mr. PENELLO. Yes.

The CHAIRMAN. Do you have any feeling or philosophy, any feeling, and obviously you do that here, you have had a contract entered in for a term, and to have that contract dissolved midway, it seems to me creates new opportunity for tension, disruption, and all of the elements that our laws are designed to help ease.

Mr. PENELLO. Yes.

The CHAIRMAN. Can you give me your philosophical feeling about the integrity of a labor-management contract?

Mr. PENELLO. Well, speaking from the standpoint of collective bargaining and rights of employees, it is a very appealing argument that employees, when the plant is taken over by a successor, should continue to enjoy the fruits of their collective bargaining. Whatever struggle and/or suffering they had to endure to secure a contract should not be vitiated because they now have a new employer who refuses to honor the contract.

This is a very appealing, equitable position. However, speaking realistically, many companies are taken over because they are in economic trouble to the point of going out of business.

If a successor company is obligated to assume all of the conditions established by contract, it may be deterred from rescuing a company in economic distress. To require that the successor take over the collective bargaining contract of the predecessor may result in not having a successor company at all. One must balance the welfare of employees who may lose their livelihood against their right to continue their contractual relationship.

The CHAIRMAN. Right.

Now, it is a guessing game, is it not?

Mr. PENELLO. Yes; it is.

The CHAIRMAN. And if we clarify the law we take the ambiguities out, we take it along the laborious journey out of the decision, and it would seem to me if you had one of these trouble situations by understanding and in contract with the working people, you could see an enterprise that is in operation but slipping into oblivion, it would be in that situation it would be in the workers' interest to see their jobs preserved, and they could enter into subsequent contract or agreements.

Mr. PENELLO. Yes.

The CHAIRMAN. Or agree to a renegotiation, could they not?

Mr. PENELLO. Yes; and that is as far as we have gone now, by requiring the successor to sit down and bargain collectively with them, but not to take over and preserve all of the conditions established under the predecessor.

The CHAIRMAN. Of course, in the economics of the situation there is no standing for a potential buyer to be a negotiator with the employees for subsequent bargaining if he buys, is there?

Mr. PENELLO. No; there would not be.

The CHAIRMAN. There is no way of doing that.

Mr. PENELLO. We have enough trouble now.

The CHAIRMAN. Yes.

It would seem to me that both the Board, at the Board level and at the court level, all the way to the top, clarifying legislation should be helped to the whole process.

Mr. PENELLO. It certainly would. This has been a troublesome issue for the Board.

In many cases we have had long complex discussions. During the first 2 years of my tenure on the Board, I suspect this successorship problem probably is the one most troublesome to the Board.

The CHAIRMAN. This question—

Mr. PENELLO. The problem of successorship.

The CHAIRMAN. Yes.

Mr. PENELLO. That is illustrated by the Spruce-up case.

The Spruce-up case came to the Board several times for discussion. Because of its complexity we could not agree to anything. It took several agenda discussions to finally hammer out the decision. It illustrates the point that you are making, Senator, that is a difficult and complex area, and definitely cries out for clarification.

The CHAIRMAN. All right, now, that—did that get to the courts, that case?

Mr. PENELLO. Not yet. I am not aware that that case went to the court.

The CHAIRMAN. I think that is one of the—quite frankly, personally I am not familiar with the details of that, and I should be.

Mr. PENELLO. That is one of the lead cases on the bargaining obligation of a successor and the point at which he has to bargain with the union.

We will give you a memo on the subject.

The CHAIRMAN. What was your last position before becoming a member?

Mr. PENELLO. Regional Director in Baltimore.

The CHAIRMAN. And then you were Regional Director in the Midwest before that?

Mr. PENELLO. Yes.

The CHAIRMAN. You are filing with us your personal financial situation, which shows rather broad investment interests in many companies.

How do you handle your situation when any company whose equities you hold has come before you for Board decision?

Mr. PENELLO. The chief counsel has a copy of it, and he will alert me whenever a case comes to our panel involving any of these companies, and I will disqualify myself.

The CHAIRMAN. Have you had any situation where you have had to disqualify?

Mr. PENELLO. Not that I am aware of.

The CHAIRMAN. There are seven corporations, as I said—

Mr. PENELLO. Yes.

The CHAIRMAN. That you have an interest and equity in.

Mr. PENELLO. Yes, sir.

The CHAIRMAN. But your counsel is alerted—

Mr. PENELLO. Yes, he has—

The CHAIRMAN. In any cases that come in to the Board, he is told to alert you, and you would be in a position to remove yourself from any consideration in that case?

Mr. PENELLO. Yes, sir.

The CHAIRMAN. Does that include those that you have not an equity, but are holding corporate bonds?

Mr. PENELLO. Yes.

The CHAIRMAN. I thought there were more than seven companies involved in your portfolio.

Mr. PENELLO. Railroads and airlines are not subject to our jurisdiction.

The CHAIRMAN. That explains that—the question, I see. You are precise. Thank you.

I know, and appreciate Mrs. Murphy's observations that we have been speedy in our consideration of this, and it has been a little longer than—I think the nomination was submitted in May—June—

Mr. PENELLO. The last of May, yes.

The CHAIRMAN. End of May. Could have been longer.

Mr. PENELLO. Yes.

The CHAIRMAN. But it was not, and anybody who has had an opportunity in appearing, of course, had full opportunity, and I gather that nobody has availed themselves of the opportunity to be heard on this nomination, either way, pro or con.

Mr. PENELLO. A surprise.

The CHAIRMAN. I will make no comment. Thank you very much.

Mr. PENELLO. Thank you, Mr. Chairman.

The CHAIRMAN. You have subscribed to the theory one good term deserves another. Thank you.

We will, as the committee, take this up as soon as we can.

[Whereupon, at 11:34 a.m., the committee adjourned.]



