LABOR

Board games

"I'm not resigned to the decline of unionism," says Clinton's nominee to chair the National Labor Relations Board.

By David Moberg

In his first year in office, Bill Clinton and organized labor have agreed on some issues, such as family and medical leave, and fought on others, like the North American Free Trade Agreement. But Clinton has done virtually nothing to strengthen unions as institutions—even though they're critical for Democratic Party success and could advance Clinton's goal of a high-wage, high-growth economy.

Yet Clinton could improve his labor record through appointments to the National Labor Relations Board (NLRB), the agency that decides whether employers and unions have committed unfair labor practices. Clinton has an unusual opportunity to make a difference quickly with the NLRB, since he can now appoint the board's general counsel and three of its five members.

The record of Clinton's nominees—led by NLRB Chairman-designate William B. Gould IV—indicates that the board may move to strengthen labor's ability to organize and represent workers. Yet Gould and the others may also promote labor-management cooperation in ways that some unions believe undermines real unionism. So far, Senate Republicans have blocked Clinton's nominees, claiming they're too pro-union, but a compromise may avert a threatened filibuster.

During the Reagan years, unions angrily attacked the NLRB for decisions that were heavily tilted toward management. The NLRB also acted slowly: the median time for deciding an unfair labor case increased from 133 days in 1980 to 300 days in 1989. That's significant, because in an organizing drive—when many employers violate the law and fire union supporters—justice delayed is justice denied. Unions increasingly gave up on the board. Some decided not to seek NLRB-sanctioned elections to gain official recognition, opting instead for direct pressure on employers to recognize a union without an election.

The labor movement's future relationship with the NLRB will depend in great part on the actions of Gould, the 57-year old great-grandson of escaped slaves and a highly respected Stanford Law School professor. As chairman of the NLRB, Gould would take the lead in interpreting and enforcing labor law, not making the laws—but his views could also influence any emerging labor law reform proposals. And there is enough leeway in interpretation of existing law that NLRB decisions make labor's job easier or tougher.

Although clearly sympathetic to organized labor, Gould has been a critic of unions—attacking their record on racial discrimination and advocating more internal democracy, such as direct election of officers. He has also advocated positions that many unions oppose, such as making it easier for employers to create non-union worker committees aimed at improving workplace performance.

With his academic prowess and his wide and varied experience, Gould seemed a safe, extremely well-qualified choice for board chairman. He would also be only the second black member and first black chairman of the NLRB. Yet despite praise for Gould from many attorneys who represent management, he has come under fire as being too sympathetic to unions. The attacks have come from ideologically anti-union groups—like the National Right-to-Work Committee—as well as from several Senate Republicans and major national business organizations.

"I am somewhat surprised at the nature of the opposition: that I'm a radical who's out of the mainstream," Gould said in a recent interview with *In These Times*. "That's ludicrous. I'm regarded as a centrist."

And in fact, some Republicans and business groups are not adamantly opposed to Gould. They simply want to

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make sure Clinton appoints one pro-management NLRB member who will write strong dissents that can be used in later court battles over NLRB decisions.

By tradition, the White House appoints members of the opposition party to two of the five five-year terms. Clinton is thus expected to name two Democrats and one Republican. He has nominated Philadelphia pro-labor lawyer Margaret A. Browning for one open seat and Frederick Feinstein, the talented chief counsel of the House labor-management subcommittee, for NLRB chief counsel. The Republican nominee is likely to be a woman from the ranks of either the Kodak or USX corporate legal staff.

These appointees will be under a chairman who has worked for both labor (the United Auto Workers) and management, as well as for the NLRB and as an arbitrator of labor-management disputes. As a professor at Stanford since 1972, Gould has written on employment discrimination, Japanese labor law and U.S. labor law, including his most recent book, *Agenda for Reform* (MIT Press).

While he supports collective bargaining and unions, Gould has argued against many leftist views of unions and the law. In *Agenda for Reform*, Gould maintains that the decline of unions is "profoundly worrisome" for democracy and pluralism. He sees a need to reform the law to better protect workers' rights. For example, he believes that employers should not be able to permanently replace strikers.

But Gould does not see labor law or even employer law violations as responsible for labor's decline. Labor law reform and a sympathetic administration would help unions, he argues, but unions need to organize more vigorously if they want to reverse their slump.

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NLRB Chairman-designate William B. Gould IV

Gould's basic premise is that a changing economy with growing international competition means not only that unionism is unlikely to spread but also that employee participation is increasingly important if U.S. businesses are to succeed in the global marketplace. In the absence of unions, he writes, the government should ease the restrictions against company unions—unions established, financed and dominated by employers—to permit more employee committees, as long as workers have autonomy and the right to choose their own leaders. He also believes that government will have to fill the vacuum left by the unions' decline with new legislation, such as protection against firings without good cause.

Despite his grim view of unions' future, he believes that the law should be changed to help organizing. He thinks the NLRB should be able to order employers to bargain if unions simply sign up a supermajority of workers (or even slightly less than a majority when the employer grievously violates the law). As things stand now, the NLRB acts only after a majority vote for a union on a secret ballot. Gould also believes that employers should be compelled to bargain with organized groups of workers—representing at least one-fifth to one-third of the workforce—even if a majority doesn't support a union.

Gould favors wide-open competition during union elections with fewer restraints on what management can say (or threaten), but also with guaranteed access to company property for union organizers. Such elections should be held quickly, he argues, and employers should be subject to bigger backpay penalties for violations.

Most of Gould's proposals require new legislation, but the NLRB itself can make a difference in a few areas. "The very first thing I'd like to accomplish is I'd like for the agency to deliver balanced decisions promptly and efficient-

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ly and for the agency to be aggressive seeking injunctive relief in federal district court, as it's authorized to do against violations by both sides," Gould says. He thinks injunctions could be especially useful in cases such as stopping employers from illegally firing pro-union workers during organizing drives.

Gould also wants to speed up the work of the agency by encouraging administrative law judges—who first hear labor law complaints—to devise informal methods of reaching a settlement between the combatants. He also hopes to establish "firm timetables for both election and unfair labor practice cases."

Yet Gould also wants to encourage labor-management cooperation. "To the extent that I can do so," Gould says, "I want to facilitate employee participation and involvement in both the union and non-union sectors." Gould rejects the view of many unionists that employee committees—referred to by a wide variety of names, such as quality-of-worklife or employee participation committees—are simply sophisticated new versions of outlawed company unions.

He concedes that "the driving force" behind some companies' decisions to set up employee committees might be to avoid unionization. "But," he adds, "I'm also sure that the driving force behind improvement in wages, hours and conditions of employment in non-union establishments is the very same thing."

"The basic problem," he continues, "is to break down the 'iron curtain' between employers and employees that makes it less likely that employee involvement and employee knowledge and employee input into decision-making can be facilitated. My view is that, in both union and non-union circumstances, we should be doing everything possible compatible with the law to promote employee communication, knowledge and involvement, even though the overall policy—as with improved wages—is to provide an alternative to unions." Dissatisfied workers, he points out, could shift allegiances from employer committees to unions, as some did in the '30s.

Gould favors cooperation mainly "because cooperation is a rational approach to the competitiveness problem that American industry is going to be increasingly confronting." Rather than promote adversarial relations, he argues, "the current law and the law as revised must do everything possible to enhance this, consistent with basic policies promoting autonomy for employees." Yet he acknowledges that cooperation is "no panacea" and that employers may later "stab unions in the back" or fail in the marketplace despite cooperative efforts.

Gould wants the board, as much as possible, to "enhance employee knowledge of corporate activity, to provide the widest information available to the employees." As things stand now, companies must disclose financial information if they claim they need concessions to avoid failing. But Gould thinks the board should seriously consider requiring disclosure when companies bargain on the basis of their needs to remain competitive. "The board is not obliged to fashion disclosure rules only in situations where the employer is going to go belly-up," he says.

Though there is a bias in Gould's beliefs—as there is in the basic Wagner Act labor legislation itself—toward collective bargaining and unionization, there is also a strong bias toward cooperation, arbitration and other models of labor relations that avoid conflict.

Most progressive labor theorists earlier in this century stressed the need for industrial or economic democracy. But Gould—like many contemporary academics and Clinton administration officials, including Labor Secretary Robert Reich—stresses employee participation, cooperation and involvement. Those are much weaker concepts that subordinate political and social ideals of democracy to a particular economic strategy.

A Gould board, nevertheless, would be likely to restore a measure of fairness and attention to worker rights to an agency that has too often in recent years been unfriendly to workers and unions. Yet without a renewed, massive effort by unions, even a more sympathetic board will make little difference.

"I'm not resigned to the decline of unionism," Gould says. "There could be a confluence of factors that provide revival, and it's possible more balanced board decisions and procedures could play a role in a union revival. But I'm very skeptical about the notion that the law on its own can provide that function."

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WORLD POLITICS

From Russia, without love

How Vladimir Zhirinovsky rose to power—and what the West could do to stop him.

By Vladimir Klimenko & Cynthia Scharf

Meet Vladimir Zhirinovsky, the controversial nationalist whose movement took 24 percent of the seats allocated for political parties in Russia's latest legislative election.

"You Americans have really driven your country into the ground," he told *In These Times* during an interview. "Soon blacks will take over all of America. Then you'll be asking *us* for aid."

Flamboyantly racist, the 47-year-old leader of the Liberal Democratic Party delights millions of fellow citizens with his perpetually agressive, goading manner. Listening to Zhirinovsky's spontaneous invective, one gets the impression that he is the voice of a troubled Russian subconsciousness, in which an imperial worldview has always coexisted with a barely concealed inferiority complex.

Zhirinovsky never passes up an opportunity to put in a plug for his 1996 presidential campaign. He promises to clean up Russia's chaos much the way Hitler mobilized Germans in the '30s. "I will solve our domestic problems through foreign-policy breakthroughs."

He boasts that among those "breakthroughs" will be the establishment of Russian ports on the Mediterranean Sea and Indian Ocean as well as a full reconstitution of the old Russian empire, Alaska included.

"Who was it that discovered Alaska? The Russians!" Zhirinovsky said in an interview. "Meanwhile, where were the Americans? Rotting in Irish jails."

Who could vote for a man who makes such outrageous statements? History demonstrates that there are always people ready to put their hopes in a demagogue—be it Hitler, David Duke or Zhirinovsky—who blames hard times on others and dishes out cheap promises for a better future.

Like Hitler, Zhirinovsky rose to prominence with the help of the most conservative wing of the establishment. Three years ago, a bealeaguered bureaucratic elite plucked him out of total obscurity by inviting him to a series of well-publicized meetings with Communist Party bigwigs and the KGB chief. According to press reports, the goal was to discuss the formation of a "coalition government" between the ruling Communists and a handful of miniscule parties whose combined membership was less than a few dozen people.

Until that time, Zhirinovsky, a lawyer, was rumored by colleagues and others who knew him to have been little more than a small-time KGB collaborator with a big ego.

Evidently, those meetings were just a prelude to bigger things. In early 1991, Zhirinovsky declared his candidacy for the presidency of the Russian Federation. When his supporters failed to gather enough signatures to qualify him for the race, the large Communist faction in the now-deposed Russian parliament voted to place his name on the ballot.

His suprising 7.8 percent showing in that election made him a celebrity. Yet observers remained divided about his future prospects. Some thought Zhirinovsky was finished after publicly supporting the August 1991 coup attempt. Others believed that the world would see more of him in the years to come. Almost no one, however, expected his oddly named Liberal Democrats to receive as much of the party list vote as it did in the last election.

Certainly many of the ballots cast for Zhirinovsky's party, as well as for the Communists and other opponents of reform, were protest votes reflecting broad discontent with President Boris Yeltsin's economic policies. Harsh market reforms have left 35 million Russians living below the

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