

*Political Partisanship and the Changing Character of the NLRB**

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Is the National Labor Relations Board biased in its decision making? The NLRB regulates labor-management relations in the United States. And Board decisions affect labor laws that cover most workers. More than half a century has passed since Congress passed the National Labor Relations Act (NLRA), which created the Board and brought formal state regulation to bear on labor-management relations. Since that time, politicians, workers, labor organizations, employer groups and employers have all declared that the Board is biased. This study considers such claims by examining historical changes in the Board's composition and the Board's legal decisions.

Aside from the few historical episodes of substantial labor legislation, labor regulation is largely left to the National Labor Relations Board (hereafter NLRB or the Board). This is a rather influential agency comprised of Presidential Appointees. The NLRB is only two steps removed from the U.S. Supreme Court, which will sometimes consider labor disputes not resolved through the appellate process. It is uncommon for congress to formally focus on labor law. The Board is therefore the crucial arbiter of labor law in the U.S.

Government regulation is a central topic in political sociology and political science (Wilson 1982; Moe 1985; Gilbert and Howe 1991; Wahl and Gunkel 1999). Most regulatory politics studies are rooted in capital-dependence theory. This approach argues that because class relations are part of state institutions, government policies reflect the privileged political position of business over other groups (Offe 1975; Gold, Lo and Wright 1975; Therborn 1978; Jones 1984). In particular, governmental policies are fundamentally conditioned by their dependence on capitalist economic investment (Przeworski and Wallerstein 1988). Conditions that adversely affect "business confidence" must be corrected. This is in large part due to the nature of democratic politics. Elected officials must act to bolster the economy or they risk declines in public support and diminished reelection potential. Offe, moreover, argues that "the ultimate

political sanction is non-investment or the threat of it” (1984: 244). Capital investment is crucial because it affects the state’s capacity to finance itself through taxes and borrowing (Block 1977:15).

Because of the state’s dependence on business confidence, regulatory agencies temper their activities so that they do not generate undue burdens on firms. Wood and Anderson (1993), for example, analyze antitrust enforcement by the Department of Justice. They find that periods of high inflation, which raise the costs of doing business, are associated with less regulatory interference from the Department of Justice. And several analysts have examined the Occupational Safety and Health Administration OSHA, which monitors and enforces workplace safety laws. One study finds that the Reagan administration restricted OSHA’s ability to enforce workplace safety regulations during poor economic conditions. The secretary of labor disallowed some existing regulations and other state managers ensured a substantial budget cut for the agency (Calavita 1983). In a related analysis, Szasz (1984) argues that in the interests of “regulatory relief,” the Reagan administration appointed agency administrators who were hostile to business regulation.

The prior discussion of the capital dependency thesis provides general contours for thinking about regulatory politics. But this approach tends to assume a monolithic state. It overlooks the role of political partisanship. The dominant political parties in the United States differ markedly on policy preferences. Their different approach to macroeconomic policy is particularly noteworthy. Republicans are more concerned with inflation control whereas the Democrats emphasize unemployment reduction (Hibbs 1987). Along with Democrats’ concern with unemployment, they are the party that is more sympathetic to organized labor (Dark 1999). These differences should be important for appointments to government agencies and the

associated regulatory outcomes. And because economic concerns are central to these partisan divisions, politics should be particularly meaningful for labor regulation.

In contrast to other federal agencies, much less attention has been paid to the National Labor Relations Board. Because the NLRB is the primary interpreter of workplace laws, it should receive far more consideration. A primary function of the Board is to adjudicate labor disputes by deciding unfair labor practice (ULP) cases.¹ This process is clearly bound up in sociological processes. Yet, the few existing quantitative studies of ULP decisions are found in industrial relations (Delorme, Hill and Wood 1981; Cooke and Gautschi 1982; Cooke et al. 1995), and political science (Moe 1985). Sociologists have been more concerned with the formation of the legislation that spawned the NLRB (Domhoff 1986; Quadagno 1984; Skocpol and Amenta 1985) and have paid less attention to the agency's activities. Analysts who study NLRB decisions examine both macro-level exogenous factors as well as traits of the Board members. But they have completely overlooked important historical changes in the character of the Board – namely, the increased appointment of management attorneys. I use both historical records and quantitative techniques to investigate this trend. I first provide the theoretical and historical underpinnings of this study, which includes an examination of the historical pattern of NLRB appointments. And finally, I present a logistic regression analysis of NLRB Unfair Labor Practice decisions.

THEORETICAL AND HISTORICAL FRAMEWORK

Presidential Ideology and Partisanship. Regulatory agencies are supposed to operate as independent governmental units. But, ample research indicates that this notion is illusory at best.

¹ Unfair labor practices are legal violations committed by employers, unions, or workers. Grievances not settled at the regional level are delivered to the National Labor Relations Board for adjudication. These charges are usually the result of actions carried out during labor disputes (such as strikes) or during the union organizing process.

Analyses of the Occupational Safety and Health Administration (Scholz, Twombly, and Headrick 1991), the Securities and Exchange Commission (Moe 1982), the Federal Trade Commission (Weingast and Moran 1983) and other agencies (Gilbert and Howe 1991) suggest that partisan politics affect agency performance.

Presidents have a particularly strong influence on regulatory bodies because they make agency appointments. And, those chosen to lead such organizations tend to reflect the president's ideological sentiments. Presidents are also able to monitor these agencies through the Office of Management and Budget (OMB). The OMB tracks budgetary information and other resource allocations. "The real question of presidential influence is not whether presidents have the means to bring their policy preferences to bear, but whether they are seriously committed to doing so" (Moe 1982: 1101). Other regulatory politics studies have examined the role of the president. Waterman (1989), for example, finds that the president may influence a variety of agencies including the Department of Housing and Urban Development and the Environmental Protection Agency.

But my focus is on labor-management relations. The two dominant political parties have different perspectives on labor issues. Conservatives view collective bargaining as an infringement on free trade (Barzel 1997; Thorne 1990). And because they see union efforts to influence the workplace as a violation of property rights, conservatives do not support pro-labor policies. This stems in part from their propensity to favor economic policies that benefit their affluent supporters. When conservatives hold the presidency, for example, macroeconomic policies tend to favor the wealthy (Blank and Blinder 1986; Bartels and Brady 2003). Republicans have thus been much more critical of organized labor than have the Democrats (Dark 1999; Gerring 1998). For these reasons, *I hypothesize that when a Republican President is in office, NLRB decisions will favor business.*

The Changing Character of the Board: From Eisenhower to Clinton. One way to examine historical change is to track organizational shifts over time. I provide evidence of changes in the NLRB by illustrating the increased appointment of management attorneys to the Board since the Eisenhower administration. I highlight conflicts in the appointment process for two reasons. First, the contentious nature of appointment hearings shows the struggle for political influence. I document efforts to alter long-held appointment practices in order to show how groups attempted to influence the Board composition. Second, these episodes reveal the ideological position of NLRB appointees and help illustrate the increasingly partisan nature of the Board.²

In 1935, congress passed the National Labor Relations Act (NLRA or Wagner Act), which established the National labor Relations Board. Under this Act, the federal government made a commitment to encourage collective bargaining and regulate labor disputes through the NLRB. During congressional hearings on this legislation, the idea that the board should act in the public interest carried much weight (see Hearings on S.2926. Reprinted in Legislative History of the NLRA). As such, it was declared that the Board should be staffed with impartial representatives. In the early years of the NLRB, appointees were drawn mostly from academia or government posts. Because the Board was supposed to be impartial and function in the public interest, pro-labor or pro-business appointments were understood to be forbidden. Yet, this was not a formal provision of the Act. And over time the Board would not maintain this nonpartisan spirit.

The Eisenhower Board. The Eisenhower administration engaged in much debate about the future of the NLRB. With the election of a new Republican president, business organizations saw an opportunity to affect labor-management regulations. The Chamber of Commerce, the

² I do not discuss all presidencies because not all of them appointed management attorneys. This is particularly the case for Democratic presidents.

National Association of Manufacturers, and other groups lobbied Congress and the White House to overhaul the Board structure. At the same time, southern Democrats and conservative Republicans in Congress suggested that the NLRB should be abolished. Because labor-management disputes involved “private rights,” they argued, such conflicts should be dealt with through private litigation rather than by government overseers (Scher 1961).

In 1953, two members of the Board resigned. This provided Eisenhower with a unique opportunity to quickly alter the composition of the Board. He did not heed calls to completely overhaul or abolish the Board. Eisenhower declared that appointees should have a political philosophy “in line with the Administration’s” and his advisor Michael Bernstein suggested that they should take action to “free the Board from undesirable [pro-labor] attributes so frequently described” (quoted in Gross 1995: 95). Eisenhower decided to go beyond the traditional pool of appointees. He became the first president to appoint an NLRB member with a business-side legal background.

In 1953, Eisenhower appointed Guy Farmer to chair the Board. Farmer was a Rhodes Scholar with a distinguished legal career. He had been employed by the NLRB for seven years and had risen to the second highest post in its legal division. Farmer’s tenure as a business lawyer received little attention in his confirmation hearing. He was conservative, to be sure. But, he repeatedly called for impartiality in administering the NLRA (Gross 1995: 97). After his tenure with the NLRB, Farmer provided a telling comment during an interview. He suggested that the President did not direct the Board’s activity. But he described the pressure to decide cases with the “philosophy that he thought his administration wanted him to project... The pressure is great because this is not pinochle we’re playing here. It’s not penny-ante. This battle is over control of one of the most powerful agencies that ever existed in Washington ... this is no tea party” (quoted in Gross 1995: 98).

Eisenhower also appointed Albert Beeson, who was not a lawyer but had worked in business management for many years. Unlike Farmer, labor representatives viewed Beeson as a pro-business partisan. CIO representative, James Carey, argued against biased appointments when he stated that Republicans would be outraged if the president nominated a union attorney to serve on the Board (cite). In response to accusations of bias, Beeson and his supporters argued that such a background is an asset rather than a liability because it provided him with expertise and insight into daily labor-management relations. Beeson was approved only after harsh critique by Senate Democrats and a close 45-42 vote for his nomination (Congressional Record, S1978 (1954)). The appointment of Beeson probably received such criticism because he was the fifth member appointed and was seen as tipping the balance in favor of employers.³

The Nixon Board. Presidents Kennedy and Johnson continued the practice of making relatively neutral appointments to the NLRB. Nixon, however, took a different approach. In 1970, he nominated Edward Miller to chair the Board. Miller had spent most of his legal career defending business interests. The AFL-CIO mounted a fierce opposition campaign that argued for the rejection of all partisan candidates. George Meany, the AFL-CIO President, noted that many government appointees move in and out of private sector employment. NLRB appointments hoping to return to a career in business, he argued, could not be expected to render impartial decisions. Moreover, Meany emphasized that organized labor had never pushed for a union official to serve on the Board. And all prior Democratic Board appointees were from impartial backgrounds. Meany stated: “We believe that no one should be appointed to the Board from the ranks of labor or management, and that includes union lawyers and employer lawyers

³ Much of the criticism of Beeson was not about his business background. Rather, he was accused of lying under oath about severing ties with his former employer. And there was concern that he was too much of a friend to Guy Farmer and would not be an independent voice on the Board (see Senate Committee on Labor and Public Welfare, Nomination of Albert C. Beeson to be a Member of the National Labor Relations Board, Supplemental Minority Views. No. 83-2, part 2. 1954).

... its members are supposed to represent the general public, and not the special viewpoints of labor or management” (Hearings on Nomination of Edward B. Miller 1970:35).

Similar to the events in Beeson’s confirmation hearing, Miller’s supporters framed his prior experience as an asset. In short, they declared that his real-world experience as a management lawyer provides invaluable practical knowledge. And they argued: “... any of us who understand the function of advocacy recognizes that ... attorneys speak for one side or another [and approach cases with] ... some basic sense of fairness and personal integrity” (Hearings on Nomination of Edward B. Miller 1970: 19). In addition, Beeson supporters argued that the real threat to impartiality was the appointment of unknowledgeable Board members from government service rather than from the private sector.

Ultimately, the Miller nomination was accepted. Somewhat surprisingly, the committee that reviewed Miller’s background, was largely Democratic. The Presence on the committee of well-known liberal Democrats like Walter Mondale and Edward Kennedy did not affect the outcome and Meany’s testimony did not sway the committee. Miller did not receive any “No” votes from the committee or the Senate. Gross (1995: 220) attributes this to the perception that Miller was the “least objectionable” of the potential Nixon appointees. For some, congress’ receptivity to Miller marked a change in attitudes about the Board. The traditional practice of impartial appointments to the Board was eroding.⁴

The Reagan and Bush Boards. President Reagan created the greatest historical shift in Board appointments. He initially sidestepped the traditional pool of attorneys for his NLRB

⁴ While Nixon and Ford drew some appointments from the ranks of management attorneys, President Carter continued the pattern of not appointing members with either management or labor backgrounds. Ford’s appointment of management attorney Peter Walther received less contentious debate as he was generally viewed as less “far to the right” than NLRB member Kennedy who preceded him (Gross 1995: 232).

appointments: “President Reagan ... departed dramatically from the approach taken by his Republican predecessors. Reagan’s initial nominees were not establishment-type management representatives with a basic commitment to the NLRA’s purposes and processes. Rather, they were apostles for union avoidance ...” (Brudney 2005: 248).

His first nomination was for John Van de Water as NLRB chairperson. Van de Water was not an attorney. Rather, he was a management consultant with particular expertise advising firms on how to avoid unionization. During his confirmation hearing, an AFL-CIO official remarked on Van de Water’s union busting legacy. He provided a particularly damning quote from a lecture in which Van de Water declared: “In the last 130 union elections I’ve been involved in, where we had to go to an election ... the unions lost the election in 125 of the cases” (Senate Committee on Labor and Human Resources, Hearings on the Nomination of John R. Van de Water 1981: 38.). In the same hearing, an opponent of his nomination produced a letter authored by Van de Water. This letter, to be used by management to discourage union support, suggested that unionization efforts may result in chaos, bombings, murder and brutal violence. Thomas Donahue, of the AFL-CIO, argued that this type of appointment was a greater violation of the public trust than even a management attorney would be. The committee vote ended in a tie and his nomination failed. Yet, he served under a recess appointment from August of 1981 through December of 1982.

Reagan’s next appointment was Donald Dotson. Dotson was a corporate legal consultant, who specialized in union avoidance. He was Reagan’s Assistant Secretary of Labor prior to the NLRB appointment and had worked for conservative Senator Jesse Helms. The Dotson confirmation received little opposition. This was probably in part because he had already been confirmed as assistant secretary of labor. Having spent much energy on opposing the Van de Water nomination, organized labor said little about Dotson.

Questions about Dotson's ability to issue impartial decisions arose in subsequent hearings about NLRB operations. A House committee presented several letters Dotson authored and submitted to law journals. In one he argued that the NLRB acted as "a legal aid society and organizing arm for unions" and that collective bargaining was a "labor monopoly" that destroyed the "marketplace as the mechanism for determining the value of labor." In this hearing he criticized prior Boards as being ignorant of the "laws of economics" and thereby contributing to U.S. industries' weakened position with regard to their foreign competition (*Joint Hearings: Oversight of the NLRB* 1984: 80). Dotson's tilt toward business interests was clear.

Reagan also appointed Robert Hunter, an aide to Republican Senator Orrin Hatch, to serve on the Board. Hunters' supporters portrayed him as conservative but fair (cite). But his published work contradicted this position. Hunter authored a chapter in a Heritage Foundation book that criticized past NLRB's as having a pro-union bias. His chapter also argued that private sector collective bargaining experience should be the prime criteria for holding an NLRB post. His distaste for government regulation of business was not limited to the NLRB. Hunter also criticized the Occupation Safety and Health Administration among others (Heatherly 1981). Reagan followed this appointment with Patricia Diaz Dennis, another management attorney. Criticism against Dennis emphasized her inexperience as she had only been out of law school for ten years. Nevertheless, both Hunter and Dennis were appointed to the Board without substantial opposition.⁵

Faced with the increasing presence of business attorneys on the Board, organized labor changed its argument about partisan appointees. Lane Kirkland, AFL president, declared that times had changed: "In the past ... we sought the appointment of individuals who ... had not

⁵ Hunter had also been the coordinator of the filibuster that ended the attempt at reforming labor law in the late 1970s. This earned him a strong anti-union reputation among labor.

been the agents of management or labor... These nominations ... are evidence that there will be no reciprocal restraint... as a matter of practical self-protection we hereby renounce our prior position in this regard. Like our management counterparts, we will no longer bind ourselves with any limitations and we will act on the premise of this administration – that the appointees to the Board need not have a significant record in the field but only need be ideological supporters of the tendency in power” (Daily Labor Report. Feb. 1, 1983). Other union leaders made similar statements. Lane Kirkland suggested that the Board was transformed into an instrument of anti-union employers. And Kirkland suggested that perhaps labor should mount a political drive for the repeal of the National Labor Relations Act, because labor would be better off without it as it was being administered (Trost and Apar 1984).⁶

The Bush NLRB was a subtle continuation of the Reagan Board. Bush appointed two management attorneys in Clifford Oviatt and John Raudabaugh. Perhaps because they were growing accustomed to the trend of partisan appointments, the AFL-CIO did not publicly oppose these nominations. Both men were private attorneys who specialized in labor law, from the business side. The Bush Board is generally viewed as a somewhat moderate board that did not emphasize overturning precedents. Rather, it attempted to maintain the regulations established under Reagan’s NLRB (Gross 1995).

The Clinton Board. Clinton continued the trend of partisan appointments. But, he appointed both pro-management and pro-labor members. He was the first Democratic president to appoint a management lawyer to the Board. In fact, he appointed three. And, Clinton’s appointees also included three union attorneys. Indeed, he was the first president to appoint union attorneys.

⁶ Reagan also appointed Rosemary Collyer, Marshall Babson, and Mary Cracraft, all of whom were management lawyers.

The most vigorous confirmation battle after Reagan's John Van de Water, was that of Roger B. Gould IV— Clinton's choice for chairman. Gould seemed well-suited for the position. He was a Stanford law professor and a labor lawyer who had previously worked for both labor and management. But, his published work troubled some congresspersons. Some argued that his work showed his pro-union bias and others accused Gould of unethical practices in his prior legal career. And, in a revival of 1950s anticommunism, some congressional staff members suggested that he was associated with communist organizations (Gould 2000; Bodah 2001). Nevertheless, Gould was approved with a slim margin of support.

Clinton faced a particularly conservative and combative congress. Republican leaders on the Senate Labor and Human Relations Committee intimated that they would block all NLRB appointees unless Clinton included their preferred candidates (Flynn 2000; Bodah 2001). The chosen management attorneys received high praise from the U.S. Chamber of Commerce and other business groups (Bernstein 1997).

By the 1990s, congressional leaders increasingly accepted the idea that the NLRB should explicitly represent the competing interests of labor and business. And, this led to the increased use of "packaged" appointments (Brudney 2005). Hence, Clinton's appointment of management attorneys helped him win congressional approval for his other nominations (Kline 1999). Under these conditions, the Board had been transformed from its foundation as an impartial body that acted in the public interest into an organization riven with blatant partisanship. Table 1 shows all of the NLRB members since the Harry S. Truman administration. The management attorneys are listed in bold print. Management attorneys are much more likely to be present in the later years. In addition, the presence of both union and management attorneys on recent Boards marks the increasingly adversarial nature of the NLRB.

Table 1. Members of the NLRB, From President Truman to President Clinton.

Member Name	Occupational Background	Appointing President	Member Name	Occupational Background	Appointing President
Paul Herzog	Public Service	Truman	Robert Hunter	Public Service	Reagan
James Reynolds	Public Service	Truman	John Van de Water	Business Consultant	Reagan
Abe Murdock	Public Service	Truman	John Miller	Public Service	Reagan
Copeland Gray	Business Manager	Truman	Donald Dotson	Business Attorney	Reagan
Paul Styles	Public Service	Truman	Patricia Diaz	Business Attorney	Reagan
Ivar Peterson	Public Service	Truman	Dennis		
Guy Farmer	Business Attorney	Eisenhower	Wilford Johansen	Public Service	Reagan
Philip Ray Rodgers	Public Service	Eisenhower	Marshall Babson	Business Attorney	Reagan
Albert Beeson	Business Manager	Eisenhower	James Stephens	Public Service	Reagan
Boyd Leedom	Public Service	Eisenhower	Mary Cracraft	Business Attorney	Reagan
Stephen Bean	Public Service	Eisenhower	John Higgins	Public Service	Reagan
Joseph Jenkins	Business Attorney	Eisenhower	Dennis Devaney	Public Service	Reagan
John Fanning	Public Service	Eisenhower	Clifford Oviatt	Business Attorney	Bush
Arthur Kimball	Public Service	Eisenhower	John Raudabaugh	Business Attorney	Bush
Frank McCulloch	Public Service	Kennedy	John Truesdale	Public Service	Clinton
Gerald Brown	Public Service	Kennedy	William Gould	Academia	Clinton
Howard Jenkins	Academia	Kennedy	Margaret Browning	<i>Union Attorney</i>	Clinton
Sam Zagoria	Public Service	Johnson	Charles Cohen	Business Attorney	Clinton
Edward Miller	Business Attorney	Nixon	John Truesdale	Public Service	Clinton
Ralph Kennedy	Public Service	Nixon	John Higgins	Public Service	Clinton
John Penello	Public Service	Nixon	Sarah Fox	<i>Union Attorney</i>	Clinton
Betty Murphy	Private Attorney	Ford	Wilma Liebman	<i>Union Attorney</i>	Clinton
Peter Walther	Business Attorney	Ford	J. Robert Brame	Business Attorney	Clinton
John Truesdale	Public Service	Carter	Peter Hurtgen	Business Attorney	Clinton
Don Zimmerman	Public Service	Carter	John Truesdale	Public Service	Clinton

Board Composition. The appointment process is fundamental to presidential power. To the extent that they are able to do so, presidents appoint individuals with ideologies similar to their own. Appointments sometimes cross party lines. Nevertheless, winning favor with the president is an important method of retaining one’s position and gaining reappointment. NLRB members administer the Labor Management Relations Act (LMRA). The LMRA is subject to interpretation. Some believe that the Act should encourage collective bargaining, and others think it should ensure workers’ freedom of association. This legal ambiguity opens the door for members to issue decisions based on partisan tendencies or in the interests of self-preservation. Given the prior historical discussion, *I expect that an increase in the proportion of NLRB*

members appointed by a Republican president will be associated with an increase in pro-business ULP decisions.

Other quantitative studies of the NLRB have completely ignored the increased tendency of presidents to appoint management attorneys (see Table 1). As prior discussion showed, there has been a good deal of debate about appointing management attorneys to the Board. Much of this discourse was about whether such appointees could put their prior careers aside and serve as neutral adjudicators of labor disputes. Some argued against management attorneys because their strong ties to the business community are a fundamental conflict of interest. Brudney (2005: 246), moreover, reports that about four fifths of the management-side attorneys who served on the Board returned directly to management representation upon leaving the Board. A NLRB appointment, it appears, is merely a brief interlude in a long career of direct management advocacy for some Board members. Given this situation, it is unlikely that management attorneys would jeopardize their future careers by supporting organized labor while serving on the Board. Are former management attorneys able to issue nonpartisan decisions? In an unguarded moment, Peter Hurtgen seemed to provide an answer. Hurtgen, a long-time business attorney appointed to the Board in 1997, openly discussed how NLRB members work in the interests of particular “*constituents.*” (Emphasis mine. Daily Labor Report. 2000, January 10). This comment reflects the ideological cleavages on the Board. *I expect that an increased proportion of management-side attorneys on the Board will be related to more pro-business decisions.*

Economic Conditions. Class-based state theories (Block 1977; Offe and Ronge 1984) argue that the government and the economy operate in symbiotic fashion. Political leaders are held accountable for economic conditions. Politicians presiding over economic recessions are much less likely to be reelected (Hibbs 1987). The Presidency of Jimmy Carter is a case in point.

Carter's inability to win a second term reflected public displeasure with economic conditions during the 1970s.

Yet, presidents do not control the economy in its entirety. A capitalist economy requires investment. But, perceptions of economic health, or business confidence, affect investment behavior. When the economic outlook is strong, investments are likely to increase. When the economy seems unstable or weak, investment will decline and the economy may suffer. Policies or directives that bolster the economy are therefore a key component of maintaining political power. And, facilitating business confidence is an important way to generate capital accumulation and state legitimacy.

This arrangement bestows implicit power on businesses. Conditions that harm business profits may induce unemployment and an unhappy citizenry. Hence, presidents and other political leaders pursue policies and practices that will encourage prosperous economic conditions (Lindblom 1977; Poulantzas 1969, 1980). As Offe and Ronge (1984) argue: "the material content of state power is conditioned by the continuous requirements of the accumulation process" (Offe and Ronge 1984: 121). It follows that business political power occurs in the absence of direct political pressure. The prospect of a decline in business confidence is enough to prompt state managers to take corrective measures (Block 1979). When the costs of doing business are high, the state may be reluctant to impose additional costs on employers. Hence, I expect that *all else being equal, during economic contractions the Board will favor employers. And, during economic expansions, the Board will be more likely to vote in labor's favor.*

The percentage of unemployed workers is another pertinent economic condition. Other analyses of the NLRB find that Board decisions favor labor when unemployment is high (Delorme et al. 1981; Moe 1985; Cooke et al. 1995). But these studies suggest that the reason

for this relationship is unclear. It may be the case that individual Board members are more sympathetic to workers when their potential for displacement is high. But another consideration is in order. If state managers are indifferent to the suffering generated by high unemployment, they will face reduced support and diminished reelection prospects. NLRB members, like members of other federal agencies, should be influenced by appointing Presidents (Wood and Waterman 1993, 1994; Moe 1987; Durant 1992). And Presidents that hope to avoid declines in legitimacy may encourage regulatory agencies to grant some measure of relief to workers who fear for their jobs. Given the findings of prior studies, *I expect that increased unemployment rates will be associated with decreases in pro-employer NLRB decisions.*

Congressional Influence. Congress holds influence over the NLRB through appointment confirmations, appropriations, and oversight and investigative processes. The Board is a nominally independent agency. But historical accounts suggest that congress has, at various times, monitored and attempted to influence NLRB decisions. Congressional interest in the Board is partly rooted in representatives' and senators' efforts to support their labor or corporate allies. But ideological proclivities also influence congressional interference with the Board.

Some in congress consider the NLRB to be an extension of organized labor into the governing apparatus. Hence, conservative congress members have been particularly observant of Board activities. Roger Gould, President Clinton's NLRB Chair, provides some relevant accounts. Gould made several public statements that opposed laws that may harm unions. After these statements, he was repeatedly questioned in oversight hearings about his ability to make impartial decisions. And during a 1995 oversight hearing, Representative Randy Cunningham (R-California) characterized the Board as a pro-labor entity and asked the NLRB chairman: "Why should we support your organization when millions of dollars are dumped into Democratic campaigns ... where over 90 percent of the dollars go to Democrats from the unions" (U.S.

House, July 12, 1995. p.47)? In light of repeated interrogations, Gould declared that he felt like congressional “Republicans’ number one enemy” (Gould 2000: 255).

Congress is also willing to encourage action on particular NLRB cases. Bodah (2001) documents written correspondence between congress and the Board. In one case, the Board received more than a dozen letters from congress members about a pending case against *Overnite Transportation Company*. Some of these letters contained threatening statements about the agency’s budget: “It is important to realize that the U.S. is entering a time of fiscal austerity... all parts of the federal government are being reviewed for ways to cut spending ...” The Board also received a letter signed by twelve House members regarding the *Roadway Package System* case, which considered whether temporary workers could acquire union representation: “Although a decision is not expected for several months we would like to stress our concern on these very important labor issues ... We find it particularly troubling that you would consider changes in such sensitive areas of the law ... Any sudden changes in these interpretations could have a seriously destabilizing effect on the U.S. economy” (Bodah 2001: 712). These are but a few documented instances of congressional attempts to influence the NLRB.

Congressional actions toward the NLRB are related to political partisanship and associated ideas about the role of government in labor-management regulation. Republicans have been much more critical of labor’s agenda. When Republicans took control of congress in 1994, they recommended cuts in the NLRB budget. And they used an appropriations hearing to attack Board decisions and question other aspects of NLRB operations. Republican congressional leaders also attempted to directly influence the Board by attaching “riders” to its appropriation (Gould 2000). *A Republican-dominated congress should be associated with NLRB decisions that are more favorable to employers.*

A STATISTICAL APPRAISAL OF BOARD DECISIONS

Research Design. Standard logistic regression assumes that error terms are uncorrelated across observations. But, this assumption is violated when the data have a nested structure. That is, when units in one group are more similar in some way than they are to those in other groups. To account for this, I use logistic regression with robust variance estimation for clustered data in STATA version 9. I specify that observations are independent across Boards but not within Boards. There are twenty-five distinct NLRB configurations in this analysis. This technique yields unbiased estimates of coefficients and standard errors and are appropriate given the nature of my data (Aldenderfer and Blashfield 1984; Williams 2000).⁷

Dependent Variable. My data are from the *Annual Report of the National Labor Relations Board* for each year between 1970 and 2002. This report is a rich resource for data on many aspects of the Board's behavior. I content-coded the section on Unfair Labor Practices from each report and obtained 1123 cases. I created a dummy variable for the case outcome. Cases decided in favor of the employer are coded as 1 and decisions against the employer are coded as 0.

The Unfair Labor Practice cases discussed in the *Annual Reports* are a subset of all cases reviewed by the Board. These cases are highlighted as the most significant and or most complex for each year. It is likely that such cases are qualitatively different from more mundane issues addressed by the Board. This is because the most significant cases are more likely to influence important aspects of labor law. It follows that more complex cases involve a greater amount of interpretation. And because NLRB members have much discretion in interpreting labor law, their partisan inclinations should be more evident in these cases.

⁷ The model passes STATA's linktest, which detects model misspecification due to omitted variable bias. And it passes the Hosmer-Lemeshow test for goodness of fit.

Explanatory Variables. I include a dummy variable that equals one when a Republican president is in office. The percentage of Republican appointees on the NLRB is drawn from official staff lists available from www.nlr.gov. I also use a measure of the percentage of management attorneys serving on the Board. Data on the prior careers of NLRB appointees were coded from *Who's Who in American Law* for various years, and Flynn (2000). I include a dichotomous measure that equals one when the U.S. Senate is dominated by Republicans. This item is from *The Statistical Abstract of the United States* for various years. I gauge economic conditions with measures for gross domestic product and unemployment. These items were obtained from the *Compustat* business statistics service. I also include two control variables. I use a dummy indicator for whether the type of case under consideration by the Board is a complaint about employer interference in union activity. And I include a yearly linear trend variable.

Specification. The prior discussion indicates that the coefficients on four predictors should be positive in this analysis. GDP and unemployment should be negative. A general specification of the logistic model that predicts whether NLRB unfair labor practice decisions will favor employers is:

$$\Pr(\text{PROEMP}=1) = F(b_0 + b_1\text{RPRES} + b_2\text{RAPPT} + b_3\text{MGMNT} + b_4\text{RSENATE} + b_5\text{GDP} + b_6\text{UNEMP} + b_7\text{EMPINTER} + b_8\text{YEAR}) \quad (1)$$

Where $\Pr(\text{PROEMP}=1)$ is the probability that the NLRB will issue a pro-employer decision. F is the cumulative density function. RPRES is whether a Republican president is in office. RAPPT is the percentage of NLRB members appointed by a Republican President. MGMNT is the percentage of management attorneys on the Board. RSENATE is a dummy indicator for whether Republicans dominate the Senate. GDP is the national gross domestic product.

UNEMP is the national unemployment rate. EMPINTER is a dummy for whether the case is about employer interference with organizing. And YEAR is a linear time trend. Table 2 shows the expected signs, the means, and standard deviations.

Table 2. Predicted Signs and Descriptive Statistics (N=1136 NLRB cases)

	Predicted Sign	Mean	Std. Dev.	Min	Max
Pro-Employer NLRB vote		0.439	0.496	0	1
Republican President	+	0.618	0.486	0	1
% Appointed by Republican	+	0.532	0.149	0.2	0.75
% Management Attorneys	+	0.216	0.166	0	0.6
Republican Dominated Senate	+	0.333	0.471	0	1
Gross Domestic Product	-	6070.012	1600.501	3771.9	10083
Unemployment	-	6.502	1.318	4.02	9.71
Employer Interference Case		0.740	0.439	0	1
Year		1984.169	8.424	1970	2002

ANALYSIS AND FINDINGS

Table 3 presents the logistic regression results on the determinants of NLRB decisions that favor employers. Model 1 focuses mainly on political factors. It assesses the effects of Republican presidency, Republican appointments to the Board, the percentage of management attorneys on the Board, and whether the Senate is dominated by Republicans. The findings for this model show that when a Republican president is in office the likelihood is greater that the NLRB will favor employers. Similarly, when the Board is dominated by Republican presidential appointments employers are favored. Interestingly, Republican dominance in the Senate does not have a significant effect on NLRB unfair labor practice decisions.

In Model 2 I add two control variables. I include a measure for whether the case was based on employer interference in union organizing. And I add a linear trend term to control for

the temporal trend in ULP decisions. The measures for both the employer interference cases and the linear time trend are not significant.

In Model 3 I add variables that gauge macroeconomic conditions. The important political findings from Model 1 persist. Having a Republican President, and an increase in the number of Republican-appointed NLRB members are all associated with increased support for employers. Expansions in the percentage of management attorneys on the Board also continue to contribute to pro-employer ULP decisions. The gross domestic product measure is negative and significant. As expected, during economic expansions the NLRB seems more willing to side with labor. Similarly, the findings suggest that during expansions in unemployment the Board will favor unions and workers.

Table 3. Logistic Regression Predicting NLRB Pro-Employer Votes (N=1136)

	Model 1			Model 2			Model 3		
	Coef.		Std. Error	Coef.		Std. Error	Coef.		Std. Error
Republican President	0.70	***	0.18	0.78	***	0.15	0.74	***	0.16
% Appointed by Republican	0.90	*	0.46	0.96	*	0.47	0.79	*	0.42
% Management Attorneys	1.14	***	0.34	1.03	***	0.30	1.35	***	0.32
Republican Dominated Senate	0.02		0.12	-0.03		0.10	0.02		0.12
Gross Domestic Product							-0.00	*	0.00
Unemployment							-0.21	*	0.08
Employer Interference Case				0.12		0.21	0.11		0.21
Year				0.01		0.01	0.16	*	0.09
Constant	-1.43		0.22	-26.27		16.45	-318.81		181.90
Pseudo R2	0.05			0.05			0.05		
Log Pseudolielihood	-734.16			-732.70			-730.28		

Note: Clustering on NLRB, there are 25 distinct NLRBs in my time period

*p ≤ .05, **p ≤ .01, ***p ≤ .001 (two-tailed tests)

CONCLUSIONS AND IMPLICATIONS

The findings show that macroeconomic conditions influence ULP case outcomes. The NLRB seems willing to assist workers and unions when employment conditions are unfavorable.

Aiding workers lends legitimacy to the state. But there is also a tendency to tilt toward labor

when the economy is expanding. This suggests that the Board is not completely indifferent to workers' and unions' concerns. Nevertheless, the political outcomes are more central to my theoretical concerns.

I found evidence for political influence on NLRB unfair labor practice decisions. The configuration of constituents that rely on Board decisions make it fertile ground for political manipulation. When Republican Presidents are in office, employers are favored. And when Republican appointments dominate the Board its decisions benefit employers. Political partisanship theory is supported. This should not be surprising given the dominant political parties' ideological differences over labor-management relations. On the other hand, the Senate has held heated confirmation hearings about NLRB appointments and engaged in attempts to sway Board decisions. Despite these efforts, Republican dominance in the Senate was not shown to be significantly associated with unfair labor practice decisions.

The evidence also suggests that the increased appointment of management attorneys to the NLRB poses additional challenges for labor. Recall that during confirmation hearings, some critics suggested that having former management attorneys on the Board was a troubling practice. Many assumed that former management lawyers would hold partisan anti-union beliefs that would affect their decisions. And others suggested that management attorneys could not be impartial because their future career prospects rested on their amicable relations with business. Brudney (2005:246) reiterates this point: "The prediction that appointees selected from the management bar would effectively use their service on the Board to enhance their partisan status in subsequent career moves has turned out to be disturbingly accurate. Nearly four-fifths of the Board appointees who came directly from management positions returned straight to management representation upon leaving the Board." The increased presence of business attorneys on the Board does not bode well for labor.

What occurs at the workplace is vital to the economic and social fate of most Americans. The oversight of workplace relations has undergone a fundamental shift over the past three decades. But little systematic attention has been paid to this change.

The major political parties are polarized over labor-management relations. And it is clear that some in congress view the NLRB as a labor ally that must be restrained. This situation has probably increased attention to NLRB affairs by union's congressional allies and adversaries. But perhaps most importantly, the rise of a particularly conservative brand of politics has fueled the appointment of management attorneys to the Board. What better ways to generate "business confidence" than to allow former (and probably future) management representatives to regulate labor-management relations?

Both the 1935 Wagner Act and the 1947 Taft Hartley amendments include statements about the aims of labor-management regulation. This process is to be in the interests "inimical to the general welfare" (LMRA 1947; 61 Statute 136). But decisions based on political partisanship and business ties, rather than the public interest seems to be the increasingly common historical trend. This is particularly the case in the NLRB's most important cases.

In recent years, unions have made much ado about revitalization. The recent fracturing of the AFL-CIO was in large part due to differences over how best to improve organized labor's status. Most revitalization arguments emphasize the need for a massive increase in union organizing. But union organizing activities are regulated by the state. And an unreceptive state translates into hard times for labor unions. These findings suggest that an overemphasis on organizing to the exclusion of political action is an error. A healthy labor movement requires a state that respects workers' rights. If labor cannot yield political gains then widespread revitalization is unlikely at best.

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