If the nineteenth century saw pro-union workers and their organizations routinely attacked with spies and thugs, today the vehicles of choice are more often high-paid union-busting law firms and consultants. While there is no shortage of anti-union lawyers in this country, attorneys on the other side can seem an endangered species, even in New York, the most unionized state in the country. Moreover, since the start of the financial crisis and the 2010 Republican electoral victories, more and more corporations and their political allies have stepped up their attacks on unions. Seldom has it been more difficult for unions to avoid accepting harsh contract concessions or to win new organizing drives.

Beth M. Margolis is a "union-side" labor lawyer. She has just completed two decades as a partner at Gladstein, Reif & Meginniss LLP, consistently ranked among the country's top labor law firms. Since its opening in 1976, the Manhattan-based firm has only represented workers and their organizations, reflecting its deep commitment to the labor movement. The firm's website states that it is organized around the principle that "workers and their organizations deserve top-quality legal representation just as much as corporations and large institutions that can pay top dollar for their lawyers." Several major unions in the New York-New Jersey-Connecticut area are represented by Gladstein, Reif & Meginniss including: the Transportation Workers Union Local 100, the Communications Workers of America, the Service Employees International Union Local 1199, as well as several local chapters of the American Association of University Professors (AAUP), including the chapter representing the faculty of Hofstra University.

Educated at Barnard College and at New York University School of Law, Beth Margolis clerked for the Honorable Dickinson R. Debevoise in federal district court in Newark, New Jersey. She also taught at NYU Law School. Before joining Gladstein, Reif & Meginniss in 1991, she was an associate at Rabinowitz, Boudin & Standard, a New York firm well-known for representing often-controversial individuals, religious groups and foreign governments in civil rights and civil liberties cases.

Given the preeminence of law firms that serve corporate interests, we wanted to ask Ms. Margolis how and why she chose to work for a firm like Gladstein, Reif & Meginniss, and what advice she might offer to anyone interested in a career in union-side labor law. We also wanted to ask about the state of worker's rights and labor law in America today from the viewpoint of someone who is daily seeing the actual tactics and effects of today's corporate attack on unions. Does the Employee Freedom of Choice Act (EFCA), fiercely opposed by the business lobby, have the potential to shift the power balance in labor organizing? What new issues and strategies are drawing the attention of the labor movement today? In a recent arbitration, Margolissuccessfully raised the question of the need to renegotiate the interest-rate swaps of public entities, which are needlessly draining them of funds that could otherwise go toward serving the public and providing fair wages to public sector workers. Gladstein, Reif & Meginniss also sometimes chooses the difficult task of representing individual unorganized workers, sometimes successfully, given the great difficulties of doing so.

In early August, Conrad Herold and Greg DeFreitas met with Beth Margolis at her firm's offices in Manhattan's Greenwich Village neighborhood.

representing and the setup, they have more or less elements of due process. Sometimes you have a nice real hearing with evidentiary ruling and sometimes it is just a lot of, you know, sort of horse trading. It depends on the arbitrator. It depends on the union. For instance, I represent several locals of transit bus operators and their arbitration calendar can have anywhere from 5 to 15 cases on them in a day. So you can imagine that that does not allow for a full evidentiary hearing and there is a lot of horse trading that goes on. You know, depending on the arbitrators, some arbitrators just kind of ask the lawyers, “What’s this about,” and then get a fix on and it then say, “Why don’t you do this.”

Other unions that we represent, when you have a grievance it’s a grievance and you have at least a day of hearings, and oftentimes many more than one day. It’s conducted much more like a typical trial.

L , Yes, he usually was. Diamandopoulos was right after him.

L , I do not believe so. They were paid by going on junkets. He used to take them to the Harvard Club and order, you know, some

and I think he got angry about it. As a result, it made its way into the decision, which was good because it confirmed something that the unions had already been saying, which is: “Yeah, maybe you won’t get the money back, but why wouldn’t you even go and ask? You asked everybody else. You’re asking us.” It was very satisfying that the arbitrator actually said that.

You asked why would the banks renegotiate these swaps. Obviously people enter into deals. Sometimes they do well, sometimes they don’t do well. My view is a public entity should never be entering into deals like these because they are basically just bets. That’s all they are. It’s just gambling and you’re gambling with public funds. But the reason why the banks should really feel pressured to do something about this is that the reason that the banks are making out like bandits right now is because the banks crashed the economy! If they hadn’t crashed the economy and the Fed wasn’t setting the interest rates at this historically low levels, they wouldn’t be making this money. They are making out twice off of taxpayers’ money. It seems to me that the power is there if it could get some traction and people could get behind it.

L, Well, it definitely will come up in this round of bargaining again. The thing that I find sad about it is that the MTA sees this as an adversarial issue. They are fighting us on this. It’s a perfect example of an issue where we should be on the same page. And we could work together. Why wouldn’t they want to get out of these swaps if they could? There is no rational reason.

L, It is beginning, yes.

L, And we should protect them at all costs.

L, Well, that’s a very good point. And I’m sure he has a significant amount of influence over the MTA board. I mean, he appoints a certain number of board members and I think he wields a lot of influence with them.

L, I do think they would. I don’t see it happening in New York. But the fact of the matter is that the more it happens in any state, even if bargaining rights aren’t more limited for public sector workers in New York, the weaker it makes the public sector unions in New York. Because everyone is watching what is happening around the country. Even though the citizens of the state of New York might not support legislation to further limit bargaining rights of public sector workers, I think you get a lot of support from people, unfortunately, to limit pension rights or health insurance rights. I think that’s part of the vicious cycle that we’re in now, which is we’re kind of in this race to the bottom. It’s really unfortunate. People seem to be feeling that if they don’t have something, the way to solve that is to take it from the people who have it, rather than to insist on getting it for themselves. Until we can turn that around, we’re just going to keep sliding down to the bottom. How do we turn it around?

L, I don’t know. I mean, there was recently an article in the Times asking this question: how are unions going to survive? It started by quoting someone – a labor economist, I believe – saying that the unions are inevitably going to continue shrinking until they disappear. It turned out that he was quoting someone back in the 1930s. The point that the journalist was making is, “See, someone was saying that then and then in the next two decades unions grew to all-time highs.” So the point being that just when we think we’re at the bottom, maybe we aren’t really.

But the one thing he didn’t address in that article is that, at the time that was said, the National Labor Relations Act hadn’t been passed. When it was passed, it did initially enable the labor movement to grow and it did initially give protection to concerted protected activity.

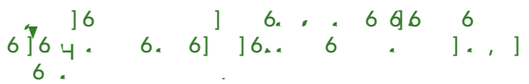
I think one thing we need is to have the law changed. But I think – and I think it’s a good thing and it’s a necessary thing – is that unions are much more focused than they have ever been in the past in working with unorganized employees and employees that probably couldn’t even get organized. I think that’s really important. I mean, it’s important that the NLRB just put on its web site this whole explanation about how you can protect your rights without being in a union. I think that needs to happen, and I think that that can be a very powerful force. It’s desperately needed.



We also do a lot of that kind of work. We do a lot of wage and hourly litigation. Oftentimes it’s for undocumented workers. That’s really important; I mean, it has to be done.

BM: They always are. They are almost always paid off the books. Fortunately the law in this area remains pretty strong, and you don’t

Of course, it can help you or hurt you because chances are the employer has been too. But it's a problem. I recently had a bus operator who had a perfect record, truly a perfect record for 18 years. He got fired because he wrote a long diatribe against his supervisor, which was completely inappropriate. You know, it obviously found its way into the employer's hands and he was fired. I got him back to work, but it's very dangerous.



L, Which is exactly what he did.

L, Yeah. It was somewhat threatening. In general, the law is that employers can't discipline you for off-duty conduct, but there are several exceptions to that. One of them is if, as a result of that conduct, it would either put the employer in a bad light if the public knew about it. For instance, there have been these cases where, say, a cop brandishes a gun at someone off duty. That doesn't look good for the police department if the public finds out about it. So that's one exception.

Another exception is if the person would pose a danger to his coworkers or his supervisors. The third is if the coworkers won't work with the person as a result of the off-duty conduct. The theory