

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

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In the Matter of

SPRINGFIELD SCHOOL COMMITTEE

and

SPRINGFIELD EDUCATION ASSOCIATION

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Case No.: MUP-18-6667

Date Issued: October 20, 2023

Hearing Officer:

Kathleen Goodberlet, Esq.

Appearances:

Maurice Cahillane, Esq. - Representing the Springfield School Committee

Mark Hickernell, Esq. - Representing the Springfield Education Association

HEARING OFFICER'S DECISION

1 SUMMARY

2 There are two issues in this case. The first is whether the Springfield School  
3 Committee (School Committee) violated Section 10(a)(5) and, derivatively, Section  
4 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by unilaterally  
5 changing, in five schools, the manner and location in which Springfield Education  
6 Association (SEA or Association) representatives may meet with teachers. The second  
7 issue is whether the School Committee independently interfered with, restrained and  
8 coerced its employees in the exercise of their rights guaranteed under Section 2 of the

1 Law in violation of Section 10(a)(1) of the Law by the Superintendent's and various  
 2 school principals' conduct in directing Association representatives to meet with teachers  
 3 during the school day in the teachers' room/lounge/lunchroom. I do not find that the  
 4 School Committee violated the Law as alleged, and dismiss the Complaint in its entirety.

5 STATEMENT OF THE CASE

6 On April 6, 2018, the Springfield Education Association (Association) filed a  
 7 Prohibited Practice Charge (Charge) with the Department of Labor Relations (DLR)  
 8 alleging that the Springfield School Committee (School Committee) had engaged in a  
 9 prohibited practice within the meaning of Section 10(a)(5), and derivatively, Section  
 10 10(a)(1) of the Law. Following an investigation, the DLR issued a Complaint of  
 11 Prohibited Practice on January 29, 2020. On July 16, 2020, and September 9, 2020, I  
 12 conducted a remote hearing via WebEx, during which the parties received a full  
 13 opportunity to be heard, to examine and cross-examine witnesses, and to present  
 14 evidence. The parties filed post-hearing briefs on November 23, 2020. Based on the  
 15 record, which includes witness testimony, my observation of the witnesses' demeanor,  
 16 stipulations of fact, and documentary exhibits, and in consideration of the parties'  
 17 arguments, I make the following findings of fact and render the following opinion.

18 STIPULATIONS<sup>1</sup>

19 Background  
 20

- 21 1. The City of Springfield (City) is a public employer within the meaning of Section 1
- 22 of the Law.
- 23
- 24 2. The School Committee is the City's representative for the purpose of collective
- 25 bargaining with school employees.

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<sup>1</sup> The parties' stipulations have been lightly edited for clarity and consistency throughout the text of this Decision.

- 1 3. The Association is an employee organization within the meaning of Section 1 of  
2 the Law.  
3
- 4 4. The Association is the exclusive bargaining representative for a bargaining unit of  
5 teachers, educators, and counselors (Unit A) employed by the School Committee  
6 in the Springfield Public Schools District (District).  
7
- 8 5. The School Committee maintains approximately sixty (60) schools in the District.  
9
- 10 6. At all relevant times, principals employed by the District at each of the schools  
11 are agents of the Committee.  
12
- 13 7. The School Committee and the Association are parties to a collective bargaining  
14 agreement for the period July 1, 2017 to June 30, 2020 (2017-2020 Agreement)  
15 covering teachers at all Pre-K to 12th Grade schools within the Springfield Public  
16 Schools system, except certain middle schools and a high school that are part of  
17 the Springfield Empowerment Zone Partnership.  
18
- 19 8. Empowerment Zone Partnership Schools are managed by a Board appointed by  
20 the Massachusetts Department of Elementary and Secondary Education, but  
21 remain part of the Springfield Public Schools.  
22
- 23 9. The School Committee on behalf of the Springfield Empowerment Zone  
24 Partnership and the Association are parties to a collective bargaining agreement  
25 for the period July 1, 2018 to June 30, 2021 (2017-2021 Agreement) covering  
26 teachers at the Empowerment Zone Partnership Schools. Such an agreement  
27 has been in effect since 2014.  
28
- 29 10. The 2017-2020 Agreement contains at Article 22(B)(2) the following provision,  
30 which has been included in the parties' non-Empowerment Zone collective  
31 bargaining agreements since at least 1980:  
32  
33 Before the opening of, during lunch time, and after the close of  
34 school on school days, the Association shall have the right to use  
35 designated areas in school buildings for meetings of teachers,  
36 provided there is no interference with any scheduled school  
37 activities. The use of such designated areas shall be arranged with  
38 the Principal in advance. All requests for building use shall conform  
39 to School Committee Rules and Regulations; provided, however,  
40 that there shall be no cost to the Association for such meetings if no  
41 overtime custodial cost is involved. Any overtime cost for custodial  
42 services shall be the responsibility of the Association.  
43
- 44 11. The 2017-2021 Agreement contains at Article 13 the following language, which  
45 has been included in all of the parties' Empowerment Zone collective bargaining  
46 agreements:

1 Before the opening of, during, and after the close of school, the  
2 Association shall have the right to use designated areas in school  
3 buildings for meetings of teachers, provided there is no interference  
4 with any scheduled school activities. The use of such designated areas  
5 shall be arranged with the principal in advance. All requests for  
6 building use shall conform to any relevant school or School Committee  
7 policies provided, however, that there shall be no cost to the  
8 Association for such meetings if no overtime custodian cost is involved.  
9

10 12. Daniel Warwick (Warwick) has been Superintendent of Springfield Public  
11 Schools since 2012.

12  
13 13. Tim Collins (T. Collins) was president of the Association from 1997 to 2017.

14  
15 14. Maureen Colgan-Posner (Colgan-Posner) succeeded T. Collins as Association  
16 President in 2017.

17  
18 15. Sandra Pellegrini (Pellegrini) retired as a teacher from the Springfield Public  
19 Schools in June 2016 after 35 years of service.

20  
21 16. Pellegrini has served as an Association Member Engagement Coordinator from  
22 2016 to the present.

23  
24 17. Peter Reese (Reese) served as Association Vice President from 2007 to 2014.

25  
26 18. Since 2014, Reese has served as the Association's Professional Relations  
27 Associate.

28  
29 19. William Baker (Baker) was Chief of School Security from 2013 to present.  
30

31 November of 2017 Labor-Management Meeting

32  
33 20. On November 28, 2017, Warwick and Colgan-Posner held a regularly scheduled  
34 labor-management meeting at the Central Office location.

35  
36 21. During the meeting, Warwick and Colgan-Posner discussed Association  
37 representatives' visits to schools, among other things.

38  
39 22. [Withdrawn.]  
40

41 23. Colgan-Posner agreed that lunchrooms were appropriate.  
42

43 24. During the November 28, 2017 meeting, Warwick discussed school safety  
44 protocols with Colgan-Posner and asked her to remind Association  
45 representatives to be sure to sign in when visiting school buildings.

1 25. Colgan-Posner agreed that this is what she did.  
2

3 26. Warwick sent an email to Colgan-Posner dated December 20, 2017, the contents  
4 of which speak for themselves.  
5

6 December 20, 2017 – Harris School Events  
7

8 27. The Harris School is a Pre-K to 5 school with approximately 55 Unit A teachers  
9 and 600 students.  
10

11 28. On December 20, 2017, Colgan-Posner and Pellegrini arrived at the Harris  
12 School at 11:00 a.m. and signed in at the front office.  
13

14 29. After signing in at the front office of the Harris School on December 20, 2017 at  
15 11:00 a.m., Colgan-Posner and Pellegrini walked in the Pre-K to 1 wing of the  
16 school looking for teachers spending their lunch period in their classrooms.  
17

18 30. On December 20, 2017, Harris School Principal Shannon Collins (S. Collins)  
19 stopped Colgan-Posner and Pellegrini in the Pre-K to 1 wing at around 11:15  
20 a.m.  
21

22 31. S. Collins served as Harris School Principal during the relevant time-period.  
23

24 32. After stopping Colgan-Posner and Pellegrini on December 20, 2017, S. Collins  
25 had a conversation with Colgan-Posner and Pellegrini.  
26

27 33. Colgan-Posner and Pellegrini went to the teachers' lunchroom.  
28

29 January 10, 2018 – Milton-Bradley School Events  
30

31 34. The Milton-Bradley School is Pre-K to 5 elementary school with approximately  
32 550 students and 55 Unit A teachers.  
33

34 35. On January 10, 2018, Colgan-Posner and Pellegrini arrived at the Milton-Bradley  
35 School at 11:00 a.m. and signed in at the front office.  
36

37 36. Kristen Hughes (Hughes) served as Milton-Bradley School Principal during the  
38 relevant time-period.  
39

40 February 12, 2018 – DeBerry School Events  
41

42 37. The DeBerry School is a Pre-K to 5 elementary school with approximately 260  
43 students and 33 Unit A teachers.  
44

45 38. On or about February 12, 2018, Colgan-Posner and Pellegrini arrived at the  
46 DeBerry School at 11:15 a.m. and signed in at the front office.

1 39. After stopping Colgan-Posner and Pellegrini on February 12, 2018, Andrea  
2 Collins (A. Collins) spoke to Colgan-Posner and Pellegrini under a staircase.  
3 Principal Elizabeth Fazio (Fazio) found them there and told them to go to the  
4 teachers' lunchroom.  
5

6 February 27, 2018 – Talmadge School Events  
7

8 40. The Talmadge School is a Pre-K to 5 elementary school with approximately 250  
9 students and 27 Unit A teachers.  
10

11 41. On February 27, 2018, Pellegrini arrived at the Talmadge School.  
12

13 42. Before Pellegrini could sign in at the Talmadge School on February 27, 2018,  
14 Principal Carla Lussier (Lussier) stopped Pellegrini and directed her to the  
15 teachers' lunchroom.  
16

17 FACTS<sup>2</sup>

18 Teachers' Room/ Lounge/Lunchroom

19 Based on the totality of facts, and as a threshold matter, I find that for the  
20 purposes of this Decision, the terms "teachers' room," "teachers' lounge," and "teachers'  
21 lunchroom" all refer to the same non-classroom school room set aside for teachers at  
22 schools. Some teachers choose to eat lunch in a teachers' room/lounge/lunchroom.  
23 Other teachers choose to eat lunch in their own classrooms. However, a teacher eating  
24 lunch in their own classroom does not convert that classroom into the teachers'

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<sup>2</sup> The DLR's jurisdiction in this case is uncontested.

1 room/lounge/lunchroom as that term is defined in this Decision.<sup>3</sup> Almost every school  
2 building has a teachers' room/lounge/lunchroom, although some consist of only a table  
3 and two chairs. Teachers' rooms/lounges/lunchrooms are occasionally used for other  
4 purposes such as student testing, or meetings between outside service providers and  
5 students.

#### 6 Relevant Contractual Provisions and School Entry Protocols

7 The School Committee and the Association are parties to a collective bargaining  
8 agreement for the period July 1, 2017 to June 30, 2020 (2017-2020 Agreement)  
9 covering teachers at all Pre-K to 12th grade schools in the District, except certain  
10 middle schools and a high school that are part of the Springfield Empowerment Zone  
11 Partnership.<sup>4</sup> The 2017-2020 Agreement contains in Article 22, Association Rights and  
12 Responsibilities, the following provisions:

#### 13 B. Association Activity on the School Level

14

15

##### 1. Recognition by the Principal

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<sup>3</sup> Colgan-Posner conceded during her testimony that the term "teachers' room" also means the "teachers' lounge." However, she testified that during the events at issue, she personally decided that the "teachers' lunchroom was where the teacher was eating lunch." I dismiss her definition of the "teachers' lunchroom" because she defined this term to further her objective to meet with teachers in their classrooms. Moreover, the evidence reveals that she differentiated a teachers' lunchroom from a teacher's classroom where they ate lunch. For instance, in a conversation with S. Collins, she complained that "there were no teachers in the teachers' lunchroom eating lunch, so she was going to meet with teachers. . . in their classrooms." In another conversation with Chief Schools Officer Kim Wells (Wells), Colgan-Posner told Wells that the teachers don't eat in the teachers' lunchroom.

<sup>4</sup> None of the schools at issue in this case are Empowerment Zone Partnership Schools.





1 school day.<sup>6</sup> Association President Colgan-Posner’s opinion is that the language of  
2 Article 22 grants Association representatives the right to meet with bargaining unit  
3 members about grievances and other issues where they eat lunch, and doesn’t say  
4 anything about lunchrooms.

5 Schools have a visitor entry protocol. At an unidentified point in time, Chief of  
6 School Security Baker wrote and trained office staff on Safety and Security Building  
7 Entry Procedures that state, in relevant part:

8 Purpose

9

10 In an effort to provide for the Safety and Security of our students and  
11 employees, school buildings use a video monitor and buzzer system for  
12 their front entrances. Once the school day starts, the front door and all  
13 other doors will be locked, although all doors can still be used as exits.  
14 Visitors will have to be buzzed into the building and report to the main  
15 office. A visitor tag/badge, which must be worn at all times while in the  
16 building, will be issued.

17

18 Single Point of Entrance Procedure

19 An important part of keeping our schools safe is using a single point of  
20 entrance for all school buildings during the regular school day. To keep the  
21 building secure, doors will remain locked during the school day and should  
22 not be propped open by faculty staff students or others.

23

24 Building Entry/Exit Procedure

25

26 Visitor Rings Bell at school entry door

27

28 Office staff via intercom reply: “How can I help you[?]” Based on the  
29 response, instruct the visitor to report directly to the main office or  
30 designated sign-in area for further instruction.

31

32

33

\* \* \*

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<sup>6</sup> Warwick began working for SPS in about 1975, and has held positions including: Substitute Teacher, Teacher, Special Education Coordinator, Special Education Supervisor, Principal, Assistant Superintendent, and Deputy Superintendent. He first became a principal in 1991, and was the Glenwood School Principal for 13 years, until about 2004. Then he was an Assistant Superintendent for 7 years.

1 The visitor will go to the sign-in area usually located in the main office,  
2 produce photo identification, and state their business.

3  
4 \* \* \*

5  
6 If the business is valid, the visitor will sign-in listing their name, date,  
7 destination (area and or person to be visited) and time of arrival.

8  
9 After signing in, a visitor tag/badge will be provided to the visitor to be  
10 placed in a visible location on their person. The visitor tag/badge issued is  
11 to be worn while in the building. School District employees must display  
12 their school ID

13  
14 For purposes of student privacy, visitors will be asked to wait in the main  
15 office. Visitors [are to be] held in the main office to wait for [an] escort from  
16 [the] receiving area or escorted to area by office staff.

17  
18 Visitors [are to be] escorted to [the main] office after [a] school visit and  
19 asked to sign out and leave their visitor tag/badge.

20  
21 Main Office/Designated sign in area are the only areas where visitors will  
22 be received unless other arrangements have been made  
23 (Custodial/Administrative needs).

#### 24 25 Overview of Significant Events

26 T. Collins became Association President in about 1997, a position he held for 20  
27 years.<sup>7</sup> Superintendent Warwick never heard complaints from school principals about T.  
28 Collins or former Association representative Arlindo Alves (Alves) visiting schools  
29 between 2012 and 2017. It is Warwick's opinion that principals did not complain  
30 because T. Collins visited teachers before the school began.

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<sup>7</sup> Before he became Association President in 1997, T. Collins was a teacher for 25 years at the John F. Kennedy Junior High School/Middle School. During that time, he served as a Building Representative, an Executive Board Member, Bargaining Team Member and Chairman of the Political Action Committee.

1           In July of 2017, Colgan-Posner succeeded T. Collins as Association President.<sup>8</sup>  
2           In late August of 2017, Colgan-Posner began visiting schools before and during the  
3           school day,<sup>9</sup> at times with Pellegrini,<sup>10</sup> walking the halls seeking impromptu meetings  
4           with teachers in their classrooms. School principals complained to Warwick that Colgan-  
5           Posner's visits during the school day were disruptive to the students' learning  
6           environment. On November 28, 2017, December 20, 2017, and January 23, 2018,  
7           Warwick told Colgan-Posner to meet with teachers during the school day in the  
8           teachers' lounge. Likewise, between November of 2017 and February of 2018, when  
9           Colgan-Posner and Pellegrini visited the Harris, Milton-Bradley, Beal,<sup>11</sup> DeBerry, and  
10          Talmadge Elementary Schools during the school day, the school principals directed  
11          them to meet with bargaining unit members in the teachers' room/lounge/lunchroom.

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<sup>8</sup> Although Colgan-Posner did not testify about the precise date that she succeeded T. Collins as Association President, I infer that she became Association President in July of 2017 because the Charging Party submitted a calendar of her work schedule that begins with that month.

<sup>9</sup> SPS elementary schools are in session from 8:55-3:30 p.m. Middle and high schools are in session from 7:20-2:20 p.m.

<sup>10</sup> As the Member Engagement Coordinator, Pellegrini's duties involved meeting with teachers, handling memberships, organizing buildings, recruiting building representatives, and generally supporting teachers. Pellegrini visited schools daily, in the mornings and afternoons, at times on her own, at times with Colgan-Posner, and for a short, unidentified, period of time, with MTA member Heather LaPenn (LaPenn). Nevertheless, aside from her school visits to the Harris, Milton-Bradley, Beal, DeBerry, and Talmadge as discussed in detail below, there is no detailed, substantive evidence in the record about the precise timing of her school visits.

<sup>11</sup> I infer from the totality of the record that the Beal School is an elementary school. This point is undisputed.

1 Association School Visits Pre-July of 2017

2 General Overview of T. Collins' School Visits

3 Between 1997 and 2017, T. Collins often visited schools, including the five  
4 schools at issue in this case, to meet with teachers individually and as a group. When  
5 visiting schools, T. Collins would enter a school and go to the main office to check in  
6 with a principal or head secretary. There were many times when he arrived so early in  
7 the morning that neither the principal nor the secretary was in the main office of a  
8 school. If an administrator was present, he would sign in if asked, but many  
9 administrators were people that T. Collins started teaching with and knew personally.  
10 Consequently, they often just waved him on and said "go right ahead." T. Collins  
11 described himself as "a recognizable figure in the schools." Before he left a building, T.  
12 Collins always checked back to the office to say hello and let the main office know that  
13 he had been in the building. If a building had required him to sign in, he would sign out  
14 of the building. Aside from pre-planned, formal, after-school staff-wide meetings, no  
15 principal or administrator at the Milton-Bradley, DeBerry Talmadge, Harris, or Beal  
16 Schools, or any other of the District's 60 schools told him where to meet with bargaining  
17 unit members.

18 T. Collins' School Visits By Type: Formal Staff-Wide Meetings, Informal  
19 Walkabouts, And Walkabout Follow-up Meetings

20  
21 T. Collins conducted three types of school visits: formal staff-wide meetings,  
22 informal "walkabouts," and walkabout follow-up meetings with individual teachers. T.  
23 Collins' formal staff-wide meetings were pre-planned meetings held after-school in  
24 school cafeterias, school libraries, and teachers' classrooms. He coordinated with

1 school principals prior to holding such meetings to avoid interference with after-school  
2 activities.

3 T. Collins' informal walkabouts were unplanned school visits that involved  
4 walking around schools seeking impromptu meetings with teachers in their classrooms.  
5 T. Collins considered walkabouts to be "a listening tour" and an opportunity to "introduce  
6 himself" to teachers. After checking in at the main office, regardless of whether anyone  
7 was there, T. Collins would visit with teachers. He would walk by classrooms asking  
8 teachers if they had time to talk. He would ask teachers how things were going and  
9 whether they had any concerns. Teachers' concerns ranged from the language of  
10 building policies to evaluations. He would listen, encourage teachers to call School  
11 Committee members and Legislative representatives, and ultimately bring those  
12 concerns to Association meetings. If a teacher was busy, he would walk onto the next  
13 classroom. T. Collins would always stop by a teachers' lounge, but his focus was on  
14 meeting with teachers in their classrooms.

15 T. Collins' walkabout follow-up meetings were pre-arranged meetings conducted  
16 at the request of individual teachers that Collins met on walkabouts. Collins did not pre-  
17 arrange individual teacher meetings with school principals, only with the teachers.

1 Collins conducted follow-up meetings during teachers' free periods, in their classrooms  
2 or other teachers' classrooms, or on walks outside on school grounds.<sup>12</sup>

3 Timing of T. Collins' Informal Walkabouts and Follow-Up Meetings

4 There is conflicting testimony in the record about the timing of T. Collins' informal  
5 walkabouts and follow-up meetings. For the reasons described in the sections below, I  
6 find that T. Collins routinely conducted informal walkabouts and met with teachers in  
7 their classrooms before school started at all SPS Schools. I do not find that T. Collins'  
8 informal walkabouts extended beyond the start of the school day, or that he began  
9 walkabouts after the start of the school day. I also find that walkabouts sometimes  
10 prompted T. Collins to hold subsequent follow-up meetings with individual teachers in  
11 classrooms or outside on school grounds during school hours, but that his practice of  
12 conducting individual meetings in teachers' classrooms varied by school.

13 First, I find based on T. Collins' demeanor and testimony that on days that he did  
14 not have other meetings, he routinely conducted walkabouts in two schools per day  
15 before the start of school, including at the Milton-Bradley, DeBerry, Talmadge, Harris,  
16 and Beal Schools. T. Collins specifically testified that his walkabouts "all started before  
17 the school day." Although he initially claimed on direct examination that he visited  
18 schools "quite often during the course of the day whenever [he] could" to be in  
19 communication with as many bargaining unit members as possible, the remainder of his

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<sup>12</sup> The Association asserts in its post-hearing brief that T. Collins would meet during the school day with teachers "in any available space on school grounds, including classrooms, hallways, or even outside the school building." However, T. Collins testified only that when he returned during the school day to meet with specific teachers, he met "the majority of time" in their classrooms, another teacher's classroom, or outside of the building on school grounds. Therefore, the record does not support the assertion in the Association's post-hearing brief that T. Collins met with teachers in hallways during the school day.

1 testimony focused on the early hours involved in his school visits. His walkabout visits  
2 began as early as 6:00 a.m., and he would arrive at a school about 45 minutes to an  
3 hour before school began in the morning. T. Collins testified that, in general, he did a  
4 “walkabout or walk around in two schools every day,” except when he was at other  
5 meetings, visiting each school about three times per year. While Collins could not have  
6 visited two of the same types of schools before school on the same day, I conclude that  
7 he could have visited two different types of schools on the same day because SPS  
8 middle and high schools begin at 7:20 a.m. and elementary schools begin at 8:55 a.m.

9         Second, I find that T. Collins’ walkabouts began and ended before the start of the  
10 school day. After T. Collins repeatedly reiterated on direct examination that he visited  
11 schools before the start of the school day, he was asked in a series of leading questions  
12 on direct examination whether he also did “those things that [Colgan-Posner] described  
13 [doing] during the school day, [walking around] looking for teachers who were on prep  
14 or otherwise unoccupied.” T. Collins responded only vaguely stating, “[y]eah. . . after the  
15 bell rang and school started for the students, I would continue to walk around [looking  
16 for teachers that were by themselves in their classrooms].” However, T. Collins offered  
17 no other supporting details on this point. He did not comment on scheduling issues,<sup>13</sup>  
18 offer anecdotes about walkabouts that spilled over into the school day, or otherwise

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<sup>13</sup> For instance, T. Collins had 1 hour and 35 minutes between school start times as middle and high schools begin at 7:20 a.m. and elementary schools begin at 8:55 a.m. If he arrived at schools 45 minutes to an hour before school began, and assuming he needed 20 minutes to drive between schools, Collins could have stayed at a middle or high school doing a walkabout for about 30 minutes after the 7:20 a.m. start before leaving for an elementary school. He also could have stayed at an elementary school beyond the start of the school day, before returning to a middle or high school for follow-up meetings with individual teachers. Nevertheless, he did not address in his testimony any of these practical details regarding his school visits.

1 testify about specific instances when he continued to walk around schools after the start  
2 of the school day. Although T. Collins also testified that his walkabouts “could go  
3 beyond the start of the school day” his testimony on this point concerns only instances  
4 where teachers would ask him to return for follow-up meetings.<sup>14</sup> I find that his  
5 walkabout follow-up meetings are distinct from his informal walkabouts, and do not  
6 establish that his informal walkabouts extended beyond the start of the school day.

7 Third, I find that T. Collins’ walkabouts did not begin after the start of the school  
8 day. When asked a leading question on direct examination about whether there were  
9 times that he “specifically arrived at a school during sort of the middle of the school day  
10 when some of the members might be having lunch,” T. Collins denied that he did,  
11 stating “not necessarily.” He then testified about follow-up meetings with specific  
12 teachers during the school day, not informal walkabouts. I find that T. Collins’ testimony  
13 on these points is consistent with that of Hughes and S. Collins who testified that T.  
14 Collins did not visit schools at which they were principals during the school day. As  
15 Principal of the Milton-Bradley (2013-2018) White Street (2011-2016), and Lincoln  
16 (2009-2011) Schools,<sup>15</sup> Hughes enforced a policy of not allowing people to enter the  
17 school building and walk around unescorted or without an approved prior appointment  
18 during the school day, and Association representatives did not enter the buildings to  
19 meet with teachers in their classrooms during the school day. As Harris School Principal

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<sup>14</sup> T. Collins testified only that his walkabouts “could go beyond the start of the school day” to the extent that “[s]ometimes teachers would say. . . I don’t have any class first period or second period, and I’d like to talk to you, can you come back or hang around so I can have that conversation with you?” T. Collins would then arrange with that teacher to return and meet during the school day, depending on their availability.

<sup>15</sup> From about 2013-2016, Hughes was Principal of both the White Street School and the Milton-Bradley School.



1 (2009-2017) S. Collins<sup>16</sup> enforced a policy that allowed Association representatives to  
2 sign in at the main office and visit teachers in their classrooms before school, but  
3 required them to meet with teachers in the teachers' room during the school day. While  
4 S. Collins was Harris School Principal and Dorman Elementary School Principal (2006-  
5 2009), T. Collins visited the schools before the start of the school day.<sup>17</sup> He would stop  
6 in the office and sign in, say hello, and indicate that he was there to visit with his  
7 members.

8         With respect to these first three findings, that T. Collins conducted walkabouts  
9 before the start of school, that walkabouts did not extend beyond the start of school,  
10 and that walkabouts did not begin after the start of school, I do not credit Colgan-  
11 Posner's and Pellegrini's testimonies. Colgan-Posner, a teacher for 24 years prior to  
12 becoming Association President in 2017, testified that she saw T. Collins in the  
13 Pottinger and Sumner Avenue Schools "at least once a year, and often more than that,  
14 maybe twice or three times a year." Colgan-Posner further testified that she saw T.  
15 Collins "[a]ll over the building" during the school day and that he met with her in her  
16 classroom, as he did with other teachers. Pellegrini, who taught for 35 years before  
17 becoming Association Member Engagement Coordinator in 2016, testified that during  
18 her time teaching at Forest Park Middle School, she often saw T. Collins walking the  
19 halls of the school and going into classrooms in the mornings, and occasionally in the  
20 mid-afternoon. I decline to credit either Association representatives' testimony on these

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<sup>16</sup> She became Chief School Officer in 2018 which involves assisting elementary school principals with organizing instruction, staff, and budgets.

<sup>17</sup> T. Collins is S. Collins' uncle. Although the Association argues that negative inferences about S. Collins' testimony should be drawn from that relationship. I decline to do so on that basis alone.

1 points based on demeanor and because their testimony lacks any salient details.  
2 Colgan-Posner's demeanor throughout the hearing appeared evasive and contrived,  
3 and her testimony on this point is broad and vague. Additionally, Pellegrini's demeanor  
4 throughout the hearing lacked spontaneity and appeared strained to align with Colgan-  
5 Posner's testimony. In addition, T. Collins did not mention ever meeting with either  
6 Colgan-Posner or Pellegrini on a walkabout after the start of the school day. The overall  
7 emphasis of T. Collins' testimony was that he conducted walkabouts very early in the  
8 morning. His demeanor and testimony was frank and evinced pride in his effort and  
9 commitment to making consistent, very early morning visits to bargaining unit members  
10 at their worksites his utmost priority when he was not scheduled for other administrative  
11 meetings.

12 Fourth, I find that T. Collins regularly<sup>18</sup> held walkabout follow-up meetings with  
13 individual teachers during the school day in their classrooms or outside on school  
14 grounds during their free periods, although the practice varied by school.<sup>19</sup> The timing of  
15 his arrival for a follow-up meeting with a teacher depended on when the teacher had a  
16 free period. He explained that while sometimes teachers may have been having lunch  
17 when he returned, he would return to see teachers "at a particular time when they were  
18 . . . free . . . [which] could vary because people's preparation periods, . . . free periods,

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<sup>18</sup> T. Collins testified that during walkabouts "sometimes" teachers would ask him to return at another time during the school day, and that he would do that "pretty regularly." I interpret his use of the word "pretty" in conjunction with the word "regularly" to mean with a degree of regularity or "moderately." See Merriam-Webster Online Dictionary at <https://www.merriam-webster.com> (last visited September 21, 2023).

<sup>19</sup> T. Collins' testimony that he regularly held follow-up meetings with individual teachers during the school day is not inconsistent with Hughes' and S. Collins' testimonies that he did not visit schools during the school day. It is plausible that his meetings with individual teachers during the school day varied on a school-by-school basis.

1 happened at various times of the day.” When he returned during the school day to meet  
2 with specific teachers, he met “the majority of time” in their classrooms, another  
3 teacher’s classroom, or outside of the building on school grounds.

#### 4 Overview of Association Visits Post-July 2017

##### 5 Colgan-Posner

6 When Colgan-Posner became Association President<sup>20</sup> in July of 2017, her goal  
7 was to visit every school to meet bargaining unit members. She was often accompanied  
8 on school visits by other representatives including Pellegrini, MTA Field representatives  
9 Nancy DeProsse (DeProsse), or Association’s Professional Relations Associate Reese.  
10 In the fall of 2017, principals began complaining to the SPS Chief School Officer about  
11 Association representatives coming into the schools during the school day, walking  
12 around inside the school buildings, and disrupting the educational environment.  
13 Warwick heard specific complaints about the DeBerry, Harris, and Milton-Bradley  
14 Schools.

##### 15 Colgan-Posner’s School Visits By Type: Formal Staff-Wide Meetings, 16 Informal Walkabouts, And Walkabout Follow-up Meetings

17  
18 Colgan-Posner conducted the same three types of school visits as T. Collins:  
19 formal staff-wide meetings, informal visits to walk around schools, and pre-scheduled  
20 meetings with individual teachers. She held building-wide meetings during after school  
21 hours to discuss contract negotiations or issues in a particular building. In advance of

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<sup>20</sup> In her preceding 24 years as a teacher in SPS schools, she also served as Association Vice President, Professional Development Chair, and a Building Representative. As a Building Representative for 22 years, she often held Association meetings after school.

1 such meetings, she would contact the school administrator and let them know that she  
2 was going to be at the school.

3 As had T. Collins, Posner conducted informal walks around schools seeking  
4 impromptu meetings with teachers in their classrooms. According to Colgan-Posner,  
5 teachers often wanted to meet with her in their classrooms for confidentiality reasons.  
6 When visiting schools for informal meetings with teachers, Colgan-Posner would ring  
7 the doorbell or buzzer at a school, and then sign in at the main office with a general  
8 statement that she was there to meet with teachers. She believed that signing into a  
9 school gave notice to a principal that she was in the school. Based on her conversations  
10 with T. Collins, she understood this to be the Association's practice. Colgan-Posner  
11 acknowledged during her testimony that school principals generally did not know where  
12 she was walking around a building during her informal visits. After signing in at a main  
13 office, Colgan-Posner would start walking around a building looking for teachers in their  
14 classrooms.<sup>21</sup> If it was lunch time, sometimes she would start by visiting the teachers'  
15 lunchroom. If no teachers were there, she would walk through the building.<sup>22</sup> In walking  
16 school halls, Colgan-Posner would observe whether teachers were alone and eating  
17 lunch in their classrooms, or had students with them. Teachers have various lunch  
18 times, so that at any given time when Colgan-Posner was walking the halls of a school,  
19 there were some teachers at lunch and some teachers teaching. Colgan-Posner

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<sup>21</sup> Colgan-Posner testified that she "could inform teachers in any building in multiple ways that [she] was coming that [she] would be available to meet with them on their lunchtime," but this was not her practice.

<sup>22</sup> Colgan-Posner testified generally that in her experience, she often walks by classrooms and sees a teacher is sitting at their desk eating their lunch. As a teacher, Colgan-Posner ate lunch at her desk a lot because she "needed that half hour...to complete work," something that she believes to be true for other teachers as well.

1 necessarily had to look into classrooms to see whether a teacher was alone or with  
2 students. However, she never entered the classrooms because she could see from the  
3 middle of a hallway whether a class was occurring in a classroom. If she did walk into a  
4 classroom and saw a teacher eating lunch with students present, Colgan-Posner would  
5 leave, as she did not discuss Association business in front of students. If a teacher was  
6 coming back from lunch or finishing up something else, and was in a hallway, that is  
7 where Colgan-Posner would talk to them.

8 Finally, as did T. Collins, Colgan-Posner also held pre-arranged meetings with  
9 individual teachers in their classrooms. When she arrived at a school for a scheduled  
10 meeting with a particular teacher, she would be more specific on the sign-in sheet and  
11 would proceed directly to that teacher's classroom.

12 The Timing of Colgan-Posner's Informal Walkabouts and  
13 Follow-Up Meetings  
14

15 Between July of 2017 and 2018, in her first year as Association President,  
16 Colgan-Posner visited every school building to meet with bargaining unit members.  
17 Ninety percent of Colgan-Posner's school visits occurred during the school day, but she  
18 also visited schools before school started.

19 Post-July of 2017 Events

20 Fall of 2017 Superintendent's Meeting with Principals

21 At an unidentified point in the fall of 2017, before a November of 2017 labor-  
22 management meeting between Warwick and Colgan-Posner, Warwick and Wells<sup>23</sup> met

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<sup>23</sup> During the events at issue in this case, Wells was the SPS Lead Chief Schools Officer. Her role in this position was to provide support and coaching assistance to schools and to work with principals, teachers, and staff to ensure that schools are performing and meeting student outcomes and goals.

1 with school principals and discussed the District's school visitor policy, including  
2 Association representatives' school visits. Warwick reminded principals that all school  
3 visitors are to enter through the main entrance to the schools. He also told principals  
4 that the "designated area" for Association representatives to meet with teachers during  
5 the school day was the teachers' lounge because "that area is designated in the  
6 contract for teachers to have access to all day." He told principals that the policy for  
7 Association representatives' school visits was that the Association representatives  
8 "could come to the [school] building, sign-in, and announce themselves at the office and  
9 go to the teachers' dining lounge to meet with teachers as necessary." Principals S.  
10 Collins, Hughes, and Fazio were at the meeting where Warwick and Wells discussed  
11 the policy regarding Association representatives' school visits.

12 November of 2017 Labor-Management Meeting

13 On November 28, 2017, Warwick and Colgan-Posner held a regularly scheduled  
14 labor-management meeting at the Central Office location.<sup>24</sup> During the meeting,  
15 Warwick discussed Association representatives' school visits, among other issues. First,  
16 Warwick discussed school safety protocols with Colgan-Posner and asked her to  
17 remind Association representatives to be sure to sign in when visiting school buildings.  
18 Colgan-Posner agreed with Warwick and told him that she signed in when visiting  
19 schools. Second, Warwick told Colgan-Posner that she and other Association  
20 representatives were not to go through the building looking for teachers to meet with

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<sup>24</sup> The parties have standing monthly labor-management meetings. Attendees typically include Warwick, Posner, Head of Human Resources Melissa Shea (Shea), School Administrator Lidia Martinez (Martinez), Union Representative for paraprofessionals Cathy Mastronardi (Mastronardi), MTA Representative DeProse, SEA Representative Reese, SPS Director of IT Paul Foster (Foster), and School Administrator and Director of Instruction Stefania Raschilla (Raschilla).

1 during the school day because it disrupted teaching and learning for students. Warwick  
2 told Colgan-Posner that that if she or other Association representatives had to meet with  
3 teachers during the school day, the “teachers’ lounge” was the designated meeting  
4 area.<sup>25</sup> Colgan-Posner agreed. She did not tell Warwick that she did not understand the  
5 term “designated area” or tell him that she considered the teachers’ room, lounge, or  
6 lunchroom to be any school room where a teacher consumed lunch. After the  
7 November 28, 2017 labor-management meeting, Colgan-Posner continued to meet with  
8 teachers in their classrooms, and principals complained to Warwick that Colgan-Posner  
9 was not holding meetings in the teachers’ lounge.

10 December 20, 2017 – Harris School Events

11 On December 20, 2017, Colgan-Posner and Pellegrini arrived at the Harris  
12 School at 11:00 a.m. and signed in at the front office. The school day had begun at 8:55  
13 a.m. and lunch was between 11:25 a.m. and 1:15 p.m. Although Colgan-Posner

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<sup>25</sup> There is conflicting testimony about the November 28, 2017 conversation regarding school visits. Warwick testified that he told Colgan-Posner that if she or other Association representatives had a meeting during the school day, the “teachers’ lounge” was the designated meeting area. According to Colgan-Posner, Warwick told her that the designated area for teacher meetings with the Association representatives was the “teachers’ lunchroom.” I credit Warwick’s testimony that he told Colgan-Posner that if she or other Association representatives had a meeting during the day, the “teachers’ lounge” was the designated meeting area. His demeanor during his testimony was sincere and straightforward, and his testimony also is consistent with his use of the term “teachers’ lounge” in his December 20, 2017 letter following up on the meeting with Colgan-Posner. In contrast, Colgan-Posner’s demeanor during her testimony at hearing appeared deliberately obtuse with respect to differentiating a teachers’ room/lounge/lunchroom in a school from a teacher’s classroom. When asked on cross-examination whether she understood during the events at issue in this case, that when asked to meet with a teacher in the “lunchroom” that meant the “teachers’ room,” not a teacher’s classroom, Colgan-Posner grudgingly conceded. Her concession on this point is consistent with her complaints during the events at issue to S. Collins that “there were no teachers in the teachers’ lunchroom eating lunch, so she was going to meet with teachers. . . in their classrooms.”

1 generally planned to meet with bargaining unit members to discuss concerns, she had  
2 no prearranged teacher meetings, and had not notified S. Collins of the visit ahead of  
3 time. After signing in at the front office, Colgan-Posner and Pellegrini began walking  
4 around the building in the Pre-K to Grade 1 wing of the school for teachers who were  
5 spending their lunch period in their classrooms. They visited the teachers'  
6 room/lounge/lunchroom<sup>26</sup> but there were no teachers in that room eating lunch.<sup>27</sup>  
7 Colgan-Posner and Pellegrini passed classrooms where classes were being held, but  
8 they did not interrupt those classes. They found a few teachers who were not teaching.

9 At 11:00 a.m. S. Collins received a call over her radio from a clerk informing her  
10 that two Association members had signed into the building and gone down the hallway  
11 and up a stairwell, not towards the teachers' room. S. Collins went to locate the  
12 Association representatives. She then received a second call regarding a student who  
13 was experiencing a medical issue. She also called Wells to the building to assist with  
14 the student's emergency and to determine where the Association representatives were  
15 in the building.

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<sup>26</sup> The teachers' room at the Harris School was renovated in 2000 and seats 24 at tables.

<sup>27</sup> Posner initially testified only that she and Pellegrini "might have stopped in the teachers' lunchroom" before looking for teachers who were eating lunch in their classrooms. However, she subsequently testified that she told S. Collins that she was walking around the building looking for teachers because there were no teachers in the lunchroom. Therefore, although Posner's initial testimony is vague, I conclude that she and Pellegrini did in fact visit the teachers' lunchroom before walking around the rest of the building and before first encountering S. Collins.



1           At about 11:15 a.m., S. Collins stopped Colgan-Posner and Pellegrini in the Pre-  
2 K to 1 wing and had an initial conversation with them.<sup>28</sup> During this first encounter, S.  
3 Collins told Colgan-Posner to go to the teachers' room and Colgan-Posner told S.  
4 Collins that "there were no teachers in the teachers lunchroom eating lunch, so she was  
5 going to meet with teachers where they were eating their lunch, which happened to be  
6 in their classrooms." S. Collins told Colgan-Posner she could not do that. Colgan-  
7 Posner responded by reiterating that there was "no point to me going to the teachers'  
8 lunchroom [because] there was no one there, and that I was just going to look for  
9 teachers in their classrooms." S. Collins left, and Colgan-Posner and Pellegrini  
10 continued walking around the school and visited with one more teacher in her  
11 classroom.

12           Subsequently, as S. Collins and Wells were assisting a student outside the main  
13 office, Colgan-Posner and Pellegrini exited a stairwell on the opposite end of the  
14 hallway. The four approached each other. S. Collins and Wells asked Colgan-Posner  
15 and Pellegrini why they weren't in the teachers' room, which was the expectation if they  
16 visited during the school day. Colgan-Posner stated that she did not feel like she  
17 needed to visit with her members in the teachers' room, even if it was during the school  
18 day. Wells also stated that she understood that if Association representatives were  
19 going to meet with members during the school day, they had to do so in a designated

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<sup>28</sup> Based on the totality of the evidence, I find that S. Collins had an initial conversation with Colgan-Posner and Pellegrini before S. Collins and Wells subsequently had a second conversation with them. In this regard I credit Colgan-Posner's testimony. Although S. Collins testified about only one encounter between her and Wells and Colgan-Posner and Pellegrini, she did not specifically deny Colgan-Posner's account of this initial meeting. I also note that in the parties' stipulation that S. Collins stopped Colgan-Posner and Pellegrini in the Pre-K to 1 wing, there is no reference to Wells. Therefore, I find that S. Collins had a brief initial encounter with Colgan-Posner.

1 area, which was the teachers' lounge. Colgan-Posner said that was not her  
2 understanding and told Wells that the teachers don't eat in the teachers' lunchroom. S.  
3 Collins and Wells reiterated their position on the policy. Colgan-Posner stated that they  
4 would have to agree to disagree. After the conversation with S. Collins and Wells,  
5 Colgan-Posner and Pellegrini went to the teachers' lunchroom.<sup>29</sup> There was one teacher  
6 there. She said that the other teachers were eating lunch in their classrooms. Then  
7 Colgan-Posner and Pellegrini left the building.

8 December 20, 2017 Warwick Email To Colgan-Posner and Colgan-Posner's  
9 January 2, 2018 Response

10  
11 On December 20, 2017, at 4:30 p.m., Warwick emailed a letter to Colgan-Posner  
12 stating, in relevant part:<sup>30</sup>

13 This is in follow-up to our discussion at the most recent Labor  
14 Management meeting regarding School visits by the SEA. As you are  
15 aware, the agreed-upon language in the CBA provides in relevant part as  
16 follows with respect to "Association Activity on the School Level":  
17

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<sup>29</sup> There is conflicting evidence about whether Colgan-Posner and Pellegrini left the school immediately. S. Collins testified that Colgan-Posner stated that they would have to agree to disagree about the policy, and that she and Pellegrini were done visiting for the day, were leaving, and would follow up with the Superintendent. Wells also testified that at the end of the conversation, Colgan-Posner said that they had finished up their business and were leaving, and they departed the building. However, Colgan-Posner testified on direct examination that she responded to Wells stating that, "this time" she would do go to the teachers' lunchroom, and that she and Pellegrini did so, where they saw one teacher. On cross-examination, Colgan-Posner reiterated that after the conversation with S. Collins and Wells, she and Pellegrini visited the teachers' lunchroom and asked the one teacher there where the rest of the teachers were. The one teacher said that the other teachers were eating lunch in their classrooms. Based on the totality of the evidence, I find that Colgan-Posner and Pellegrini went to the teachers' lunchroom after the conversation with S. Collins and Wells.

<sup>30</sup> A parenthetical in the transcript on Volume 1, page 82 erroneously refers to the December 20, 2017 letter as Union Exhibit 2. The exhibit was marked and entered as Respondent Exhibit 1.

1                   2. School Meetings  
2

3                   Before the opening of, during lunch time, and after the close of  
4                   school on school days, the Association shall have the right to use  
5                   designated areas in school buildings for meetings of teachers,  
6                   provided there's no interference with any scheduled school  
7                   activities. The use of such designated areas shall be arranged with  
8                   the Principal in advance. All requests for building use shall conform  
9                   to the School Committee Rules and Regulations; provided,  
10                  however, that there should be no cost to the Association for such  
11                  meetings if no overtime custodial cost is involved. Any overtime  
12                  costs for custodial services shall be the responsibility of the  
13                  Association.  
14

15                  We also discussed that the designated area in general and the school  
16                  buildings is the "teachers' lounge." As noted in the above CBA language,  
17                  the use of the area is required to be arranged with the Principal in  
18                  advance. You were reminded of SPS protocols and to also remind and  
19                  discuss with SEA representatives that went visiting the school buildings  
20                  they are to check-in with the principal in the office. You indicated at our  
21                  meeting that you agreed and understood this. Please remind SEA  
22                  representatives of the contract language and district protocols to avoid  
23                  future disruptions.  
24

25                  By email dated January 2, 2018, Colgan-Posner responded to Warwick's  
26                  December 20, 2017 letter stating, in relevant part: "I'm not sure where this confusion is  
27                  coming from. When I have held union meetings I did notify [Principal of the Rebecca  
28                  Johnson School] Darcia [Millner], [Principal of the Washington School] Linda [Bianchi]  
29                  and [Principal of the Liberty School] Robin [Bailey-Sanchez] in advance of the meetings  
30                  and they did determine where the meetings would be held.

31                  Colgan-Posner understood Warwick's December 20, 2017 letter to refer to  
32                  Association meetings that included all teachers in a building, and she believed that she  
33                  had "followed the contract" with respect to these meetings. In 2017, she held building-

1 wide meetings at the Rebecca Johnson School in a teacher's classroom, at the  
2 Washington School in the library, and at the Liberty School in a teacher's classroom.<sup>31</sup>

3 It is undisputed that the Association is obliged to contact a school principal to  
4 determine a proper place to meet with teachers for large group meetings. However,  
5 Warwick's December 20, 2017 letter did not alter Colgan-Posner's or Pellegrini's  
6 opinions that the Association should be able to meet with individual teachers where the  
7 teachers eat lunch, and that contractual language allowed the Association to meet with  
8 teachers wherever the teacher happened to be having lunch.

9 January 10, 2018 – Milton-Bradley School Events

10 On January 10, 2018, Colgan-Posner and Pellegrini arrived at the Milton-Bradley  
11 School at 11:00 a.m. and signed in at the front office. Colgan-Posner had no  
12 prearranged meeting with any teacher and did not notify Hughes of the visit ahead of  
13 time. After Colgan-Posner and Pellegrini signed in at the front office, they went to the  
14 teachers' lunchroom. Because there were paraprofessionals, but no teachers in the  
15 lunchroom, Colgan-Posner and Pellegrini left the teachers' lunchroom to look for  
16 teachers eating lunch in their classrooms. They observed classes in session but did not  
17 interrupt those classes. Then, they ran into Ms. Castillo, a teacher.<sup>32</sup> Castillo, had just  
18 picked up her lunch downstairs, was on her way back upstairs, and was holding a lunch  
19 tray. She asked to speak with Colgan-Posner and Pellegrini in her classroom.

20 Hughes had received a call from her clerk that there were two women "walking  
21 around on the third floor of the building popping their heads into classrooms." The clerk

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<sup>31</sup> Posner did not specify when these meetings occurred.

<sup>32</sup> The record does not identify Castillo's first name.

1 informed Hughes that two Association representatives had signed in earlier. Hughes  
2 went upstairs where she approached Colgan-Posner, Pellegrini and Castillo. Hughes  
3 told Colgan-Posner and Pellegrini that she had a report that they were walking into  
4 classrooms. When Colgan-Posner explained that they were looking to meet with  
5 teachers, Hughes told them that they could head down to the teachers' lounge on the  
6 first floor. Colgan-Posner told Hughes that the Association met with teachers wherever  
7 they eat their lunch, and that Castillo was eating her lunch in her classroom. Hughes  
8 explained that all principals had been told that the Association could meet with teachers  
9 in the teachers' cafeteria, which in that building was a large space. When Colgan-  
10 Posner started to explain that teachers are overworked and have to eat in their  
11 classrooms, Hughes further explained that "I received a call that you were walking  
12 around the building, popping your heads into classrooms. It's a safety issue. I didn't  
13 know that you were here. And . . . you are more than welcome to meet with staff in the  
14 teachers' lounge."

15 Colgan-Posner told Castello that she would talk to her later. Fifteen minutes of  
16 Castello's 30-minute lunch break had already passed and there was not a lot of time to  
17 go to the teachers' lounge, where, in Colgan-Posner's opinion, privacy was also a  
18 problem. Colgan-Posner and Pellegrini left Castello and returned to the teachers'  
19 lunchroom. No one was there, so they left the building. Colgan-Posner spoke with  
20 Castillo by telephone at another date.

21 January 23, 2018 – Beal School Events

22  
23 On January 23, 2018, Colgan-Posner visited the Beal School with Pellegrini to  
24 listen to members issues and concerns. She did not have an appointment to see any

1 particular teacher and had not notified the Principal of the visit ahead of time.<sup>33</sup> When  
2 Colgan-Posner and Pellegrini arrived at the Beal School, they rang the bell and signed  
3 in at the office. As they were signing in, the Principal told them that they “were not  
4 allowed to be in the building.” Colgan-Posner disagreed. The Principal told Colgan-  
5 Posner and Pellegrini to wait in the office while she made a call in her office. When she  
6 returned, she told Colgan-Posner and Pellegrini that they had to go to the teachers’  
7 lunchroom. Colgan-Posner responded that, “I have to be where teachers are eating  
8 lunch, and that could be [in] their classroom.” The Principal said she would make  
9 another call. When she returned, she reiterated to Colgan-Posner that she had to go to  
10 the teachers’ lunchroom. Colgan-Posner and Pellegrini went to the teachers’ lunchroom  
11 where there were teachers eating lunch.

12 January 23, 2018 Labor – Management Meeting<sup>34</sup>  
13

14 On January 23, 2018, Warwick and Colgan-Posner held another labor-management  
15 meeting. The issue of school access was not on the agenda, but Warwick raised the  
16 issue. Warwick told Colgan-Posner to sign-in and out of schools, and to act in  
17 accordance with the collective bargaining agreement by going to the teachers’ lounge to

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<sup>33</sup> The record does not identify the name of the Beal School Principal.

<sup>34</sup> During the hearing, Colgan-Posner initially testified on cross-examination that the Association had not filed a grievance on the incidents at issue. On re-cross examination, she claimed that her conversations with Warwick during labor-management meetings on November 28, 2017 and January 23, 2018 constituted filing step one grievances. I need not consider her assertions as the issue of whether the Association appropriately filed a grievance on the incidents at issue is immaterial.

1 avoid disrupting school buildings during the school day.<sup>35</sup> Colgan-Posner explained that  
2 she met with teachers in their lunchroom, which could be their classrooms if that was  
3 where they were eating lunch. Warwick told Colgan-Posner “to cease and desist, and  
4 follow the rules.”

5 February 12, 2018 – DeBerry School Events

6 On February 12, 2018, Colgan-Posner and Pellegrini went to the DeBerry School  
7 at 11:15 a.m. Upon arriving at the school, they rang the bell, signed in at the front office  
8 and started walking around the building looking for teachers who were eating lunch in  
9 their classrooms. They did not have an appointment with any particular teacher that  
10 day, and had not notified Principal Fazio of the visit ahead of time. Colgan-Posner and  
11 Pellegrini generally planned to listen to teachers’ issues and concerns.

12 In walking around the DeBerry School Colgan-Posner and Pellegrini saw some  
13 classrooms that were in session, but did not interrupt those classes. At some point,  
14 building representative Ivelisse Lescano (Lescano) joined them. In a hallway, under a  
15 staircase, teacher Andrea Collins (A. Collins) stopped Colgan-Posner, Pellegrini, and  
16 Lescano to talk. A. Collins did not have students with her and was not supposed to be in  
17 a classroom with students at the time. Colgan-Posner and A. Collins discussed working  
18 conditions, in particular, planning time with A. Collins. According to Colgan-Posner,  
19 nothing about her conversation with A. Collins in a hallway under a staircase suggested  
20 that she was disrupting any class.

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<sup>35</sup> There is conflicting testimony about the language Warwick used. Warwick testified that he “clearly specified. . . the expectation. . . [to] sign-in, . . . [to] sign-out . . . and [to go] to the teachers’ lounge [to avoid] disrupting the building[s] during the school day, which is stated right in the contract.” According to Colgan-Posner, Warwick told her to meet with teachers “in their lunchroom.” I credit Warwick based on his overall credibility.

1 As she was walking down a ramp, Fazio saw A. Collins with Colgan-Posner,  
2 Pellegrini, and Lescano in the hallway, under the staircase. She went to introduce  
3 herself because she was a new principal at the time and had not personally met  
4 Colgan-Posner or Pellegrini. Fazio asked A. Collins if she needed classroom coverage  
5 and A. Collins responded that she was on lunch. Then Fazio turned to Lescano and  
6 said “[y]ou know you need to be in the – everybody needs to be in the teachers’ room.”  
7 Lescano said “I know.” Colgan-Posner, responded by saying, “that’s fine I can go to the  
8 teachers’ lunchroom, but I’m talking to a teacher right now.” Fazio reiterated that  
9 Colgan-Posner had to go to the teachers’ lunchroom.<sup>36</sup> When Colgan-Posner finished  
10 her conversation with A. Collins, she went to the teachers’ lunchroom. As there were no  
11 teachers in the teachers’ lunchroom, Colgan-Posner and Pellegrini left the school.

12 February 27, 2018 – Talmadge School Events  
13

14 On February 27, 2018, Pellegrini arrived at the Talmadge School during the  
15 school day. Before Pellegrini could sign in at the at the main office, Principal Carla  
16 Lussier (Lussier) stopped Pellegrini and directed her to the teachers’ lunchroom.  
17 Pellegrini then walked to the teachers’ lounge and met with two teachers.

18 OPINION

19 Count I – Alleged Section 10(a)(5) Violation

20 The first issue is whether the School Committee violated Section 10(a)(5) and,  
21 derivatively, Section 10(a)(1) of the Law by unilaterally changing the manner and

---

<sup>36</sup> There is conflicting testimony on this point. According to Fazio, Colgan-Posner and Pellegrini did not say anything. According to Colgan-Posner, she responded by saying, “that’s fine I can go to the teachers’ lunchroom, but I’m talking to a teacher right now” and Fazio reiterated that Posner had to go to the teachers’ lunchroom. I credit Colgan-Posner’s testimony because I find it implausible that she merely stood silently in response to Fazio’s statement.



1 location in which Association representatives may meet with teachers in five schools.  
2 The Complaint specifically alleges that that a practice existed prior to December 20,  
3 2017, whereby Colgan-Posner and Association representatives often met with  
4 bargaining unit members at their respective schools during their lunch period to discuss  
5 Association business, and whereby Colgan-Posner and Association representatives  
6 would sign in at the school's front office and then freely walk throughout the school to  
7 speak with members in their classrooms or another area of their choosing. The  
8 Complaint further alleges that beginning on December 20, 2017, the School Committee  
9 unilaterally changed the manner and location in which Association representatives may  
10 meet with bargaining unit members at schools by directing them to meet with teachers  
11 in the teachers' lunchroom.

12 A public employer violates Sections 10(a)(5) and, derivatively, (1) of the Law  
13 when it unilaterally changes wages, hours, or other terms and conditions of employment  
14 without first bargaining to resolution or impasse with the employees' exclusive  
15 bargaining representative. School Committee of Newton v. Labor Relations  
16 Commission, 388 Mass. 557 (1983); City of Newton, 32 MLC 37, 48, MUP-2849 (June  
17 29, 2005). To establish a unilateral change violation, a charging party must show that:  
18 1) the respondent has changed an existing practice or instituted a new one; 2) the  
19 change affected employee wages, hours, or working conditions and thus implicated a  
20 mandatory subject of bargaining; and 3) the change was implemented without prior  
21 notice or an opportunity to bargain to resolution or impasse. Commonwealth of  
22 Massachusetts v. Labor Relations Commission, 404 Mass. 124, 127 (1989); School

1 Committee of Newton v. Labor Relations Commission, 388 Mass. at 572; City of  
2 Newton, 32 MLC at 48.

3         Here, the School Committee does not dispute that the manner and location in  
4 which Association representatives may meet with bargaining unit members during the  
5 school day is a mandatory subject of bargaining. However, the School Committee  
6 argues that it did not change an existing practice. In contrast, the Association argues  
7 that the parties had a longstanding practice by which Association representatives had  
8 unfettered access to unit members on school grounds, provided that they did not  
9 interfere with the educational mission of the schools. The Association maintains that for  
10 more than two decades prior to December of 2017, Association representatives met  
11 with bargaining unit members at their worksites before, during, and after school hours,  
12 without interrupting instructional time.

13         In determining whether a binding practice exists, the Commonwealth  
14 Employment Relations Board (CERB) “analyzes the combination of facts upon which  
15 the alleged practice is predicated, including whether the practice has occurred with  
16 regularity over a sufficient period of time so that it is reasonable to expect that the  
17 practice will continue.” City of Newton, 32 MLC at 48-49, (citations omitted). In its  
18 analysis, the CERB “inquires whether employees in the unit have a reasonable  
19 expectation that the practice in question will continue.” Id. at 49 (citations omitted). The  
20 CERB focuses on the fact that “[a] past practice is a practice which is unequivocal, has  
21 existed substantially unvaried for a reasonable period of time and is known and  
22 accepted by both parties.” Id. (citations omitted). “The definition of ‘practice’ necessarily  
23 involves the [CERB’s] policy judgement as to what combination of circumstances

1 establishes the contours of a past practice for purposes of applying the law prohibiting  
2 unilateral changes.” Bristol County, 23 MLC 114, 116, MUP-9844 (November 15, 1996).

3 T. Collins conducted three types of school visits: formal staff-wide meetings,  
4 informal walkabouts, and walkabout follow-up meetings with individual teachers.  
5 However, the only conduct at issue in this case concerns walkabouts – the  
6 unscheduled, informal, school visits where Association representatives sought  
7 impromptu meetings with teachers in their classrooms by walking around a school  
8 during the school day. Neither formal staff-wide meetings nor pre-arranged meetings  
9 with individual teachers during the school day are at issue because in all five instances  
10 in the Complaint where a principal stopped Colgan-Posner and Pellegrini and directed  
11 them to the school’s teachers’ room, it was the middle of the school day when the  
12 Association representatives were walking around a school seeking impromptu meetings  
13 with teachers in their classrooms.

14 T. Collins and Colgan-Posner both conducted school visits seeking impromptu  
15 meetings with teachers in their classrooms, but with one essential difference – timing. T.  
16 Collins conducted his walkabouts all before the school day. His walkabouts did not  
17 extend beyond the start of the school day, or begin after the start of the school day.  
18 Therefore, while T. Collins was Association President between 1997 and about July of  
19 2017, the parties had no practice whereby the Association representatives freely walked  
20 throughout schools during the school day seeking impromptu meetings with teachers in  
21 their classrooms or another area of their choosing.

22 In contrast to T. Collins’ before-school walkabouts, 90% of Colgan-Posner’s  
23 school visits occurred during the school day. Colgan-Posner’s conduct in visiting

1 schools and seeking impromptu meetings with teachers during the school day, as  
2 opposed to before the start of the school day, was a clear departure from T. Collins'  
3 practice. From late August of 2017 until December 20, 2017, when S. Collins directed  
4 Colgan-Posner to the teachers' room, Colgan-Posner walked freely throughout schools  
5 during the school day speaking with teachers in their classrooms, or elsewhere in  
6 schools. Nevertheless, I decline to find that Colgan-Posner's four-month practice of  
7 visiting schools during the school day seeking impromptu visits with teachers in their  
8 classrooms established a binding practice.

9       There is no definitive length of time required for a practice to become a binding  
10 term or condition of employment. City of Boston, 20 MLC 1603, 1608-1609, MUP-7976  
11 (May 20, 1994). The CERB has stated that "[i]t is not practical to consider an artificial or  
12 arbitrary length of time as a proper standard to be applied in making these decisions"  
13 and applies a case-by-case approach. Id. In the fall of 2017, Colgan-Posner was a new  
14 Association President, following on the heels of an Association President with two  
15 decades of service. Any analysis that focuses Colgan-Posner's four months of conduct  
16 to the exclusion of the preceding 20 years of T. Collins' conduct ignores the most  
17 relevant and established pattern. In City of Boston, 20 MLC at 1609, the CERB declined  
18 to consider a one-year snapshot of patrol supervisor assignments as evidence of an  
19 existing practice, stating that it was "inappropriate . . . to seize upon a limited period of  
20 high deployment and rule that it necessarily establishes a condition of employment."  
21 See also, City of Boston, 41 MLC 119, MUP-13-3371, 14-3466, 14-3504 (November 7,  
22 2014) (declining to take a narrow historical view of promotional exam evidence because  
23 it would require ignoring relevant evidence). Therefore, I decline to find that Colgan-

1 Posner's limited, four-month period of mid-day school visits where she walked freely  
2 throughout schools seeking impromptu meetings with teachers in their classrooms, or  
3 elsewhere in schools, constitutes the only relevant evidence of a past practice. T.  
4 Collins' conduct as Association President in the 20 years prior to Colgan-Posner's  
5 tenure is pivotal.

6 Even if I found that Colgan-Posner's practice of visiting schools during the school  
7 day seeking impromptu meetings with teachers is the only relevant evidence of the  
8 alleged practice, her practice was not accepted by both parties. Warwick objected to  
9 Colgan-Posner's conduct on November 28, 2017, December 20, 2017, and January 23,  
10 2018, telling her specifically that she and other Association representatives were not to  
11 go through school buildings looking for teachers to meet with during the school day  
12 because it disrupted teaching and learning for students. In light of the fact that Colgan-  
13 Posner's conduct was a short-lived deviation from the previous 20-year practice and  
14 was conduct that that Warwick swiftly and repeatedly rejected, I do not find that her  
15 practice existed substantially unvaried for a reasonable period of time and was known  
16 and accepted by both parties. City of Newton, 32 MLC at 48-49, (citations omitted).

17 There can be no change where there has never been any practice established in  
18 the past, Town of North Andover, 1 MLC 1103, 1106 MUP-529 (September 3, 1974),  
19 and I have found that there was no established practice of Association representatives  
20 walking freely throughout schools during the school day seeking impromptu meetings  
21 with teachers in their classrooms or elsewhere in schools. The following facts, as  
22 alleged in the Complaint, are undisputed. Warwick directed Colgan-Posner to meet with  
23 teachers during the day in the teachers' room/lounge/lunchroom on January 23, 2018,

1 and principals directed Colgan-Posner to the teachers' room/lunchroom/lounge during  
2 the school day on December 20, 2017 (Harris School), January 10, 2018 (Milton-  
3 Bradley School), January 23, 2018 (Beal School), and February 12, 2018 (DeBerry  
4 School). Additionally, Lussier directed Pellegrini to the teachers' room/lounge/lunchroom  
5 during the school day on February 27, 2018. However, the Association has failed to  
6 meet its burden of demonstrating by a preponderance of the evidence that by such  
7 actions the School Committee has unilaterally changed a condition of employment  
8 embodied in a binding past practice. City of Newton, 32 MLC at 48. Accordingly, I  
9 dismiss the allegation that the School Committee violated Section 10(a)(5), and  
10 derivatively, Section 10(a)(1) of the Law.<sup>37</sup>

11 Count II – Alleged Section 10(a)(1) Violation

12 The second issue is whether the School Committee independently interfered  
13 with, restrained and coerced its employees in the exercise of their rights guaranteed  
14 under Section 2 of the Law in violation of Section 10(a)(1) of the Law by the  
15 Superintendent's and various school principals' conduct in directing Colgan-Posner and  
16 Pellegrini to meet with teachers during the school day in the teachers'  
17 room/lounge/lunchroom instead of walking throughout the school seeking impromptu  
18 meetings with teachers. There is no dispute that the following events as alleged in the  
19 Complaint occurred:

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<sup>37</sup> The School Committee also argued that it bargained the issue of the manner and location that Association representatives may meet with bargaining unit members in Article 22 of the collective bargaining agreement. A past practice cannot overcome explicit contract language. City of Somerville, 44 MLC 123, 125, MUP-16-5023 (January 30, 2018). Nevertheless, in light my findings above, I need not decide the School Committee's affirmative defense of waiver by contract.

- 1 • On or about December 20, 2017, Colgan-Posner and Association Representative  
2 Pellegrini signed in at the front office of the Harris School and walked through the  
3 school to look for teachers in their classrooms during their lunch period. Principal  
4 S. Collins stopped Posner and Pellegrini and told them that they could not walk  
5 freely throughout the school but could only meet with members in the teachers'  
6 lunchroom.  
7
- 8 • On or about January 10, 2018, Posner and Pellegrini signed into the front office  
9 at the Milton-Bradley School and walked through the school to find teachers in  
10 their classrooms during their lunch period. Principal Hughes stopped Posner and  
11 Pellegrini and directed them to the teachers' lunchroom.  
12
- 13 • On or about January 23, 2018, Posner and Pellegrini signed into the front office  
14 at the Beal School. Principal Beglane told Posner and Pellegrini that they could  
15 not visit teachers in their classrooms during their lunch period but had to go to  
16 the teachers' lunchroom.  
17
- 18 • In a meeting in the afternoon of January 23, 2018, Superintendent Warwick told  
19 Posner that Association representatives were required to arrange their meetings  
20 in advance with the school principal and were only allowed to meet with  
21 members in a designated area in each school building, mainly the teachers'  
22 lunchroom.  
23
- 24 • On or about February 12, 2018, Posner and Pellegrini signed into the DeBerry  
25 School and walked around the school to meet with teachers in their classrooms  
26 during their lunch period. Principal Fazio stopped Posner and Pellegrini and  
27 directed them to the teachers' lunchroom.  
28
- 29 • On February 27, 2018, Pellegrini visited the Talmadge School to meet with  
30 teachers in their classrooms. Principal Lussier stopped Pellegrini before she  
31 signed in and directed her to the teachers' lunchroom.  
32

33 A public employer independently violates Section 10(a)(1) of the Law if it  
34 engages in conduct that would reasonably tend to interfere with, restrain, or coerce  
35 employees in the free exercise of their rights under Section 2 of the Law. City of  
36 Peabody, 25 MLC 191, 193, MUP-9861 (May 21, 1999). In determining whether an  
37 employer has violated the Law, the CERB applies an objective test that focuses on the  
38 impact that the employer's conduct would have on a reasonable employee rather than  
39 the subjective impact of the employer's conduct on the employee involved. Id. Under

1 this test, expressions of employer anger, criticism and ridicule directed at employees'  
2 protected activities have been found sufficient to constitute interference, restraint and  
3 coercion of employees, although to constitute a violation of the Law it is not necessary  
4 that an employer's conduct actually restrain or coerce an employee in the exercise of  
5 the employee's rights. Id.

6 For reasons described in the section above, prior to December of 2017, the  
7 parties had no established practice of Association representatives walking freely  
8 throughout schools during the school day seeking impromptu meetings with teachers in  
9 their classrooms or elsewhere in schools. In the absence of other evidence establishing  
10 that Association representatives had limited means to meet with bargaining unit  
11 members or that the requirement was discriminatorily enforced, I do not find that any  
12 reasonable employee could be chilled by the Superintendent's or principals' directions  
13 that Association representatives not walk around schools seeking impromptu meetings  
14 with teachers during the day, but rather meet with teachers in the teachers'  
15 room/lounge/lunchroom. See Quincy School Committee, 19 MLC 1476, 1481-82, MUP-  
16 5951 (Oct. 21, 1992) (an employer may restrict access of non-employees, including  
17 union representatives, in a non-discriminatory manner consistent with concerns for  
18 security of students, employees, and property, as long as unions may communicate with  
19 employees through other means). Accordingly, I dismiss the allegation that the School  
20 Committee independently interfered with, restrained and coerced its employees in the  
21 exercise of their rights guaranteed under Section 2 of the Law in violation of Section  
22 10(a)(1) of the Law.



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CONCLUSION

Based on the record, and for the reasons stated above, I conclude that the School Committee did not violate Section 10(a)(5), and derivatively, Section 10(a)(1) of the Law and did not independently interfere with, restrain and coerce its employees in the exercise of their rights guaranteed under Section 2 of the Law in violation of Section 10(a)(1) of the Law.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS



/s/ Kathleen Goodberlet  
KATHLEEN GOODBERLET, ESQ.  
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c. 150E, Section 11, 456 CMR 13.19, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Request for Review with the Department of Labor Relations within ten days after receiving notice of this decision. If a Request for Review is not filed within the ten days, this decision shall become final and binding on the parties.