

Freedom of Expression Arbitration Update

School District No. 5 (Southeast Kootenay): Union Political Materials Posted in Schools/Buttons Worn in Classrooms

Arbitrator Mark Thompson has issued his [award dated October 30](#) confirming that students must be insulated from political messages in schools. More specifically, teachers may not post union political materials on school walls/doors or wear union political buttons in the classroom.

This is an extremely important award, further building on the [award of Arbitrator Burke](#) dated February 21, 2011, in which a teacher was prohibited from wearing a black armband in the classroom to protest the Foundation Skills Assessment (FSA) test (see [@issue 2011-06](#)).

Issue

Under section 2b of the *Charter of Rights and Freedoms* (the Charter), do teachers' rights to freedom of expression extend to posting, in the view of students, union political materials related to educational policy on the walls outside of their classroom and permit teachers to wear buttons in the classroom? Does the employer have legitimate section 1 arguments to restrict or minimally impair this freedom of expression by teachers in schools?

Facts

The BCTF adopted and implemented a political campaign entitled "When Will They Learn." The three main messages in this campaign were: "When will they learn — special needs neglected," "When will they learn — 177 schools closed," "When will they learn — 10,000 overcrowded classes." This campaign was launched first in conjunction with the municipal elections of 2008 and later with the provincial election of May 12, 2009.

In School District No. 5 (Southeast Kootenay), just prior to the provincial election, three elementary teachers and one secondary teacher were directed to remove the "When Will They Learn" materials, which were on display in their classroom or taped to the wall outside of their classroom. In addition, one elementary teacher was directed to refrain from wearing a "When Will They Learn" button while visiting a middle school. The teachers were advised that these materials could instead be posted on the union bulletin board provided in each staff room.

Section 1 "Pressing and Substantial Objectives"

Although the BCTF argued that "students did not need to be sheltered from political controversy," Arbitrator Thompson disagreed and stated the following on pages 27, 39, 44 and 47 of his award:

The third pressing and substantial objective of the Employer was its desire to insulate students from partisan political messages while in school. Students could see the materials in this case. Since teachers are in positions of authority and students are a captive audience, school boards want to avoid distractions that political messages from teachers could cause. Arbitrator Kinzie recognized this concern in his decision on the provincial testing program. He required that materials be distributed to parents in sealed envelopes so that students would be sheltered from any political message. In her award dealing with teachers wearing armbands, arbitrator Burke accepted the employer's argument about the vulnerability of students to political messages from teachers.

The materials at issue in this case were clearly directed at parents, whose views could influence policy choices. However, the means of presenting these messages to parents involved children. Teachers wore buttons while dealing with children. Materials were posted beside classrooms and on classroom doors.

Considering the contextual factors set out in the Court of Appeal decision and the authorities cited, I conclude that insulating students from political messages in the classroom is a "pressing and substantial objective" as required by the Oakes test. To summarize, I have concluded that the materials used in this case were political, but not partisan. Teachers may not introduce such materials, either in the form of printed matter or buttons worn on their garments into the classroom or the walls or doors immediately adjacent to classrooms. For these reasons the grievance is denied.

Significance

It is not appropriate for a teacher who is acting in an instructional role/setting in the presence of students to wear a button displaying a union and/or political message or post such materials in the view of students. The role of the teacher is to educate students and not to advance their individual or union's interests. School districts must be aware of the vulnerability of children to the messages conveyed by their teachers. Teachers are authority figures to students — as students are a captive audience and as there may not be a counterpoint to the views of the teacher, particularly in an elementary school setting, it is important to ensure that the classroom and the learning environment of a school are unimpaired by a teacher's use of the classroom to advance a political agenda. Teachers are obliged to maintain their professionalism and to foster an open and supportive education environment. Such an environment can be undermined where teachers use the classroom to advance their political views.

This decision is significant for school districts, particularly in light of the current political context and the desire of some teachers to seek out opportunities to express themselves in schools on various political messages on educational issues. This decision and the previous decisions of Arbitrators Burke and Kinzie referenced above confirm that school districts have both the responsibility and right to insulate students from political materials/messages on educational issues. Union political materials should be posted on the union bulletin board and should not be worn or posted on the doors or walls of schools which are in the view of students.

Please note: With trustee election campaigns currently underway, students should be sheltered from election materials in schools.

Questions

Should you have any questions regarding this award, please contact Brian Chutter at brianc@bcpsea.bc.ca or your BCPSEA labour relations liaison.