

Foundation Skills Assessment (FSA): Hall Expedited Arbitration Award

Arbitrator John Hall released an expedited arbitration award on January 9, 2009 regarding the distribution of FSA materials to parents through students in School District No. 39 (Vancouver). Arbitrator Hall remained seized of the issue after he issued a Consent Award regarding FSA on October 15, 2008. This expedited arbitration arose after a dispute between a district and a local “over a pamphlet which the union had produced regarding FSA testing. The pamphlet had been provided to teachers to send home to parents through students.”

Although the expedited arbitration award is limited to the specific issue of the distribution and does not address the content of the FSA material, Arbitrator Hall's award makes two important findings for school districts to consider.

First, with regard to teachers sending home material about FSA through students, Arbitrator Hall relied on Arbitrator Kinzie's statement in the School District No. 5 (Southeast Kootenay) FSA arbitration, that placing the FSA pamphlet in a sealed envelope addressed to the parents or guardians of students “constitutes a reasonable attempt” to address the concern that inserting students into the policy discussion causes them to feel “uncertain about two very important sets of people in their lives.”

Arbitrator Hall goes on to say that, “if the Union wishes to distribute FSA material to parents via students, it must do so in a sealed envelope or in some other manner designed to prevent students from reading the contents of the material. This precautionary measure avoids the potential for harm to the students, and does not infringe the right of teachers to express their views about FSA testing to the students' parents.”

Second, with regard to the authority of the employer to control what is sent home from school, Arbitrator Hall stated that, in light of the Consent Award, “the Union must give the employer and/or principals advance notice of the method selected for distribution” and that “any issue over the manner of distribution” of FSA material should be resolved before the material is sent home. Arbitrator Hall referred to Arbitrator Kinzie in saying that, “the Employer has the right to control what is sent home to parents through the medium of their children/students at its schools.”

Questions

Should your district face a situation where response is problematic, or if you have any questions regarding this bulletin, please contact your BCPSEA labour relations liaison. You may also wish to refer to BCPSEA @issue bulletin No. 2008-13, dated September 30, 2008 (on our website at <http://www.bcpsea.bc.ca/access/publications/aissue/2008/ai2008-13.pdf>), which states:

“It is suggested that your Board of Education either pass a resolution or adopt a district policy that requires prior approval for a teacher to distribute union/political information directly to parents or through students as couriers” and that “the communication must be in a sealed envelope and clearly marked/addressed to the parent/guardian.”