

LEGAL ALERT

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Appellate Division Affirms Board's Right to Order Removal of Classroom Signs During Collective Negotiations

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In an important affirmation of a school district's right to regulate teacher speech in the workplace during contract negotiations, the Appellate Division of New Jersey Superior Court today confirmed that restrictions placed upon public employees' speech remain permissible even when the content of the speech does not specifically reference a labor dispute or negotiations.

SPSK represented the Board of Education in *Parsippany-Troy Hills Education Association v. Parsippany-Troy Hills Board of Education*, Docket No. A-0992-16T4, (July 23, 2018), where the local Education Association, amid "heated negotiations" for a successor contract, directed its members to place approximately two to three hundred signs on classroom doors and windows throughout the District's fourteen schools. The signs proclaimed "I AM PROUD TO BE A TEACHER," followed by the local Education Association's name.

The District ordered the signs removed on the grounds that they violated a Board Policy prohibiting staff members from engaging in "activity that is intended and/or designed to promote, further, or assert a position on labor relations issues." As reported in our prior Legal Alert (*Proud to Be a Teacher*, October 11, 2016), the Superior Court found that there was no question, given the context of the matter, that the signs constituted a labor relations statement and their removal did not infringe upon Association members' First Amendment rights.

The Association appealed that decision, arguing that the lower court erred when it considered the context of the signs. The Association argued that the application of the Policy was overbroad since there was nothing intrinsic in the language of the signs that referred to a labor relations issue. The Appellate Division disagreed, concluding that "[r]easonable restrictions [on public employees' freedom of speech] can apply when they arise from a labor dispute, even when the content of the speech does not specifically refer to the labor dispute or negotiations." Contrary to the Association's argument, the Court expressly found that the context of a public employee's exercise of free speech rights must be considered when determining whether the employer's restrictions are justified.

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The Appellate Division also noted that the District’s buildings were not “public fora” and the Association’s claims had to be analyzed within that context, as the District was within its rights to regulate the purposes for which its buildings could or could not be used by its employees. Rejecting the Association’s claim that the application of the policy was a prior restraint on speech, the Appellate Division concluded that the directive to remove the signs did not leave the employees without ample alternatives through which they could express their message.

If you have any questions regarding the effect of this important decision, please do not hesitate to contact the school law and labor attorneys at SPSK.

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