

IN ARBITRATION PROCEEDINGS  
PURSUANT TO AGREEMENT BETWEEN THE PARTIES

In the Matter of a Controversy	)	
	)	
between	)	
	)	
FAIRFIELD-SUISUN UNIFIED SCHOOL,	)	
DISTRICT,	)	
	)	
District	)	
	)	OPINION AND AWARD
and	)	
	)	CHARLES A. ASKIN
FAIRFIELD-SUISUN UNIFIED TEACHERS	)	ARBITRATOR
ASSOCIATION,	)	
	)	
Association	)	AAA Case 74 300 00049 97
	)	
Involving a dispute concerning	)	
class size for specialist teachers	)	
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This dispute involves the application and interpretation of a Collective Bargaining Agreement between the above-named District and Association. Pursuant to the terms of the Agreement, the parties selected this Arbitrator to hear and resolve the matter.

A hearing was held in Fairfield, California on August 1, 1997. During the hearing, the parties were given full opportunity to examine and cross-examine witnesses and to introduce relevant exhibits. Both parties filed pre-hearing briefs, and the matter was submitted upon the close of the hearing on August 1, 1997.



## FACTS

This dispute concerns the interpretation of the language in Article 14.2 of the Agreement concerning the maximum class size for Specialist teachers in the District. Section 12.4 of the contract grants elementary teachers the right to preparation time (work time without students assigned to the teacher) of 250 minutes spread over 10 days. In order to provide that time, the District employs Specialist teachers who teach music, P.E., and similar subjects in 25-minute increments when the regular classroom teachers are "released" from their class for their preparation time. There are approximately 40 Specialist teachers employed by the District.

The language in Article 14.2 represents a modification of the language in the predecessor Collective Bargaining Agreement. The prior (1992-95) contract provided the same maximum limit of 32 students for teachers in grades 1-3, but contained a lower maximum of 38 students, including mainstreamed Special Education students. The record reflects that in the parties' negotiations, the District proposed to increase the maximum class size for Specialists from 38 to 40 and to delete the phrase "including mainstreamed Special Education Students". The evidence also shows that the Association agreed to increase the maximum size, but only if the above phrase relating to Special Education students was retained. The District agreed to this modification of its proposal. There is evidence that the Association's negotiator explained at the bargaining table that it was agreeing to the larger class size limits to provide

release time for Special Day Class (SDC) teachers and to facilitate the mainstreaming of SDC students.<sup>1</sup>

The current Agreement was negotiated in 1995. Thereafter, in the summer of 1996, the state legislature made significant changes in elementary school class size goals, and the District reduced its class size in grades 1 and 2 to a maximum of 20 students per class. After the adoption of the reduced class sizes, the District has scheduled two regular, reduced classes in grades 1 and 2 to a Specialist teacher on the basis that an assignment of 40 students (with zero Special Education students) is consistent with the maximum class size for Specialists provided in Article 14.2. The District adduced evidence that, unlike regular elementary classroom teachers, Specialists teach the same activity (P.E., music, etc.) all day instead of the core curriculum; in addition, their lessons tend to be group activities (organized games in P.E., singing in music) rather than the kind of individualized instruction required of regular classroom teachers. According to the District, it would be necessary to hire 3-5 Specialists if the Association's position is sustained in the grievance, which would cost the District about \$50,000 per Specialist (or a total additional expense of \$150,000 - \$250,000).

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<sup>1</sup> As noted in Article 14.3, the maximum size limit for Special Day Class teachers is (and was) 16 students. The parties discussed at the bargaining table the fact that a limit of 40 students for Specialists facilitated preparation time for prep time because one-half of those classes (8 of 16) could be added to 32 students in each of two regular classrooms for a total of 40.

## CONTENTIONS OF THE PARTIES

The Association contends that Article 14.2 permits only the assignment of 32 regular education students, plus 8 SDC students, to a Specialist in Grades 1 and 2. The parties had a clear and repeated meeting of the minds during the negotiations for the 1995-98 contract. The District is now attempting to secure through the grievance process what they could not get, and only obliquely asked for, in the bargaining process. The Arbitrator should rule that the District violated the Agreement, and order a status quo ante remedy. The Association also seeks back pay, with interest, for those Specialists who were required to service the excess number of students, calculated at the per diem per instructional period rate.

The District contends that the clear and unambiguous language of Article 14.2 is controlling. That language specifies a maximum class size for Specialists in grades 1 and 2 of 40 students. The additional language about special education students lends nothing to the meaning or effect of the bargained limits, i.e. 40 students; thus, the Arbitrator should enforce the bargained limit without addressing the parties' intent. This is particularly true in view of the "zipper clause" in Article 3.3. If a contrary result is reached, any relief and remedies are limited by the terms of the Agreement and by reserved management rights. The Association has no right to dictate a class size of less than 40 for Specialists. Alternatively, this dispute should be negotiated by the parties.

## OPINION

The primary function of an arbitrator who is asked to interpret a Collective Bargaining Agreement is to ascertain the mutual intent of the parties. To fulfill that function it is first necessary to determine whether the pertinent language is clear and unambiguous. If so, the arbitrator simply enforces the plain meaning of the words used by the parties. Alternatively, where the language is ambiguous an arbitrator may then look beyond the four corners of the contract to ascertain the parties' intent by reviewing the extrinsic evidence such as past practice or bargaining history. Normally, the standard for determining whether contract is ambiguous is whether *plausible* contentions can be made for conflicting interpretations of the dispute language.

Here, the governing language provides that the class size for Specialist teachers in Grades 1-3 "shall not exceed...40 students, including Mainstreamed Special Day Class students." In essence, the District argues that the language means that the inclusion of SDC students within the class ceiling is permissive, i.e. that the limit of 40 students "may" include SDC students. This is certainly a plausible interpretation of the disputed language. On the other hand, the Association argues that the language is mandatory, i.e. that the phrase "*including...[SDC] students*" (emphasis supplied) was added for a specific reason: a class of 40 students "must" include SDC students. This is likewise a plausible interpretation.

A review of the entire clause shows that the parties agreed to a limit of 32 students for regular teachers in Grades 1-3, without reference to any inclusions, and a larger limit of 40 students for Specialist teachers, with the inclusion of SDC students. One interpretation of these different class size limits for the same grade levels is that the parties recognized a difference in the type of instruction provided by Specialist teachers and regular elementary class teachers (group lessons vs. individual teaching of core curriculum), as argued by the District. However, it certainly can be argued that the difference in class size limits for the same grade levels was negotiated because of the stated difference noted in the contract of including SDC students in the class size limit for Specialists, as argued by the Association. Based on the language of Article 14.2, the Arbitrator finds that both parties have advanced plausible arguments for conflicting interpretations of the clause and that the language is therefore ambiguous.

A review of the bargaining history leaves little doubt about the parties' intent and the bargain which was struck. During the negotiations, the District sought to increase the class ceiling and to delete the inclusion language pertaining to the SDS students. The latter portion of the District's proposal, of course, would have simply increased the class size for Specialists without any limitation at all. The evidence shows that the District was not successful in obtaining this simple increase in the class ceiling.

The evidence further shows that a major rationale of the parties in increasing the prior limit from 38 students to 40 students was the fact that the class size for SDC classes (16 students) facilitated a convenient way to schedule prep time for SDC teachers by dividing the latter classes by two and adding 8 students to the "regular" limit of 32 students, for a total of 40. These discussions about the numerical composition of the regular and SDC classes and the evidence that the Association's agreement to an increase in the class size limit for Specialist was conditioned upon the District's withdrawal of the "SDC inclusion" proposal show that the bargain which was struck consisted of a trade-off for an increased class size for Specialists in exchange for an understanding that the "extra" students to be included would be SDC students. Any doubt about this intent is removed by the District's acquiescence to the Association's statement at the bargaining table that the increase in Specialists' class sizes was accepted to provide release time to the SDC teachers and to facilitate the mainstreaming of SDC students. Accordingly, it is concluded that the 40-student limit for Specialists' classes means 32 students plus 8 SDC students.<sup>2</sup>


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<sup>2</sup> Contrary to the argument of the District, the language in Article 14.1 concerning the right of principals to consider economic constraints does not support a contrary conclusion. The specific contractual class size limits negotiated in Article 14.2 supercede the general language contained in Article 14.1; to hold otherwise would render the specific limits in 14.2 to be meaningless because the District could unilaterally ignore those limits whenever it determined that "economic constraints" supported such a decision.

AWARD

The District violated the Agreement when it combined regular classrooms in Grades 1 and 2 and scheduled 40 regular students in classes taught by Specialists in those grades. The appropriate remedy is to restore the status quo ante unless and until the parties negotiate a modification of the existing language.<sup>3</sup>

DATED: August 11, 1997



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CHARLES A. ASKIN,  
Arbitrator

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<sup>3</sup> There is no contractual basis for the Association's requested remedy of awarding back pay to Specialists who were scheduled to teach classes in excess of the proper class limits.