

1 *BEFORE R. DOUGLAS COLLINS*  
2 *IN ARBITRATION PURSUANT TO ARTICLE 12 OF THE*  
3 *PARTIES' 2007 – 2010 AGREEMENT*

4 In the Matter of a Dispute

5 – between –

6 *SANTA MONICA COLLEGE FACULTY*  
7 *ASSOCIATION*

8 – and –

9 *SANTA MONICA COMMUNITY COLLEGE*  
10 *DISTRICT.*

11 Concerning the reduction of the number of  
12 staff parking spaces on the main campus.

*ARBITRATOR'S*  
*OPINION & AWARD*

12 *APPEARANCES*

13 *For the Association:*

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18 *PROCEDURAL HISTORY*

19 This arbitration arises under the 2007 – 2010 Agreement (“Agreement”) between the  
20 *SANTA MONICA COLLEGE FACULTY ASSOCIATION* (“Association”) and the *SANTA*  
21 *MONICA COMMUNITY COLLEGE DISTRICT* (“District”). I was selected as the impartial  
22 arbitrator of this dispute in accordance with Article 12 of the Agreement, which provides that my  
23 decision is binding on the parties.

24 The evidentiary hearing in this matter was held September 29, 2009, at the District’s offices  
25 in Santa Monica, California. At the outset of the hearing the parties stipulated that the instant  
26 grievance was properly before me for final and binding arbitration. Each party had a full and  
27 adequate opportunity to call, examine, and cross-examine witnesses and to introduce relevant  
28 evidence. All witnesses testified under oath. A certified court reporter attended the hearing to record

1 the proceedings and testimony and subsequently produced a verbatim transcript thereof. Each party  
2 submitted a post-hearing brief, completing the record herein.

3 *ISSUE*

4 The parties stipulated at the outset of the hearing that the issue to be decided in this  
5 arbitration is as follows:

6 Did the District violate Article 18.4.1 by reducing staff parking  
7 spaces on the main campus below 536?

8 If so, what is the appropriate remedy?

9 *RELEVANT PROVISIONS OF THE AGREEMENT*

10 Effective August 21, 2007,  
11 through August 23, 2010

12 ...

13 ARTICLE 12

14 GRIEVANCE PROCEDURE

15 ...

16 12.3 Formal Procedure

17 ...

18 Level Three – Arbitration

19 12.3.8

20 ...

21 d. The arbitrator shall, as soon as possible, hear evidence and render a decision on the issue or  
22 issues submitted, and provide an appropriate remedy. . . .

23 e. The arbitrator will have no power to add to, subtract from, or modify the terms of this  
24 Agreement.

25 12.3.9 The decision of the impartial arbitrator shall be binding on the parties.

26 ...

27 ARTICLE 13

28 RIGHTS OF THE BOARD OF TRUSTEES

13.1 The Board of Trustees on its own behalf and on behalf of the electors of the District retains and  
reserves without limitation all powers, authority, and rights conferred upon it by the laws of the State  
of California except as limited and agreed to in a specific article or section of the Agreement. The  
Board of Trustees may legally delegate or assign certain powers, authority, and rights to the  
Superintendent/President. Neither the exercise in a particular manner of any right herein reserved  
to the Board of Trustees nor the non-exercise of any such right shall be deemed to be a waiver of the  
Board of Trustees' rights, nor shall such exercise of rights preclude the Board of Trustees from  
exercising the right in a different manner.

...

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1 ARTICLE 18  
2 SAFETY, HEALTH AND WELFARE AND WORKING CONDITIONS

3 18.4 Parking

4 18.4.1 The District shall not increase the parking fee charged to faculty without the written agreement of  
5 the Association. The number of unrestricted staff parking spaces on the main campus shall not be  
6 reduced below 536 spaces unless the District gives prior notice to the Faculty Association. If the  
7 Association objects to the reduction plan, no reduction shall take place unless required by law or for  
8 the safety of the staff or students. Upon completion of the new parking structure, either the District  
9 or the Association may request that this section be reopened to discuss the allocation of staff parking  
10 spaces.

11 *RELEVANT FACTS*

12 The controlling facts of this grievance are simple and undisputed. It boils down to the  
13 meaning of the term “main campus” as used in § 18.4.1 of the Agreement, which provides in  
14 relevant part that the number of unrestricted parking spaces available for faculty “on the main  
15 campus shall not be reduced below 536 spaces” absent agreement of the Association. Here, the  
16 dispute between the parties is whether spaces in a parking lot at the corner of 14<sup>th</sup> Street and Pico  
17 Boulevard in the City of Santa Monica are “on the main campus” within the meaning of § 18.4.1.

18 Santa Monica College is located in a densely populated urban area. The majority of its  
19 buildings are situated between Pico Boulevard on the north, Pearl Street on the south, the alley west  
20 of and parallel to 20<sup>th</sup> Street on the east, and 16<sup>th</sup> Street on the west. There are no public streets  
21 within those boundaries. In recent years the College has implemented a Facilities Master Plan,  
22 adding several new buildings and replacing others, and the campus now appears to be more crowded  
23 than most community colleges. A few additional College buildings are located on the south side of  
24 Pearl Street, which house the Campus Police Department, International Education Counseling,  
25 Auxiliary Services, and the Center for Environmental & Urban Studies.

26 Parking is a major concern at the College, in part because of the limited number of spaces  
27 available in the surrounding neighborhood. There are two large parking structures on the campus,  
28 designated Parking Structure 3 and Parking Structure 4. There is also a small parking lot on the roof  
of Drescher Hall, designated Lot 2. Prior to 2009, there was a larger single-level lot at the northeast  
corner of the campus and along the alley west of 20<sup>th</sup> Street; that lot was designated Lot 1. In  
addition, there is a parking lot on the south side of Pearl Street designated Lot 5.

1 Section 18.6.1 of the parties' 1998 – 2001 Agreement addressed parking as follows:

2 The District shall not increase the parking fee charged to faculty without the written  
3 agreement of the Association. The number of unrestricted staff parking spaces on  
4 campus shall not be reduced unless the District gives prior notice to the Faculty  
5 Association. If the Association objects to the reduction plan, no reduction shall take  
6 place unless required by law or for the safety of the staff or students.

7 Former Union President Lantz Simpson testified that the Association filed a grievance when  
8 the District unilaterally reduced the number of parking spaces from 577 to 536 during the term of  
9 the 1998 – 2001 Agreement. During negotiations for the 2001 – 2004 Agreement, the Association  
10 therefore proposed that the second sentence of § 18.6.1 be modified to read, "The number of  
11 unrestricted staff parking spaces on the main campus shall not be reduced below 536 spaces." The  
12 District agreed to the proposal. However, the record establishes that the parties did not discuss the  
13 meaning of the term "main campus" during those negotiations. The revised language was carried  
14 forward in the parties' 2004 – 2007 and 2007 – 2010 Agreements without further modification other  
15 than the renumbering of the provision as § 18.4.1.

16 Sometime around 1998, the District purchased a property located at the southeast corner of  
17 14<sup>th</sup> Street and Pico Boulevard. The parcel is roughly 100 to 200 yards west of 16<sup>th</sup> Street and Pico  
18 Boulevard, which the Association contends to be the northwest corner of the "main campus."  
19 Between that parcel and 16<sup>th</sup> Street is a small office building, a medical office, and a Foster's Freeze  
20 ice cream shop. Although the parcel was occupied by a gasoline station when purchased by the  
21 District, the station was removed and the property was used primarily for construction purposes,  
22 such as the storage of materials and equipment, through at least 2006. Although the District  
23 intended to convert the property to an English as a Second Language and International Student  
24 Center, including underground parking for about 45 cars, funding issues arose and the project was  
25 not built. The property was apparently vacant for most of 2007 and 2008.

26 Sometime in late 2008 or 2009, the District began construction of a new Student Services  
27 and Administration Building at the northeast corner of the campus where much of Lot 1 was  
28 previously located. Although the new facility is planned to include underground parking garage for  
370 cars, the spaces in Lot 1, which were used primarily by faculty and other employees, were lost.

1 To replace some of the parking spaces lost during construction of the Student Services and  
2 Administration Building, the District paved the parcel at the corner of 14<sup>th</sup> Street and Pico  
3 Boulevard, turned it into a parking lot, and designated it as Lot 6. On December 10, 2008, it met  
4 with representatives of the Association to discuss issues related to the construction, including faculty  
5 parking on Lot 6, which the District asserted was now part of the College’s “main campus.”  
6 However, the Association objected, contending that Lot 6 was not “on the main campus” within the  
7 meaning of § 18.4.1 of the Agreement.

8 On December 15, 2008, the Association filed the instant grievance contending that the  
9 District had violated § 18.4.1 by failing to provide at least 536 parking spaces for faculty members  
10 on the main campus. The dispute was not resolved by the parties, and it was therefore submitted to  
11 final and binding arbitration as described above.

12 *OPINION*

13 Having carefully reviewed and weighed all the testimony and evidence presented at the  
14 hearing, and after considering each argument raised by the parties in their briefs, it is my conclusion  
15 that the District violated Article 18.4.1 by reducing staff parking spaces on the main campus below  
16 536. Simply stated, Lot 6 is not part of the College’s “main campus” within the plain meaning of  
17 the Agreement.

18 An arbitrator’s sole function in a case involving contract interpretation is to ascertain and  
19 apply the parties’ mutual intent as expressed in their contract, not to rewrite it. Such intent is to be  
20 determined by reference first to the contract itself. Where the language is clear and unambiguous  
21 on its face, further inquiry is inappropriate:

22 Plain and unambiguous words are undisputed facts. The conduct of Parties may be  
23 used to fix a meaning to words and phrases of uncertain meaning. Prior acts cannot  
24 be used to change the explicit terms of a contract. An arbitrator’s function is not to  
25 rewrite the Parties’ contract. His function is limited to finding out what the Parties  
26 intended under a particular clause. The intent of the Parties is to be found in the  
27 words which they, themselves, employed to express their intent. When the language  
28 used is clear and explicit, the Arbitrator is constrained to give effect to the thought  
expressed by the words used.<sup>1</sup>

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<sup>1</sup> *Phelps Dodge Copper Products Corp.*, 16 LA 229, 233 (Jules Justin, 1951).

1 Unless there is persuasive evidence that the parties mutually understood the words they used  
2 in their contract to have some special or technical meaning, the words will be read as having their  
3 ordinary meanings.

4 In interpreting collective bargaining agreements, words shall be read as having their  
5 common meaning, unless it is clear that the parties intended otherwise. Negotiators  
6 often are not lawyers and the collective agreement is intended as a practical working  
7 statement, rather than a technical legal document. It is intended to be read and  
8 applied by employees, union officers, supervisors, and heads of departments. There  
9 is a heavy presumption that it is intended to mean what such persons will read it to  
10 mean, not what a lawyer can by remote inference import into it.<sup>2</sup>

11 It is beyond dispute that the parties did not understand the term “main campus” to include  
12 Lot 6 when the phrase was added to the Agreement in 2001 since there was no such parking lot at  
13 the time. Moreover, absent evidence to the contrary, the word “main” must be presumed to have  
14 been intended to have its usual and ordinary meaning, to wit: “chief in size, extent, or importance;  
15 principal; leading. . . .”<sup>3</sup> If the District intended for the term “main campus” to have some different  
16 or specialized meaning, it was obligated to place that proposal on the table at the time the provision  
17 was negotiated. Having failed to do so, it cannot now argue persuasively that the term was  
18 understood and intended to have some broader meaning.

19 Absent evidence that the parties mutually understood and intended to include within the  
20 meaning of § 18.4.1 parking lots that were not within the obvious boundaries of the College’s “main  
21 campus,” specifically the area between Pico Boulevard, Pearl Street, 16<sup>th</sup> Street, and the alley west  
22 of 20<sup>th</sup> Street, the term must be read as limited to that geographic area.<sup>4</sup> To hold otherwise would  
23 render the term meaningless, allowing the District to designate virtually any property as part of the  
24 “main campus” regardless of its proximity or relationship to the rest of the College. If the parties had  
25 mutually understood and intended such a result, then the limiting phrase “on the main campus”  
26 would have been superfluous. However, it is a fundamental principle of contract interpretation that

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27 <sup>2</sup> *City of Meriden*, 48 LA 137, 142 (Clyde Summers, 1967).

28 <sup>3</sup> *The Random House Dictionary of the English Language*, Second Edition, Unabridged (New York: Random House, Inc., 1987) 1159.

<sup>4</sup> The District itself apparently did not consider the property at 14th and Pico to be part of the College’s “main campus” as recently as August 2008, when it produced a map of the “main campus” that did not include that parcel.

1 all words used by the parties must be presumed to have been intended to have meaning and they  
2 must therefore be given effect if practicable: “In general, as between two otherwise reasonable  
3 interpretations, preference will be given to the one that gives meaning and effect to all the provisions  
4 and words of the contract.”<sup>5</sup>

5 Moreover, the existence of Lot 5 is irrelevant to this analysis. Even assuming that Lot 5 is  
6 not part of the “main campus” within the meaning of § 18.4.1, that provision prohibits the District  
7 from reducing faculty parking “on the main campus” below 536 only if “the Association objects to  
8 the reduction plan,” and it may reduce parking despite any such objection if “required by law or for  
9 the safety of the staff or students.” There is no evidence that the Association ever objected to the use  
10 of Lot 5 for faculty parking, but clearly it did object to the use of Lot 6. Since there is no evidence  
11 that the reduction of faculty parking spaces on the main campus was required by law or for safety  
12 reasons, the District’s unilateral action despite the Association’s objection violated § 18.4.1.

13 Finally, the District’s reliance on either the Rights of the Board of Trustees provision of the  
14 Agreement or on external law is not persuasive. While the District argues correctly that under  
15 Article 13 it retains all rights not otherwise limited by the Agreement, its right to designate faculty  
16 parking is specifically restricted by § 18.4.1. Decisions of courts regarding the meaning of the word  
17 “campus” under Washington or Iowa law are simply not helpful since the dispute here turns on the  
18 meaning of the word “main.”

19 Less clear is the appropriate remedy for the District’s violation of § 18.4.1. Although the  
20 Association has presented a plausible plan for establishing the contractually mandated 536 faculty  
21 parking spaces on the main campus of the College, it is clearly not the only means of implementing  
22 that requirement, nor is it necessarily the best. Accordingly, the question of the appropriate remedy  
23 shall be remanded to the parties for negotiation, subject to my retention of the jurisdiction conferred  
24 on me by the parties and the Agreement.

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27 <sup>5</sup> Marvin F. Hill, Jr., and Anthony V. Sinicropi, *Evidence in Arbitration*, Second Edition (Washington, D.C.:  
28 The Bureau of National Affairs, Inc., 1987) 355.

1 *AWARD*

2 For the above reasons and based on the record as a whole, I hereby find that the District  
3 violated Article 18.4.1 by reducing staff parking spaces on the main campus below 536.

4 The question of the appropriate remedy for said violation is hereby remanded to the parties  
5 for negotiation for a minimum of 30 days from the date of this Opinion & Award, or other period  
6 mutually agreeable to the parties.

7 The arbitrator shall retain jurisdiction over this matter for the sole and limited purpose of  
8 resolving any disputes that may arise between the parties regarding the interpretation or application  
9 of this Award, specifically the appropriate remedy for the District's violation of § 18.4.1.

10 It is so ordered.

11 

12 R. DOUGLAS COLLINS

13 Arbitrator

14 Dated: January 28, 2010

15 Hermosa Beach, California