

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

LABORERS' UNION, LOCAL NO. 1086

and

ADVANCE CAST STONE COMPANY

Case 8
No. 57085
A-5734

Appearances:

Mr. Miles Mertens, Business Agent, appeared on behalf of the Union.

Mr. Matthew Garni, President, Advance Cast Stone Company, appeared on behalf of the Company.

SUPPLEMENTAL ARBITRATION AWARD

On April 15, 1999, I issued an Arbitration Award resolving a grievance between the above-captioned parties. I denied the grievance in part and granted it in part. The grievance was denied to the extent that Ponath and Beversdorf were not entitled to pay increases after 8, 16 or 32 weeks of employment, but the grievance was granted to the extent that Perry was entitled to advance to the 16 and 32 week steps of the salary schedule. I ordered a make whole remedy for Perry.

On October 18, 1999, the parties' representatives initiated a conference call to the undersigned concerning my April 15, 1999 Award. In that conference call, they mutually requested clarification of a part of the Award. The part in question was in the **FACTS** section of the Award and will be identified below. Pursuant to the parties' mutual request, the undersigned issues the following Supplemental Arbitration Award.

DISCUSSION

In my April 15, 1999 Award, I made the following statements on pages 3 and 4 of the FACTS section:

When the parties negotiated their 1995-1998 collective bargaining agreement, they agreed that effective November 1, 1995, new employees would be paid a starting wage of \$9.20/hour. They further agreed that these new hires would receive the following wage adjustments at the following intervals:

Start	\$9.20
After 8 weeks:	\$9.40
After 16 weeks:	\$9.70
After 32 weeks:	\$10.00
After 52 weeks:	The regular hourly rate then in effect.

In the summer of 1998, the full scale pay rate referenced above (i.e. the rate after 52 weeks of employment) was \$11.60/hour.

When the parties negotiated their current collective bargaining agreement in 1998, they did not change any of the new hire wage rates listed above. Thus, they left the start rate at \$9.20/hour. Similarly, all the other wage rates listed above for new hires were unchanged. Under this contract, the full scale pay rate (i.e. the rate after 52 weeks of employment) is \$11.95/hour. When the parties negotiated their current collective bargaining agreement, they did not address the matter of what would happen if the Company hired a new employee at a pay rate higher than the start rate listed above (i.e. \$9.20/hour).

While the new hire start rate listed in the contract is \$9.20/hour, the record indicates that the Company has had to pay more than that to attract new workers. The Company's current new hire start rate is \$10.20/hour. This figure of \$10.20/hour as the new hire start rate is not referenced in the contract; instead, as previously noted, the new hire start rate referenced in the contract is \$9.20/hour. The record indicates that the Company has hired an unspecified number of new employees at \$10.20/hour. When it has done so, it has given them wage increases after 8, 16, 32, and 52 weeks of employment. Specifically, the Company has been paying new hires according to the following schedule:

Start	\$10.20
After 8 weeks:	\$10.40
After 16 weeks:	\$10.70
After 32 weeks:	\$11.00
After 52 weeks:	The regular hourly rate then in effect.

In essence, the Company has been paying \$1.00 an hour more than what the contract specifies at the start rate, and after 8, 16, and 32 weeks of employment. The record indicates that the Union was aware of, and consented to, these higher pay rates.

...

The requested clarification involves the last full paragraph quoted above.

The Company requested a clarification of this paragraph for the following reason. Company President Garni indicated that while the Company pays some new hires \$10.20/hour to start, it does not always do so; some new hires are being paid \$9.20/hour to start. The Union does not dispute this factual assertion.

When I wrote the last paragraph quoted above, and specifically made the statement, "The Company's current new hire start rate is \$10.20/hour", it was my understanding that all new hires were being paid \$10.20/hour to start. I learned in the conference call that I was mistaken in that regard. While some new hires are being paid \$10.20/hour to start, not all new hires are being paid that amount; some are being paid \$9.20/hour to start. \$9.20, of course, is the start rate listed in the collective bargaining agreement.

As I noted in the **DISCUSSION** section of my Award, the Union does not object to the Company paying new hires more than the start rate listed in the collective bargaining agreement. Since there is no objection by the Union, the Company can pay new hires more than \$9.20/hour if it wants to do so.

As just noted, the Company is paying some new hires \$10.20/hour. However, just because the Company is paying some new hires \$10.20/hour does not mean that all new hires must be paid at that rate. The only way that all new hires would be entitled to a rate above \$9.20/hour is if the parties had a side agreement that modified or changed the collective bargaining agreement and raised the start rate. Notwithstanding what I wrote in the **FACTS** section, the parties herein do not have a side agreement that all new hires will be paid \$10.20/hour. In the absence of a side agreement modifying the collective bargaining

agreement, the agreement's written terms are controlling. The agreement specifies in plain terms that the start rate for new hires is \$9.20/hour. While the Company can pay new hires more than that if it wants, it is not required to do so. Thus, the Company does not have to pay all new hires \$10.20/hour.

Dated at Madison, Wisconsin this 29th day of October, 1999.

Raleigh Jones /s/

Raleigh Jones, Arbitrator

