KINGDOM OF CAMBODIA

NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 235/12-Manhattan

Date of award: 16 January 2013

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **Chhiv Phyrum**

Arbitrator chosen by the worker party: **An Nan**

Chair Arbitrator (chosen by the two Arbitrators): **Kong Phallack**

DISPUTANT PARTIES

Employer party:

Name: **Manhattan Textile and Gar. Corp. (the employer)**

Address: Apil Leu Village, Ampil Commune, Kampong Siam District, Kampong Cham Province

Telephone: 012 871 222, 042 94 17 18 Fax: N/A

Representatives:

1. Mr La Rykao — General Director
2. Mr Yang Chhounteu — Special Assistant to the General Director
3. Mr Som Seyha — Administration staff member

Worker party:

Name: **Cambodian Alliance of Trade Unions (ATU)**

Local Union of ATU (the union)

Address: Apil Leu Village, Ampil Commune, Kampong Siam District, Kampong Cham Province

Telephone: 012 88 00 39 Fax: N/A

Representatives:

1. Mr Yang Sophorn — President of ATU
2. Mr Mai Sopheaktra — General Secretary of ATU

3. Mr John Theang — President of the Union
4. Mr Phan Channy — Vice-President of the Union
5. Ms Kim Oun — Secretary of the Union

ISSUES IN DISPUTE

(From the Non-Conciliation Report of the Ministry of Labour and Vocational Training)

1. The workers demand that the employer provide the seniority bonus to those workers with more than one year of service. The employer claims that it has already provided the seniority bonus to those workers on an undetermined duration contract and seeks to rely on the provisions of the Labour Law for those with fixed duration contracts.
2. The workers demand that the employer provide female workers 50% of their wages as maternity payment and reinstate them after their maternity leave. The employer refuses to accommodate this demand and claims that this issue should be submitted to the Garment Manufacturers Association in Cambodia (GMAC).
3. The workers demand that the employer provide a monthly US$ 3 incentive bonus to those who choose to work overtime on public holidays. The employer claims that it cannot afford to accommodate this demand.
4. The workers demand that the employer provide a 4,000 riel meal allowance per day. The employer claims that it cannot afford to accommodate this demand.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labour Law (1997); the *Prakas* on the Arbitration Council No. 099 dated 21 April 2004; the Arbitration Council Procedural Rules which form an Annex to the same *Prakas*; and the *Prakas* on the Appointment of Arbitrators No. 136 dated 7 June 2012 (Tenth Term).

An attempt was made to conciliate the collective dispute that is the subject of this award, as required by Chapter XII, Section 2A of the Labour Law. The conciliation was unsuccessful, and non-conciliation report No. 52/12 dated 26 November 2012 was submitted to the Secretariat of the Arbitration Council on 4 November 2012.

HEARING AND SUMMARY OF PROCEDURE

Hearing venue: The Arbitration Council, No. 72, Street 592, Corner of Street 327 (Opposite Indra Devi High School), Boeung Kak II Commune, Tuol Kork District, Phnom Penh

Date of hearing: 14 December 2012 at 8:30 a.m.

Procedural issues:

On 20 November 2012, the Department of Labour Disputes of Kampong Cham province (the Department) received a complaint from the Local Union of ATU, outlining the workers' demands that the employer improve working conditions. Upon receiving the claim, on 26 November 2012, Department conciliators invited the employer and the workers to the conciliation session which was held at the Department offices. One of the five issues in dispute was conciliated. The four unresolved issues were referred to the Secretariat of the Arbitration Council on 4 December 2012 via non-conciliation report No. 52/12 dated 26 November 2012.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer and the workers to a hearing and conciliation of the four unresolved issues. The hearing was held on 14 December 2012 at 8:30 a.m. with both parties present. The Arbitration Council conducted a further conciliation of the four unresolved issues, but it remained unresolved.

As the parties are signatories to the Memorandum of Understanding On Improving Industrial Relations in the Garment Industry (MoU), dated 28 September 2010, the Arbitration Council will divide the issues into two types: rights disputes and interests disputes. In accordance with the MoU, both parties have agreed to choose binding arbitration for rights disputes. However, the MoU does not apply to interests disputes. The parties are able to choose non-binding arbitration for interests disputes, and can object to an arbitral award issued in relation to such disputes.

Such an objection will not affect the parties' obligation to implement an award on rights issues in accordance with the MoU. In this case, the parties chose non-binding arbitration for their interests dispute.

The award was due on 27 December 2012. However, the parties agreed to extend the due date to 16 January 2013.

The Arbitration Council considers the issues in dispute in this case based on the evidence and reasons below.

EVIDENCE

This section has been omitted in the English version of this arbitral award. For further information regarding evidence, please refer to the Khmer version.

FACTS

- Having examined the report on collective labour dispute resolution;

- Having listened to the statements of the representatives of the employer and the workers; and
- Having reviewed the additional documents:

The Arbitration Council finds that:

- Manhattan Textile and Gar. Corp. operates a garment factory. It employs a total of 3,400 workers.
- The Local Union of ATU (the union) is the claimant in this case. The union received a registration certificate dated 18 September 2012 from the Ministry of Labour and Vocational Training. The union represents approximately 2,000 workers but it does not hold a certificate of most representative status (MRS).

Issue 1: The workers demand that the employer provide the seniority bonus to those workers with more than one year of service.

- At the hearing, the workers demanded that the employer provide the seniority bonus to those with fixed duration contracts and with more than one year of service.
- The employer claims that the workers on undetermined duration contracts receive the seniority bonus in accordance with Notification no. 041/11. The employer does not provide this bonus to those on fixed duration contracts as they have seniority of less than one year.
- The employer's practice regarding fixed duration contracts is as follows:
    - 80% of the workforce holds fixed duration contracts.
    - Generally, the employer offers six months' fixed duration contracts to workers.
    - At the expiration of each contract, the employer asks workers to take two days' unpaid leave before concluding a new contract with them. If the employer does not intend to offer a worker new contract, it will not ask him or her to take leave.
    - At the expiration of each contract, the employer will pay workers a termination payment, including outstanding wages, payment in lieu of unused annual leave, and severance pay equal to 5% of the wages received during the length of the contract.
- The employer claims that "two days' leave" is an informal term used by the employer and the workers, and is not taken in the form of annual leave, authorised, or unauthorised leave by the employer. In the context of this case, the two days' leave is taken before the renewal of the contract (after that leave, the employer will offer a new six months contract).

- The employer further claims that none of the workers on fixed duration contracts have seniority of more than one year as they have taken two days' leave at the expiry date of their contracts. Therefore, they are not entitled to the seniority bonus.
- The workers acknowledge that they have taken two days' leave. Despite this, the workers maintain that they still have seniority of over a year.
- The employer claims that it first started asking the workers to take leave at the expiration of their contracts between 2010 and 2011. Prior to this period, the employer did not ask the workers to take leave; it renewed their contracts immediately after they expired.
- The employer argues that the practice of asking the workers to take two days' leave results from irregular purchase orders.
- The employer's work hours run from 6:00 a.m. to 10:30 a.m. and from 11:00 a.m. to 2:30 p.m. The workers usually work overtime until 5:00 p.m.
- On 20 December 2012, the workers submitted a list of names of 498 workers, titled "a list of names of the claimant workers with seniority of more than one year for seniority bonus", to the Arbitration Council.
- On 26 December 2012, the deadline for the parties to object to evidence, the employer submitted the application forms and employment contracts of 243 workers to the Arbitration Council. Of the 243 workers, the employer classifies the employment contracts of 15 workers as permanent (please see the annex). Apart from this, the employer has not presented any evidence upon which it bases its objection. In addition, the employer has not submitted an explanatory note on its submitted evidence. Therefore, the Arbitration Council does not consider the employer's objection documents, with the exception of the employment contracts of the 15 workers which have been classified as permanent contracts.
- The Arbitration Council has examined and considered the employment contracts of the 15 workers, and finds that they are undetermined duration contracts, which do not specify an expiry date.
- The Arbitration Council finds that only 483 workers are claimants in this arbitration.
- The employer refuses to accommodate the workers' demand.

Issue 2: The workers demand that the employer provide a payment equal to 50% of pregnant workers' wages as maternity payment and reinstate them after their maternity leave.

- At the hearing, the workers demanded that the employer provide a payment equal to 50% of the pregnant workers' wages as maternity payment to female workers under fixed duration contracts and seniority of more than one year, and that the employer rehire them after their maternity leave.

- The workers claim that female workers on fixed duration contracts have not enjoyed the entitlements of maternity leave including a payment equivalent to 50 % of their wages.
- The employer asserts that female workers on undetermined duration contracts and with seniority of more than one year are entitled to maternity leave and payments as stipulated in the Labour Law. Those on fixed duration contracts are not entitled to these entitlements as they do not have one year's seniority.
- The employer claims that none of the female workers on fixed duration contracts have seniority of more than one year because they have taken two days' leave at the expiry date of each of their contracts. Therefore, they are not entitled to maternity leave or maternity payment.
- The employer's practice is to encourage female workers with fixed duration contracts to resign from work (premature termination of their contracts) when their pregnancy is due. After their maternity leave, they can apply for employment and if the employer needs workers, they will be recruited.
- On 20 December 2012, the workers submitted a list of names of the 27 workers, titled "a list of names of the pregnant workers whose contracts have been terminated and who have not enjoyed maternity leave (the employer has not rehired them).
- By 26 December 2012, the deadline for objecting to evidence, the employer had not objected to the list of names submitted by the workers. Thus, the Arbitration Council decides to consider the workers' document.

Issue 3: The workers demand that the employer provide a US$ 3 incentive bonus to those choosing to work on public holidays.

- The workers make this demand because the employer gave them this bonus on 29 and 31 October 2012.
- The employer argues that the bonus is provided by different buyers to those workers who have worked on their products.
- The employer refuses to accommodate this demand.
- The two parties do not have an agreement regarding this issue. The Internal Work Rules does not provide for this demand.

Issue 4: The workers demand that the employer provide a 4,000 riel meal allowance per day.

- At the hearing, the workers demanded that the employer provide a 4,000 riel meal allowance per day because their wages are insufficient to buy food due to the increased price of consumer goods.
- The employer refuses to accommodate this demand.

- The two parties do not have an agreement regarding this issue. The Internal Work Rules does not provide for this demand.

REASONS FOR DECISION

Before turning to this issue, the Arbitration Council considers whether this issue gives rise to a rights or interests dispute.

Article 312, paragraph two of the Labour Law states:

> The Council of Arbitration legally decides on disputes concerning the interpretation and enforcement of laws or regulations or of a collective agreement. The Council's decisions are in equity for all other disputes…

Clause 43 of *Prakas* No. 099 SKBY on the Arbitration Council dated 21 April 2004 states:

> An arbitral award which settles an interest dispute takes the place of a collective bargaining agreement and shall remain in effect for one year from the date on which it becomes final unless the parties agree to make a new collective bargaining agreement replacing the award.

In previous Arbitral Awards, the Arbitration Council has held that interests disputes have no basis in the law, an agreement, or a collective agreement *(see AAs 119/09-SL, Reasons for Decision, Issue 1; 86/10-New Mingda, Reasons for Decision, Issue 2; 02/11-Pou Yuen, Reasons for Decision, Issue 2)*.

Based on Article 312 and Clause 43 mentioned above, the Arbitration Council will legally resolve issues relating to interpretation and enforcement of legal provisions or a collective agreement. Apart from this, the Council resolves issues in accordance with equitable principles. Thus, the Arbitration Council concludes that a dispute relating to an interpretation of the law, an agreement, or a collective agreement qualifies as a rights dispute which is resolved by the law (*see Arbitral Awards 05/11-M&V (Branch 1), reasons for decision, issues 1 and 5; 13/11-Gold Kamvimex, reasons for decision, issues 1 and 2; 14/11-GHG, reasons for decision, issue 4*). A dispute which has no basis in the law, an agreement, or a collective agreement qualifies as an interests dispute which is resolved on equity by the Council (*see Arbitral Awards 31/11-Quint Major Industrial, reasons for decision, issue 4 and 62/11-Ocean, reasons for decision, issue 1*).

Issue 1: The workers demand that the employer provide seniority bonus to those who have been employed for more than one year

The Arbitration Council considers whether this issue gives rise to a rights or interests dispute.

Point 3 of Notification no. 041/11 issued by the Ministry of Labour and Vocational Training dated 7 March 2011 states:

a. Workers who have worked at any factory, enterprise, or establishment for more than one year will receive a seniority bonus as follows:

Seniority (in years)	1	2	3	4	5	6	7	8	9	10	11
Amount of money received (in dollars)	0	2	3	4	5	6	7	8	9	10	11

b. Workers with seniority in accordance with the years set out above will receive a seniority bonus corresponding with their years of seniority (as per the table above). Workers who have worked for more than 11 years will receive a seniority bonus of US$ 11 per month.

Since this demand concerns the seniority bonus mentioned above, the Arbitration Council considers this issue to be a rights dispute.

Based on Point 3 of Notification above, workers with more than one year of service at factories, enterprises, and establishments are entitled to the seniority bonus set out in the table above.

According to the facts, the employer did not provide the seniority bonus to those with fixed duration contracts during 2010 or 2011 because the employer believes that they do not have more than one year's seniority as they took two days' leave at the expiry date of their contracts. Therefore, they are not entitled to the seniority bonus. The workers argue that their seniority has exceeded one year despite having taken two days' leave between contracts.

The Arbitration Council considers that this issue in this case arises from the conflicting interpretations of the term "seniority" by the employer and the workers.

The Arbitration Council considers this issue as follows:

In Arbitral Award 68/05-Gold Lida, the Arbitration Council ruled that:

> Seniority is the length of successive service which adds more rights or privileges for the workers based on the length of service provided by the workers…The seniority will end only when the worker stops working for the enterprise." (Please see Arbitral Awards 75/05-Fortune Garment; 17/10-Zongtex Garment, reasons for decision, issue 3; 60/10-Kin Tay, reasons for decision, issue 2; 101/10-Tripos International, reasons for decision, issue 2).

Based on this definition of seniority, the Arbitration Council considers whether or not the two days' leave amounts to the worker ceasing to work for the enterprise.

According to the facts, at the expiration of each contract, the employer will ask the workers to take two days' leave before concluding a new contract with them. If the employer did not intend to offer a new contract, it would not have asked them to take leave.

In this case, the Arbitration Council considers that when the workers take two days' leave, they expect that their fixed duration contracts will be renewed because the employer's practice is regular, general, and specific. In this sense, the two days' leave is taken based on the two parties' agreement before concluding a new contract; this period does not indicate the two parties' willingness not to renew their contracts.

The Arbitration Council concludes that the two days' leave which is taken based on the two parties' agreement does not amount to stop working for the enterprise. Thus, the workers' seniority is not interrupted. In this case, the workers with more than two renewed fixed duration contracts of six months have accumulated seniority of more than one year despite having taken two days' leave at the end of each contract.

According to the facts, the employer claims that it asks the workers to take two days' leave at the expiry date of each contract before concluding a new contract as purchase orders are irregular.

In this case, the Arbitration Council considers that the employer's practice with respect to the two days' leave is regular, general, and specific. This practice is regular because the two days' leave is always taken before concluding a new contract. It is general because all workers, who have concluded more than one fixed duration contract, have taken two days' leave before concluding a new contract. In addition, this practice is specific because the period of leave is always two days to be taken by workers to another. Apractice that is regular, general, and specific cannot possibly be based on irregular purchase orders. In this sense, the employer's attempts to support its practice do not reasonably fit with its actual practice. For this reason, the Arbitration Council does not accept the employer's claim of irregular purchase orders.

Article 13 paragraph 1 of the Labour Law, states:

> The provisions of this law are of the nature of public order, excepting derogations provided expressly. Consequently, all rules resulted from a unilateral decision, a contract or a convention that do not comply with the provisions of this law or any legal text for its enforcement, are null and void.

In Arbitral Awards 64/11-M&V (Branch 3), reasons for decision, issue 4, the Arbitration Council noted:

> …an internationally known principle of civil code requires that parties in civil relationships must implement their rights and fulfil their obligations with

> integrity and in good faith. Creating an employment relationship using short-term contracts in order to avoid fulfilling statutory obligations goes against the principles of integrity and good faith, and in this case the parties are considered as having misused the law.

The Arbitration Council agrees with these rulings.

According to the facts, the Arbitration Council finds that workers on fixed duration contracts have not received their seniority bonuses (Notification no. 041/11), their maternity leave entitlements (Article 182 of the Labour Law), maternity payments (Article 183 of the Labour Law), or annual leave (Article 166 of the Labour Law) because the employer believes that they do not have seniority of more than one year due to the two days' of leave being taken at the expiration of each contract.

The Arbitration Council considers that while the two days' leave indicates the employer's willingness to renew the workers' contracts, it also reflects the employer's intention to avoid its statutory obligations by not allowing the workers to enjoy their fundamental rights provided for in the Labour Law. The employer's intention goes against the spirit of Article 13 paragraph 1 of the Labour Law and principles of integrity and good faith.

Based on the above interpretation, the Arbitration Council considers that the workers on fixed duration contracts are not considered to have stopped working in the period of two days. As a result, their seniority has not been interrupted.

According to the facts, the Arbitration Council finds that 283 workers on fixed duration contracts have made the claim in this issue.

In conclusion, based on Point 3 of Notification no. 041/11, the Arbitration Council orders the employer to cease its practice and provide the seniority bonus to those with fixed duration contracts and with more than one year of service, as specified in the list of names submitted by the workers, with the exception of the 15 workers with undetermined duration contracts (please see the annex).

Issue 2: The workers demand that the employer (1) provide 50% of 90 days' wages and perquisites of maternity payment to female workers on fixed duration contracts and with more than one year of service and (2) rehire them after their maternity leave.

The Arbitration Council considers whether this issue gives rise to a rights or interests dispute.

Based on this demand, the Arbitration Council considers this issue to be a rights dispute as it concerns an entitlement provided for in the Labour Law.

1/ 50% of 90 days' wages and perquisites of maternity payments to female workers on fixed duration contracts and with more than one year of service

According to the facts, the employer does not provide maternity payment to female workers on fixed duration contracts. The employer claims that none of them has more than one year of service as they have taken two days' off at the expiration of their contracts. Thus, they are not entitled to maternity leave.

The Arbitration Council considers whether the female workers on fixed duration contracts are entitled to maternity payment when taking maternity leave.

Article 183 of the Labour Law states:

> During the maternity leave as stipulated in the preceding article, women are entitled to half of their wage, including their perquisites, paid by the employer…However, the wage benefits specified in the first paragraph of this article shall be granted only to women having a minimum of one year of uninterrupted service in the enterprise.

Based on the interpretation of seniority mentioned above, seniority of the female workers with fixed duration contracts has not been interrupted despite having taken two days' leave at the expiry date of their contract. Thus, the female workers, who have concluded six months' fixed duration contracts more than twice, have accumulated seniority of more than one year.

According to the facts, the Arbitration Council finds that 17 female workers have not received maternity payment when taking maternity leave.

In this case, the Arbitration Council considers that the employer's practice is contrary to Article 183 of the Labour Law.

Thus, the Arbitration Council orders the employer to provide 50% of 90 days' wages and perquisites to the female workers, the members of the Local Union of ATU, with fixed duration contracts, and with more than one year of seniority, when taking maternity leave.

2/ rehiring female workers after their maternity leave

The employer's practice is to encourage female workers on fixed duration contracts to resign (premature termination of employment contracts) when they are due to give birth before their contracts expire. After returning from maternity leave, they can submit their job applications and will be recruited if the employer needs workers.

The workers demand that the employer allow the female workers with fixed duration contracts to return to work without submitting their job applications after returning from their maternity leave.

The Arbitration Council considers this case as follows:

Article 182 paragraph 1 of the Labour Law 1997 states, “In all enterprises covered by Article 1 of this law, women shall be entitled to a maternity leave of ninety days.”

Based on this article, female workers have the right to take maternity leave of 90 days. This right shall not be restricted by the seniority of the female workers for the enterprises.

Based on Article 182, the female workers have the right to take maternity leave of 90 days even if they have less than one year of service. Thus, the female workers with fixed duration contract can enjoy this right when they are due to give birth.

In this case, the employer’s practice is contrary to Article 182 of the Labour Law.

However, in this case, the female workers have terminated their fixed duration contracts when their pregnancy is due.

In conclusion, the Arbitration Council (1) rejects the workers’ demand that the employer rehire them after their maternity leave and (2) orders the employer to immediately cease the practice of not allowing the female workers with fixed duration contracts to take maternity leave and orders the employer to comply with Article 182 of the Labour Law concerning the right of female worker to take maternity leave.

Issue 3: The workers demand that the employer provide a monthly US$ 3 incentive bonus to those choosing to work overtime on public holidays.

The Arbitration Council considers whether this issue gives rise to a rights or interests dispute.

Based on this demand, since the Arbitration Council finds that there is no provision of the Labour Law, a collective agreement, or an agreement stipulating the provision of a monthly US$ 3 incentive bonus to those choosing to work overtime on public holidays, the Council considers this issue to be an interests dispute.

Article 96 paragraph 2 of the Labour Law states:

> The collective agreement is a written agreement relating to the provisions provided for in Article 96 - paragraph 1. The collective agreement is signed between:
>
> a) one part: an employer, a group of employers, or one or more organisations representative of employers; and
>
> b) the other part: one or more trade union organisations representative of workers…

Clause 9 of *Prakas* no. 305 issued by the Ministry of Social Affairs, Labour, Vocational Training, and Youth Rehabilitation dated 22 November 2001, states:

> Any union with the status of most representative union shall have the right to approach the employer for the purpose of negotiating a collective bargaining agreement applying to all the workers it represents. In this case, the employer shall be required to enter into negotiations.

Based on Article 96 of the Labour Law and Clause 9 of the *Prakas* mentioned above, With respect to interests disputes, the Arbitration Council considers whether the disputant union has most representative status (MRS). The Arbitration Council considers that having MRS gives a union the legal capacity to negotiate with an employer to establish a collective agreement and gives it legal standing to bring an interests dispute before the Arbitration Council for resolution.

Clause 43 of *Prakas* No. 099 dated 21 April 2004 states:

> An arbitral award which settles an interest dispute takes the place of a collective bargaining agreement and shall remain in effect for one year from the date on which it becomes final unless the parties agree to make a new collective bargaining agreement replacing the award.

Based on this provision, the Arbitration Council considers that if it issues an arbitral award to settle an interests dispute, the award will become a collective agreement applicable to all workers at the enterprise. Non-members of the union cannot exercise their right to strike demanding an interests dispute in the future. Thus, the Arbitration Council cannot resolve an interests dispute unless the claimant union has MRS or the claimant union comprises a group of unions representing more than half of all the workers at the enterprise (*see Arbitral Awards 81/04-Ever Green, reasons for decision, issue 4; 98/04-Great Union, reasons for decision, issue 3*).

In Arbitral Award 169/11-Fortune Teo, reasons for decision, issue 5, the Arbitration Council has declined to consider an interests dispute if the union bringing the dispute to the Council does not have MRS (*see Arbitral Awards 02/11-Pou Yuen, reasons for decision, issue 2; 66/11-In Han Sung, reasons for decision, issue 1*).

In this case, the claimant, the Local Union of ATU, does not have MRS. Thus, this union has no legal capacity to bring an interests dispute to the Council for resolution.

In conclusion, the Arbitration Council declines to consider the workers' demand that the employer provide a monthly US$ 3 incentive bonus to those choosing to work overtime on public holidays.

Issue 4: The workers demand that the employer provide a 4,000 riel meal allowance per day.

The Arbitration Council considers whether this issue gives rise to a rights or interests dispute.

Based on this demand, since the Arbitration Council finds that there is no provision in the Labour Law, a collective agreement, or an agreement stipulating the provision of a monthly US$ 3 incentive bonus to those choosing to work overtime on public holidays, the Council considers this issue to be an interests dispute (see reasons for decision, issue 3 regarding interests dispute).

In conclusion, the Arbitration Council declines to consider the workers' demand that the employer provide a 4,000 riel meal allowance per day.

Based on the above facts, legal principles, and evidence, the Arbitration Council makes its decision as follows:

DECISION AND ORDER

Part I. Rights dispute:

Issue 1:

Order the employer to cease its practice and provide seniority bonuses to those on fixed duration contracts and with more than one year of service, as specified in the list of names submitted by the workers, with the exception of the 15 workers on undetermined duration contracts (please see the annex).

Issue 2:

- Order the employer to provide 50% of 90 days' wages and perquisites to the female workers, the members of the Local Union of ATU, on fixed duration contracts, and with more than one year of seniority, when taking maternity leave.

- (1) Reject the workers' demand that the employer rehire them after their maternity leave and (2) order the employer to immediately cease the practice of not allowing the female workers on fixed duration contracts to take maternity leave and orderthe employer to comply with Article 182 of the Labour Law concerning the right of female worker to take maternity leave

Type of award: binding award

The award of the Arbitration Council in Part I will be final and is enforceable by the parties in accordance with the MoU dated 28 September 2010.

Part II. Interests dispute:

Issue 3:

Decline to consider the workers' demand that the employer provide a monthly US$ 3 incentive bonus to those choosing to work overtime on public holidays.

Issue 4:

Decline to consider the workers' demand that the employer provide a 4,000 riel meal allowance per day.

Type of award: non-binding award

The award in Part II will become binding eight days after the date of its notification unless one of the parties lodges a written opposition with the Minister of Labour through the Secretariat of the Arbitration Council within this period.

SIGNATURES OF THE MEMBERS OF THE ARBITRAL PANEL

Arbitrator chosen by the employer party:

Name: **Chhiv Phyrum**

Signature: .....

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: .....