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| 5. Mr Leang Sokly | Second Vice-President the Local Union of KWPFU |
| 6. Mr Chhem Vibol | Secretary of the Local Union of KWPFU |
| 7. Mr Seang Sokhun | Treasurer of the Local Union of KWPFU |
| 8. Mr Nhim Veasna | Advisor to the Local Union of KWPFU |

ISSUES IN DISPUTE

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

1. The workers demand that the employer refrain from discriminating against the leaders and members of the local union. The employer denies the allegation of union discrimination, arguing that if the workers have evidence of discrimination they should show it.
2. The workers demand that the employer allow the Local Union of KWPFU to enjoy the freedom and benefits that are allowed to other unions and to repay benefits to the union leaders for when they were candidates for leadership of other unions. The employer refuses to accommodate the demand, asserting that it is complying with the *Prakas* and Notifications issued by the Ministry of Labour and Vocational Training.
3. The workers demand that the employer provide the attendance bonus as follows: if workers take leave for one day, two days, three days, or four or more days, the employer should respectively maintain their attendance bonus, deduct US \$2, deduct US\$ 3, and deduct the full attendance bonus. The employer refuses to accommodate the demand, asserting that it is complying with the Labour Law.
4. The workers demand that the employer provide them with a monthly US\$ 10 allowance for either transportation or accommodation. The employer refuses to accommodate the demand, asserting that it is complying with the Labour Law.
5. The workers demand that the employer maintain their wages, attendance bonuses, and other benefits when they take special leave. The employer refuses to accommodate the demand, asserting that it is complying with the Labour Law.
6. The workers demand that the employer allow workers who are more than one month pregnant to leave work 15 minutes early. The workers state that leaving five minutes early is not sufficient. The employer refuses to accommodate the demand, asserting that it is complying with the Labour Law.
7. The workers demand that the employer allow workers who have recently given birth to take a one hour break each day to breastfeed their babies (half an hour in the morning and another half in the afternoon). They demand that this right continue until their babies are 24 months old; otherwise, the employer should provide a monthly

US\$ 15 bonus for milk formula. The employer refuses to accommodate the demand, asserting that it is complying with the Labour Law.

8. The workers demand that the employer provide a 1,500 riel meal allowance on a daily basis. The employer refuses to accommodate the demand, asserting that it is complying with the Labour Law.
9. The workers demand that the employer provide skill bonuses to workers in the sewing section. They demand US\$ 3, US\$ 6, US\$ 10, and US\$ 15 per month for workers handling one machine, two machines, three machines, and more than four machines respectively. The employer refuses to accommodate the demand, asserting that it is complying with the Labour Law.
10. The workers demand that the employer provide a 1,500 riel meal allowance per hour. The employer refuses to accommodate the demand, asserting that it is complying with the Labour Law.
11. The workers demand that the employer provide an additional US\$ 3 seniority bonus for each year of service. The employer refuses to accommodate the demand, asserting that it is complying with the Labour Law.

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. 133 dated 9 June 2010 (Eighth 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. 068/11 KB/KN dated 24 February 2011 was submitted to the Secretariat of the Arbitration Council on 3 March 2011.

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: 18 March 2011 at 8:30 a.m.

Procedural issues:

On 21 February 2011, the provincial Department of Labour Disputes assigned an expert officer to conciliate the 11 issues in dispute between the employer and the Local

Union of KWPFU. None of the issues were resolved. The 11 non-conciliated issues were referred to the Secretariat of the Arbitration Council on 3 March 2011 via non-conciliation report No. 068/11 KB/KN dated 24 February 2011.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer and the workers to a hearing and conciliation of the 11 non-conciliated issues, held on 16 March 2011 at 8:30 a.m. Both parties were present at the hearing. The Arbitration Council conducted a further conciliation of the issues, resulting in issues 1, 2, 5, 10, and 11 being resolved. The remaining issues in dispute are issues 3, 4, 6, 7, 8, and 9.

Normally, parties who appear before the Arbitration Council have the right to choose between binding and non-binding arbitration, regardless of whether the issues give rise to interests or rights disputes. However, in the Memorandum of Understanding On Improving Industrial Relations in the Garment Industry (MoU) signed by the Garment Manufacturers Association in Cambodia (GMAC) and six leading union confederations on 28 September 2010, the signatories agreed to submit rights disputes to binding arbitration. The signatories are still able to choose either binding or non-binding arbitration of interests disputes.

As the parties are signatories to the Memorandum of Understanding On Improving Industrial Relations in the Garment Industry (MoU), signed on 28 September 2010, the Arbitration Council will divide the issues into two types: rights disputes and interests disputes. The parties are not entitled to lodge an objection to an award on rights disputes because they have agreed in the MoU to be bound by these awards. However, the parties are able to object to an award on interests disputes if they choose non-binding arbitration of such disputes.

Any objection lodged by the parties to an award on interests disputes will not affect their obligation to implement an award on rights disputes in accordance with the MoU.

The Arbitration Council will consider the remaining issues in dispute 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:

- Quint Major Industrial Co., Ltd. employs approximately 3,200 workers.
- The Local Union of KWPFU is the claimant and represents 309 workers. It possesses a certificate of registration dated 24 November 2010.
- The Independent Trade Union holds a certificate of most representative status (MRS). There is no collective agreement at the enterprise.

Issue 3: The workers demand that the employer deduct from the attendance bonus in proportion to the number of days of authorised leave taken.

- The workers revised their demand at the hearing. They demand that the employer deduct from the attendance bonus in proportion to the number of days of authorised leave taken.
- The employer's practice is to maintain the attendance bonus when workers take special leave (if their annual leave is not exhausted) and annual leave.
- The workers state that the employer deducts the full attendance bonus when workers take leave for personal commitments, as opposed to annual leave, regardless of whether the leave is authorised.
- There is no provision in the employer's Internal Work Rules regarding this issue.

Issue 4: The workers demand that the employer provide a monthly US\$ 10 transportation and accommodation allowance.

- The employer does not provide a transportation and accommodation allowance.
- There is no mention in the employer's Internal Work Rules or the workers' employment contracts of the provision of a transportation and accommodation allowance.

Issue 6: The workers demand that the employer allow pregnant workers to leave work 15 minutes early.

- The employer allows pregnant workers to leave work five minutes early.
- The workers make this demand in the interests of pregnant workers' health and safety.

Issue 7: The workers demand that the employer allow workers who have recently given birth to take a one hour break each day to breastfeed their babies (half an hour in the morning and another half in the afternoon) until their babies are 24 months old; otherwise, the employer should provide a monthly US\$ 15 allowance for milk formula.

- The employer's practice is to allow workers who have recently given birth to take a break of one hour each day (half an hour in the morning and another half in the afternoon) for breastfeeding until their babies are one year old.
- The workers claim that their demand is legally founded, but fail to cite any article of the law. The employer claims that it is complying with the law, but fails to specify any article.

Issue 8: The workers demand that the employer provide a 1,500 riel meal allowance on a daily basis.

- The workers make this demand due to their low wages and the increasing price of consumer goods.

Issue 9: The workers demand that the employer provide skill bonuses to workers in the sewing section. They demand US\$ 3, US\$ 6, US\$ 10, and US\$ 15 per month for workers handling one machine, two machines, three machines, and more than four machines respectively.

- The employer has never provided a skill bonus to workers, regardless of whether they can handle one, two, or three machines.
- There is no agreement at the enterprise regarding the provision of a skill bonus.
- The workers make this demand because other employers provide skill bonuses to their workers.

REASONS FOR DECISION

Issue 3: The workers demand that the employer deduct from the attendance bonus in proportion to the number of days of authorised leave taken.

Before deciding the issues in this case, the Arbitration Council will consider whether each demand gives rise to a rights dispute.

Article 312, paragraph two of the Labour Law (1997) states that "[t]he 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.

Based on this provision, the Arbitration Council resolves rights disputes based on the law and interests disputes based on equity.

In previous arbitral awards, the Arbitration Council has held that “a rights dispute is a dispute concerning entitlements in the law, an agreement, or a collective agreement” (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; and 37/11-ASD, reasons for decision, issue 1*).

In this case, the Arbitration Council considers that the issue in dispute is a rights dispute as it concerns the attendance bonus provided for in Notification No. 041 dated 7 March 2011. The Arbitration Council will consider the issue in dispute below.

Notification No. 041/11 KB/SCN dated 7 March 2011 provides that “workers who attend work regularly in accordance with the number of working days in each month will receive a bonus of at least US\$ 7 per month.”

The Arbitration Council notes that this notification does not contain a clear statement about authorised leave and considers that the same ambiguity exists in both Notification No. 041/11 KB/SCN and Notification No. 017 SKBY dated 18 July 2000, which states that “workers who attend work regularly in accordance with the number of working days in each month will receive a bonus of at least US\$ 5 per month.”

In previous arbitral awards, the Arbitration Council has ruled that employers must pay the attendance bonus in proportion to the number of days of authorised leave taken by the workers. As the workers are permitted to take the leave, they should not lose the full attendance bonus (see *Arbitral Awards 57/07-Seratex, reasons for decision, issue 3; 106/07-M & V (Branch 3), reasons for decision, issue 3; and 128/08-Wei Hua, reasons for decision, issue 2*).

The Arbitration Council will apply the abovementioned ruling in this case.

In conclusion, the Arbitration Council orders the employer to deduct from the attendance bonus in proportion to the number of days of authorised leave taken.

Issue 4: The workers demand that the employer provide a monthly US\$ 10 transportation and accommodation allowance.

The Arbitration Council finds that this issue has no basis in the terms of the Labour Law or an agreement, thus making this an interests dispute.

With respect to interests disputes, the Arbitration Council considers whether the disputant union holds most representative status (MRS). In this case, the Arbitration Council finds that the Local Union of KWPFU does not hold a certificate of MRS.

In previous arbitral awards, the Arbitration Council has declined to consider interests disputes if the union bringing the dispute to the Council does not hold MRS (see *Arbitral*

Awards 48/09-Roo Hsing, reasons for decision, issue 2 and 24/10-Reliable Source, reasons for decision, issue 5).

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 one-year collective agreement. Generally, a collective agreement must be applicable to all workers at the enterprise and the right to strike cannot be exercised for the purposes of revising an unexpired collective agreement (*see Arbitral Awards 48/09-Roo Hsing, reasons for decision, issue 2 and 24/10-Reliable Source, reasons for decision, issue 5*).

In previous arbitral awards, the Arbitration Council has ruled that the a union without MRS does not have legal standing to bring an interests dispute before the Council for resolution (*see Arbitral Awards 48/09-Roo Hsing, reasons for decision, issue 2 and 24/10-Reliable Source, reasons for decision, issue 5*).

In this case, the Local Union of KWPFU does not hold a certificate of MRS. Therefore, the Council considers that the union does not have legal standing to bring an interests dispute before the Council for resolution. Only an MRS union is entitled to do so.

In conclusion, the Arbitration Council declines to consider the workers' demand that the employer provide a monthly US\$ 10 accommodation or transportation allowance.

Issue 6: The workers demand that the employer allow pregnant workers to leave work 15 minutes early.

The Arbitration Council finds that this demand has no basis in the terms of the Labour Law or regulations, making this an interests dispute (*see the aforesaid reasons for decision concerning interests disputes*).

In conclusion, the Arbitration Council declines to consider the workers' demand that the employer allow pregnant workers to leave work 15 minutes early.

Issue 7: The workers demand that the employer allow workers who have recently given birth to take a one hour break each day to breastfeed their babies (half an hour in the morning and another half in the afternoon) until their babies are 24 months old; otherwise, the employer should provide a monthly US\$ 15 allowance for milk formula.

Article 184 of the Labour Law (1997) provides that “[f]or one year from the date of child delivery, mothers who breast-feed their children are entitled to one hour per day during working hours to breast-feed their children.”

Based on this provision, the Arbitration Council considers that the Labour Law entitles female workers to take a break of one hour during working hours to breastfeed their children following their delivery.

The Arbitration Council finds that this demand has no basis in the terms of the Labour Law or regulations, making this an interests dispute (see the aforesaid reasons for decision concerning interests disputes).

In conclusion, the Arbitration Council declines to consider the workers’ demand that the employer allow workers who have recently given birth to take a one hour break each day to breastfeed their babies (half an hour in the morning and another half in the afternoon) until their babies are 24 months old or provide a monthly US\$ 15 allowance for milk formula.

Issue 8: The workers demand that the employer provide a 1,500 riel meal allowance on a daily basis.

In this case, the Arbitration Council finds that this issue has no basis in the Labour Law or an agreement, making this an interests dispute (see the aforesaid reasons for decision concerning interests disputes).

In conclusion, the Arbitration Council declines to consider the workers’ demand that the employer provide a 1,500 riel meal allowance on a daily basis.

Issue 9: The workers demand that the employer provide skill bonuses to workers in the sewing section. They demand US\$ 3, US\$ 6, US\$ 10, and US\$ 15 per month for workers handling one machine, two machines, three machines, and more than four machines respectively.

In this case, the Arbitration Council finds that this issue has no basis in the Labour Law or an agreement, making this an interests dispute (see the aforesaid reasons for decision concerning interests disputes).

In conclusion, the Arbitration Council declines to consider the workers’ demand that the employer provide a skill bonus to workers in the sewing section.

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 3: Order the employer to deduct from the attendance bonus in proportion to the number of days of authorised leave taken.

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 4: Decline to consider the workers' demand that the employer provide a monthly US\$ 10 accommodation or transportation allowance.

Issue 6: Decline to consider the workers' demand that the employer allow pregnant workers to leave work 15 minutes early.

Issue 7: Decline to consider the workers' demand that the employer allow workers who have recently given birth to take a one hour break each day to breastfeed their babies (half an hour in the morning and another half in the afternoon) until their babies are 24 months old or provide a monthly US\$ 15 allowance for milk formula.

Issue 8: Decline to consider the workers' demand that the employer provide a 1,500 riel meal allowance on a daily basis.

Issue 9: Decline to consider the workers' demand that the employer provide a skill bonus to workers in the sewing section.

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: **Mar Samborana**

Signature:

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: