KINGDOM OF CAMBODIA

NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 45/11-Zhong Yov

Date of award: 11 May 2011

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **Seng Vuoch Hun**

Arbitrator chosen by the worker party: **Liv Sovanna**

Chair Arbitrator (chosen by the two Arbitrators): **Pen Bunchhea**

DISPUTANT PARTIES

Employer party:

Name: **Zhong Yov Co., Ltd.**

Address: Prey Roka Village, Chhork Cheuneang Commune, Angsnoul District, Kandal Province

Telephone: 089 727 783 Fax: N/A

Representative at the first hearing:

1. Mr Ho Lihow Head of Administration

Representative at the second hearing: Absent

Worker party:

Name: **Cambodian Union Federation (CUF)**

Local Union of CUF

Address: Prey Roka Village, Chhork Cheuneang Commune, Angsnoul District, Kandal Province

Telephone: 012 658 129 Fax: N/A

Representatives at the first hearing:

1. Mr Chhuon Momthol President of CUF
2. Mr Morm Thon Dispute Resolution Officer of CUF

3. Mr Mok Sovan — Officer of CUF
4. Ms Sok Symony — Trainer from CUF
5. Mr Ou Vuthea — Officer of CUF
6. Mr Sin Sothea — Officer of CUF
7. Mr Phon Nim — President of the Local Union of CUF
8. Mr Ar Thon — Vice-President of the Local Union of CUF
9. Mr Ol Chanrum — Secretary of the Local Union of CUF

Representatives at the second hearing:

1. Mr Morm Thon — Dispute Resolution Officer of CUF
2. Mr. Phon Nim — President of the Local Union of CUF
3. Mr. Ar Thon — Vice-President of the Local Union of CUF
4. Mr. Ol Chanrum — Secretary of the Local Union of CUF

ISSUES IN DISPUTE

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

1. The workers demand that the employer pay an additional US$ 5 of wages and a living allowance of US$ 6 to both probationary workers and regular workers, [to be back paid] from January 2011 at the latest, in accordance with the *Prakas* of the Ministry of Labour and Vocational Training dated 8 July 2010, because the employer has failed to comply with the *Prakas*. This demand implies that Zhong Yov Co., Ltd has violated the Labour Law. The workers are therefore entitled to outstanding main wages dating back to October 2010 [when the *Prakas* came into effect].

2. [The workers demand that] when workers have work-related accidents, either inside or outside the factory, the employer must take them to a hospital immediately, along with any necessary documents for submission to the National Social Security Fund (NSSF). This demand is made because when workers have been sent to hospital in the past, documents have not been submitted to the NSSF on time and as a result workers have received delayed treatment which can negatively affect their health and may even pose life threatening risks.

3. The workers demand that the employer provide them with an accommodation and transportation allowance of US$ 6 per month.

4. The workers demand that the employer provide a seniority bonus of US$ 3 to workers who have been working since 2005.

5. The workers demand that the employer notify all workers of the main wage, attendance bonus, transportation allowance, seniority bonus, etc.

6. The workers demand that the employer stop discriminating against the union.

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. 092/11 KB/KN dated 28 March 2011 was submitted to the Secretariat of the Arbitration Council on 4 April 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: First hearing: 20 April 2011 at 2:00 p.m.
Second hearing: 9 May 2011 at 9:00 a.m.

Procedural issues:

On 1 March 2011, the provincial Department of Labour Disputes of Kandal Province received a complaint from the Local Union of CUF outlining the workers' demands for the improvement of working conditions by the employer. Upon receiving the claim, the Department of Labour Disputes assigned an expert officer to conciliate the labour dispute and the last conciliation session was held on 14 March 2011. None of the six issues were resolved at the session. The six non-conciliated issues were referred to the Secretariat of the Arbitration Council on 4 April 2011 via non-conciliation report No. 092/11 KB/KN dated 28 March 2011.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer and the workers to a hearing and conciliation on the six non-conciliated issues, held on 20 April 2011 at 2:00 p.m. A second hearing was held on 9 May 2011 at 9:00 a.m. Both parties were present at the first hearing as summoned by the Arbitration Council, but the employer was absent from the second hearing.

In both hearings, the Arbitration Council conducted a further conciliation of the six non-conciliated issues, resulting in issues 2, 3, 5, and 6 being resolved. The remaining issues in dispute are issues 1 and 4.

Normally, parties who appear before the Arbitration Council have the right to choose between a binding or non-binding award, 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 their rights disputes to binding arbitration. The signatories are still able to choose either binding or non-binding arbitration of interests disputes at the hearing.

As both parties are signatories to the MoU dated 28 September 2010, the Arbitration Council will divide the issues into two types: rights disputes and interests disputes. The parties are bound to select binding arbitration of rights disputes. However, they are not bound to select binding arbitration of interests disputes. Any objection 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 issues in dispute based on the evidence and reasons below.

EVIDENCE

Witnesses and Experts: N/A

Documents, Exhibits, and other evidence considered by the Arbitration Council:

A. Provided by the employer party:

1. Authorisation letter from the company directory for Bun Heng, dated 20 April 2011.
2. Certificate of most representative status (MRS) of the Local Union of Khmer Youth Trade Union Federation (KYFTU), No. 030/10 KB/VB dated 15 July 2010.
3. Certificate of commercial registration, No. 1250 PN/NTK dated 27 August 2004.
4. Internal Work Rules of the employer.
5. Arbitral Award 62/10-Zhong Yov, dated 19 July 2010.
6. Company statute, dated 25 August 2004.
7. Letter from the workers to the president of CUF requesting intervention in the labour dispute at the Zhong Yov factory, dated 24 January 2011.

B. Provided by the worker party:

1. Letter from the workers to the president of CUF requesting intervention in the labour dispute at the Zhong Yov factory, dated 24 January 2011.
2. Letter from CUF to the head of the provincial Department of Labour and Vocational Training of Kandal Province seeking intervention in the Local Union of CUF's demands, No. 033/11 SSX dated 22 February 2011.

3. Minutes of collective labour dispute resolution at Zhong Yov Co., Ltd., No. 092/11 KB/RK/VK, dated 28 April 2011.
4. Letter confirming the registration of the Local Union of CUF, No. 020/11 KB dated 12 January 2011.
5. Union registration certificate of the Local Union of CUF, dated 12 January 2011.
6. List of names of members of the Local Union of CUF.
7. Union registration certificate of the Local Union of KYFTU, dated 12 April 2010.
8. Payroll records detailing of overtime payments to some workers.

C. Provided by the Ministry of Labour and Vocational Training:

1. Report on collective labour dispute resolution at Zhong Yov Co., Ltd., No. 092/11 KB/RK/VK dated 28 April 2011.
2. Minutes of collective labour dispute resolution at Zhong Yov Co., Ltd., dated 14 March 2011.

D. Provided by the Secretariat of the Arbitration Council:

1. Letter inviting the employer to select an arbitrator, No. 245 KB/AK/VK/LKA dated 5 April 2011.
2. Minutes of arbitrator selection from employer list, dated 6 April 2011.
3. Notice to attend the first hearing addressed to the employer, No. 252 KB/AK/VK/LKA dated 5 April 2011.
4. Notice to attend the first hearing addressed to the workers, No. 253 KB/AK/VK/LKA dated 5 April 2011.
5. Notice to attend the second hearing addressed to the employer, No. 308 KB/AK/VK/LKA dated 6 May 2011.
6. Notice to attend the second hearing addressed to the workers, No. 309 KB/AK/VK/LKA dated 6 May 2011.
7. Agreement on binding arbitration of rights disputes, dated 23 March 2011.

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:

- Zhong Yov Co., Ltd. commenced operation of the factory in 2008 and currently employs approximately 250 workers.

- There are two unions at the factory: the Local Union of CUF and the Local Union of KYFTU. The latter union holds a certificate of MRS, valid until 15 July 2012.
- The Local Union of CUF, registered on 12 January 2011 and representing 26 workers, is the claimant in this case.

Issue 1: The workers demand that the employer provide them with an additional US$ 5 of wages and US$ 6 of living allowance for August and September 2010.

- In August and September 2010, the employer provided an additional US$ 5 of wages and a US$ 6 living allowance to those workers who are the members of the Local Union of KYFTU. This was prior to the coming into force of Notification No. 049/10 KB/SCN, issued by the Ministry of Labour and Vocational Training, which increased wages by US$ 5 and provided for a living allowance of US$ 6. The increase for members of the Local Union of KYFTU was the result of a request by the union and a subsequent written agreement with the employer. The parties did not remember the date of the agreement.
- The parties stated that the agreement had not yet been registered.
- The union notified all workers that the agreement was applicable to only its members. It explained that if any worker later became a member of the union, they would also receive the additional US$ 5 of wages and the US$ 6 living allowance for August and September 2010.
- The employer states that after the abovementioned notification became effective in October 2010, it paid all workers an additional US$ 5 of wages and a US$ 6 living allowance. It argues that since it has already complied with the law, it cannot accommodate the workers' demand.
- The workers reason that as they hold the same positions at the factory [as the members of the KYFTU], they should receive the same benefits. Further, the workers argue that the employer discriminated against the Local Union of CUF by paying extra benefits for August and September to workers who withdrew from the Local Union of CUF to become members of the Local Union of KYFTU. The workers also maintain that because the Local Union of KYFTU is the union with MRS, the agreement it made with the employer must apply not only to its members but all workers.
- The workers and the employer did not submit the agreement made between the employer and the Local Union of KYFTU to the Arbitration Council.

Issue 4: The workers demand that the employer back pay the seniority bonus that it deducted in 2008 and 2009.

- The employer's practice prior to 2008 was to pay a US$ 2 seniority bonus to workers with tenure of over one year, a US$ 3 for two years, US$ 4 for three years, and US$ 5 for four years. If a worker's tenure exceeded four years, the employer stopped increasing the bonus, even if the worker had served for more than five years, in compliance with Notification No. 017 SKBY dated 18 July 2000.
- In 2008, the employer and the Local Union of KYFTU made an agreement, authorising the employer to deduct the US$ 3 seniority bonus for 2008 and 2009 from all the workers. ~~- ; and t~~The employer also ~~did not also pay~~withheld seniority bonuses of US$ 1 and US$ 2 to the workers who ~~had~~ retained seniority of one or two years.
- The names of the 17 claimant workers and their seniority are listed below:

No.	Name	ID	Employment Commencement Date
1	Chhen Sorphorn	107	01-04-2001
2	Mom Srey	009	11-11-1998
3	Long Sopheap	093	01-09-2000
4	Earm Peurn	092	01-09-2000
5	Neang Sreyoun	149	01-09-2001
6	Ngeth Sophat	012	16-11-1998
7	Chan Vuthy	110	01-04-2001
8	Chun Sreymom	228	04-04-2002
9	Sam Touch	108	01-04-2001
10	Ar Thon	327	01-01-2003
11	Meach Solin	490	17-01-2003
12	Ol Chanrum	470	11-06-2003
13	Seth Sorphea	626	23-02-2004
14	Chim Phally	1273	23-09-2005
15	Run Rom	1826	27-11-2006
16	Ngok Sreylo	1272	23-09-2005
17	Porng Theurn	1085	24-03-2005

- The workers state that if the employer cannot not meet their demand, the Arbitration Council should make a decision based on the law.

REASONS FOR DECISION

Issue 1: The workers demand that the employer provide them with an additional US$ 5 of wages and US$ 6 of living allowance for August and September 2010.

Before turning to this issue, the Arbitration Council will consider whether or not the demand gives rise to a rights dispute.

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).*

The Arbitration Council agrees in this case with the interpretation above. As the demand concerns the application of an agreement made in accordance with Decree 38, it is a rights dispute.

Point 2 of Notification No. 049 KB/SCN dated 9 July 2010, states,

> A minimum wage of US$ 56 will be provided to probationary workers employed for one to three months in the textile, garment, and footwear production sectors; that is, the current minimum wage of US$ 45 plus additional wages of US$ 5 and the living allowance of US$ 6. After completion of the probationary period, the workers will receive a minimum wage of US$ 61 per month; that is, a minimum wage of US$ 50 plus additional wages of US$ 5 and the living allowance of US$ 6

The Arbitration Council finds in this case that abovementioned notification came into effect after the agreement was made between the employer and the Local Union KYFTU. In this case, the employer fulfilled its obligation under the notification. Therefore, the notification is not involved in the dispute.

Article 65 of the Labour Law provides that "[a] labour contract establishes working relations between the worker and the employer. It is subject to ordinary law and can be made in a form that is agreed upon by the contracting parties."

Article 1 of Decree 38 on Contracts and Other Liabilities states that "[a] contract is an agreement between two or more persons to create, change or terminate one or more obligations which bind them."

Article 22 of Decree 38 on Contracts and Other Liabilities states that "[a] contract is a legally binding agreement between the parties. Amendments to the contract can only be made with the consent of both contracting parties…A contract binds only the parties to the contract."

Based on these provisions, in previous arbitral awards the Arbitration Council has ruled that

> Article 65 of the Labour Law subjects the labour contract to ordinary law, meaning that the labour contract is subject to Decree 38 on Contracts and Other Liabilities. Based on Articles 1 and 22 of Decree 38, a contract can be made as long as the parties agree to the contract; no third party...can force the parties to enter into a contract. *(See Arbitral Awards 131/09-Medcrest, reasons for decision, issue 3; 54/10-USA, reasons for decision, issue 6; 68/10-USA, reasons for decision, issue 4; and 46/11-Sun Lei Fung, reasons for decision, issue 2)*

The Arbitration Council agrees in this case with the interpretation above. Consequently, the agreement providing a US$ 5 increase in main wages and a living allowance of US$ 6 for August and September 2010 is only applicable to the parties to the agreement.

However, does an agreement made between the union with MRS and the employer apply to non-members of the union?

Clause 6 of *Prakas* No. 305 on the Representative Status of Professional Organisations of Workers within Enterprises and Establishments and the Right to Collective Negotiation to Conclude a Collective Agreement, dated 22 November 2001, provides that "[a]ny union that has an absolute majority of members of all workers in that enterprise or establishment has the right to represent all workers of that enterprise or establishment."

Based on this article, the union with MRS has the legal right to represent all workers at the factory even without an authorisation letter from non-members. However, the article does not state whether an agreement made by the union applies to all workers.

A collective agreement made by the union with MRS must apply to workers of different types represented by the union. For this reason, the agreement can apply to all workers if it is registered as a collective agreement.

Clause 4 of *Prakas* No. 287 SKBY dated 5 November 2001 states that "[e]mployers or their [employer] organisation shall register a collective agreement and its annexes and addenda with the provincial or municipal Division of Social Affairs, Labour and Vocational Training…"

Based on this clause, an agreement made by the union with MRS does not become a collective agreement unless it is registered.

In summary, if the union with MRS makes an agreement on behalf of its members, the agreement is applicable only to its members. In contrast, if the union applies for

registration of the agreement, then it will become a collective agreement and therefore apply to all workers at the enterprise.

In this case, the Arbitration Council finds that the Local Union of KYFTU informed all workers that the agreement it made with the employer extended only to members of the union having an absolute majority of members at the enterprise. Thus, the Local Union of KYFTU enforced its right to represent only its members in making an agreement with the employer. As a result, although the agreement was made by union with MRS, it applies only to its members on the grounds that the union limited the agreement's scope to its members and did not apply for registration of the agreement.

At the hearing, the workers asserted that the employer discriminated against their union by providing the benefits to only the members of the Local Union of KYFTU.

Article 12 of the Labour Law states:

> Except for the provisions fully expressing under this law, or in any other legislative text or regulation protecting women and children … no employer shall consider on account of:
>
> …
>
> - membership of workers' union or the exercise of union activities.
>
> to be the invocation in order to make a decision on:
>
> …
>
> - discipline or termination of [an] employment contract.

Article 279 of the Labour Law states:

> Employers are forbidden to take into consideration union affiliation or participation in union activities when making decisions concerning recruitment, management and assignment of work, promotion, remuneration and granting of benefits, disciplinary measures and dismissal.

In previous arbitral awards, the Arbitration Council has determined that the workers have the burden of proof in claims of union discrimination. (*See Arbitral Awards 93/06-Evergreen, reasons for decision, issue 1; 112/06-River Rich, reasons for decision, issue 1; and 01/07-Supreme, reasons for decision, issue 1*).

In this case, the workers assert that the employer discriminated against the Local Union of CUF by paying benefits to workers who withdrew from the union to become members of KYFTU. The Arbitration Council finds that the [agreement governing] the provision of benefits did not apply to all workers. For this reason, the non-provision of

benefits does not constitute discrimination because the Local Union of CUF is not a party to the agreement.

In conclusion, the Arbitration Council rejects the workers' demand that the employer back pay the US$ 5 of wages and living allowance of US$ 6 for August and September 2010.

Issue 4: The workers demand that the employer back pay the seniority bonus that it deducted in 2008 and 2009.

The Arbitration Council will take Notification No. 017 dated 18 July 2000 into consideration because this notification was in effect during 2008 and 2009 and governed the provision of the seniority bonus.

Point 5 of Notification No. 017 SKBY dated 18 July 2000 states,

> Any workers who work at a factory or enterprise a number of years will receive a bonus as follows:
>
> 5.1. A worker who has worked for more than one year will receive a seniority bonus of US$ 2 per month.
>
> 5.2. A worker who has worked for more than two years will receive a seniority bonus of US$ 3 per month, i.e. US$ 2 for the first year plus US$ 1 for the second year.
>
> 5.3. A worker who has worked for more than three years will receive a seniority bonus of US$ 4 per month, i.e. US$ 2 for the first year, plus US$ 1 for the second year, plus US$ 1 for the third year.
>
> 5.4. A worker who has worked for more than four years will receive a seniority bonus of US$ 5 per month, i.e. US$ 2 for the first year, plus US$ 1 for the second year, plus US$ 1 for the third year, plus US$ 1 for the fourth year.

Point 3 of Notification No. 745 KKBV dated 23 October 2006 provides that "the benefits workers used to receive under points 3, 4, 5 and 6 of Notification No. 017 SKBY dated 18 July 2000 on shall be retained".

Based on these notifications, the seniority bonus for workers who have worked for more than four years remains US$ 5 per month. The Arbitration Council finds that the employer must pay seniority bonuses in accordance with the workers' seniority and must not deduct the workers' bonuses [in violation of the notifications].

Based on the facts, the employer deducted seniority bonuses of US$ 3 per month from 17 workers in 2008 and 2009.

The Arbitration Council will consider the validity of the agreement that authorised the employer to deduct the workers' bonus in 2008 and 2009.

Article 13, paragraph 2 of the Labour Law states:

> Except for the provisions of this law that cannot be derogated in any way, the nature of public order of this law is not obstructive to the granting of benefits or rights superior to the benefits and the rights defined in this law, granted workers by a unilateral decision of an employer or a group of employers, by an employment contract, by a collective convention or agreement, or by an arbitral decision.

Based on this article, the Arbitration Council considers that the agreement does not comply with the law.

The Arbitration Council holds that the employer's practice does not comply with Notification No. 017 because the workers are entitled to receive seniority bonuses in accordance with their seniority.

In conclusion, the Council orders the employer to back pay the seniority bonuses of US$ 3 to the workers whose names are listed in the table above and to pay them the bonus in accordance with their seniority.

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

DECISION AND ORDER

Issue 1: Reject the workers' demand that the employer back pay the US$ 5 of wages and living allowance of US$ 6 for August and September 2010.

Issue 4: Order the employer to back pay the seniority bonuses of US$ 3 to the workers whose names are listed in the table above and to pay them the bonus in accordance with their seniority.

Type of award: binding award

This award will become binding and enforceable upon issuance as the parties agreed to binding arbitration on 20 April 2011.

SIGNATURES OF MEMBERS OF THE ARBITRAL PANEL

Arbitrator chosen by the employer party:

Name: **Seng Vuoch Hun**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Liv Sovanna**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: .....

Dissenting Opinion on Issue 1

Based on Clause 37 of *Prakas* No. 099 SKBY of the Ministry of Labour and Vocational Training dated 21 April 2004, I, Arbitrator, **Liv Sovanna**, would like to record my dissent on issue 1 of the Arbitral Award **45/11-Zhong Yov**:

Issue 1: The workers demand that the employer provide them with an additional US$ 5 of wages and US$ 6 of living allowance for August and September 2010.

Before turning to this issue, the Arbitration Council will consider whether or not the demand is a rights dispute.

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).*

The Arbitration Council agrees in this case with the interpretation above. Since the demand concerns the application of an agreement made between the employer and the workers, it is a rights dispute.

The Arbitration Council will consider whether or not the agreement between the employer and the Local Union of KYFTU (the MRS union) to provide a pay rise of US$ 5 and a living allowance of US$ 6 in August and September 2010 is applicable to non-members of the union.

Clause 6 of *Prakas* No. 305 on the Representative Status of Professional Organisations of Workers within Enterprises and Establishments and the Right to Collective Negotiation to Conclude a Collective Agreement, dated 22 November 2001, provides that "[a]ny union that has an absolute majority of members of all workers in that enterprise or establishment has the right to represent all workers of that enterprise or establishment."

Based on this clause, the union with MRS has a legal right to represent all workers in the factory even without authorisation letters from non-members. As a result, the union with MRS holds the right to protect the interests of all workers, including non-members of that union and members of other unions. Since this provision gives such a right to the union with MRS, all agreements made by that union must apply to all workers, unless the agreement contradicts the law or confers lesser benefits than the law. For instance, in issue 4 in this case, the Local Union of KYFTU entered into an agreement with the employer, authorising

the employer to deduct the workers' seniority bonus. Therefore, this agreement must be applicable to all the workers.

Thus, I believe that the agreement made between the employer and the Local Union of KYFTU conferring a pay rise of US$ 5 and a living allowance of US$ 6 in August and September 2010 should apply to non-members of the union.

The interpretation by the Council [that the agreement is only applicable to members of the Local Union of KYFTU] is incorrect because:

1. The Arbitration Council did not see the agreement but acknowledged that it was only applicable to members of the Local Union of KYFTU. At the hearing, the Council ordered the employer to submit the agreement but the employer failed to follow the order. This failure is not the fault of the workers, therefore the workers should not lose benefits because of the employer's failure to produce the documentation.

2. It is unfair to non-members of the Local Union of KYFTU (that is, for the agreement that results in the loss of benefits to apply to all workers whilst the agreement providing superior benefits to the law only applies to certain groups of workers.)

I consider that the union with MRS is unable to sign an agreement (which becomes a collective agreement after being registered) to cover only its members because collective bargaining is the exclusive right of that union and the law determines that a collective agreement can cover a geographical location (enterprise or establishment) or profession but not cannot cover specific types of union (applicable to this or that union). If the union with MRS can sign an agreement applicable only to its members, the other unions would have to hold [separate] negotiations regarding the interests of its members. This interpretation [by the Council] is contrary to the principle of freedom of association to join or not join a union.

In conclusion, I do not agree with the reasoning and the decision in issue 1.

Signature of Arbitrator

Liv Sovanna