KINGDOM OF CAMBODIA

NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 35/11-Gold Gear

Date of award: 11 April 2011

Dissenting opinion by Arbitrator Ing Sothy

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **Ing Sothy**

Arbitrator chosen by the worker party: **Vong Vanna**

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

DISPUTANT PARTIES

Employer party:

Name: **Gold Gear Garment Ltd. (the employer)**

Address: Prey Roka Village, Chork Cher Neang Commune, Angsnoul District, Kandal Province

Telephone: 078 549 559 Fax: N/A

Representatives:

1. Mr Ko Oi Leung — Director
2. Mr Sin Sythai — Head of Administration
3. Ms Cheang Mouy — Assistant to the Director

Worker party:

Name: **Khmer Youth Trade Union Federation (KYFTU)**

Local Union of KYFTU

Address: Prey Roka Village, Chork Cher Neang Commune, Angsnoul District, Kandal Province

Telephone: 017 370 363 Fax: N/A

Representatives:

1. Mr Mai Vatthana — Vice-President of KYFTU
2. Mr Sean Sorn — Dispute Resolution Officer of KYFTU
3. Mr Chheang Bunsok — President of the Local Union of KYFTU

4.	Mr Sorn Vuthy	Vice-President of the Local Union of KYFTU
5.	Mr Pon Rathtiny	Member of KYFTU Committee
6.	Mr Khat Sarun	Worker
7.	Mr Ly Sochet	Worker
8.	Ms But Nary	Worker

ISSUES IN DISPUTE

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

1. The workers demand that the management and the Chinese supervisors in all groups and sections use appropriate language towards the workers.
2. The workers demand that the employer install warm and cool water dispensers in the factory.
3. The workers demand that the employer refrain from discriminating against the leaders of the Local Union of KYFTU and the union's supporters.
4. The workers demand that the employer set up a day-care centre and breastfeeding room in the factory in accordance with the standards set forth in the *Prakas* issued by the Ministry of Labour and Vocational Training.
5. The workers demand that the employer take responsibility for work-related accidents and refrain from deducting from their wages and bonuses.
6. The workers demand that the employer provide a monthly US$ 10 attendance bonus.
7. The workers demand that overtime work be on a voluntary basis.
8. The workers demand that the employer provide an additional 1,000 riel meal allowance per hour.
9. The workers demand that the employer provide a physician and a sufficient amount of medicine in the factory.
10. The workers demand that the employer allow them to take leave.
11. The workers demand that the employer set up a canteen equipped with tables and chairs.
12. The workers demand that the employer build a parking lot for workers' motorbikes and bicycles.
13. The workers demand that the employer offer at least six month fixed duration contracts to probationary workers upon completion of the probationary period.

14. The workers demand that the employer allow pregnant workers to leave 15 minutes early.

15. The workers demand that the employer provide hygienic bathrooms and soap.

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. 107/11 KB/KN dated 11 March 2011 was submitted to the Secretariat of the Arbitration Council on 14 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: 25 March 2011 at 2:00 p.m.

Procedural issues:

On 11 March 2011, the Department of Labour Disputes of Kandal Province held a conciliation session on the 15 issues in dispute, but none of the issues were resolved. The 15 non-conciliated issues were referred to the Secretariat of the Arbitration Council on 14 March 2011, via non-conciliation report No. 107/11 KB/KN dated 11 March 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 15 non-conciliated issues, held on 25 March 2011 at 2:00 p.m. Both parties were present at the hearing. The Arbitration Council conducted a further conciliation of the 15 issues, resulting in issues 1, 2, 5, 6, 7, 8, 10, 11, 12, 14, and 15 being resolved. The remaining issues in dispute are issues 3, 4, 9, and 13.

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 both parties are signatories to the MoU dated 28 September 2010, they 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

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:

- Gold Gear Garment Ltd. employs a total of 160 workers, 120 of whom are female. There is only one union at the factory; the Local Union of KYFTU.
- The Local Union of KYFTU, the claimant in this case, holds certificate of registration No. 1959 dated 29 September 2010.

Issue 3: The workers demand that the employer reinstate Chheang Bunsok, Sorn Vuthy, and Pon Rathtiny.

- The workers revised their demand in this issue, demanding that the employer reinstate Chheang Bunsok, Sorn Vuthy, and Pon Rathtiny.

Case of Chheang Bunsok

- Chheang Bunsok commenced work on 1 June 2010. His final three month contract was effective from 1 January to 31 March 2011. He was a versatile worker. He received a US$ 61 main wage and a US$ 6 attendance bonus each month, receiving an average monthly wage of US$ 70-78.
- He is the president of the Local Union of KYFTU.

Case of Sorn Vuthy

- Sorn Vuthy commenced work on 7 June 2010. His final three month contract was effective from 1 January to 31 March 2011. Working in the sewing section, he received a US$ 61 main wage and a US$ 6 attendance bonus.
- He was the vice-president of the Local Union of KYFTU.

Case of Pon Rathtiny

- Pon Rathtiny commenced work on 20 May 2010. His final three month contract was effective from 1 January to 31 March 2011. He was a versatile worker. He received a US$ 71 main wage and a US$ 6 attendance bonus, receiving an average monthly wage of US$ 80-89.

Facts relating to the dismissal

- The employer did not notify the three workers of their dismissal in advance.
- The employer dismissed them on 17 February 2011, prior to the expiration of their last contracts.
- The three workers did not receive any warnings in the course of their employment.
- The employer states that it dismissed them because they did not pay enough attention to their work, went to the infirmary without permission, and made phone calls during working hours.
- The employer further states that Pon Rathtiny had an altercation with the director of Gold Gear Garment Ltd. The employer argues that the dismissal was not the result of union discrimination.
- The employer and the workers agree that the dismissal took place without authorisation from the Labour Inspector.
- The Local Union of KYFTU held an election on 8 February 2011. On 9 February 2011, the union notified the employer of the elected candidates: President Chheang Bunsok, Vice-President Sorn Vuthy, and Secretary Mut Kim. The employer's security guard acknowledged receipt of the notification of the newly-elected leaders.
- On 10 March 2011, the Ministry of Labour and Vocational Training issued a letter recognising the newly-elected leaders.
- The workers argue that the dismissal was the result of union discrimination because they were all dismissed on the same date. The workers claim that the employer took their union membership cards and did not acknowledge any union letters. Further, the employer refused to attend the conciliation session with the union.

- Based on the documents submitted by the employer on 29 March 2011, the Arbitration Council finds the following:
    - Sun Veurn, ID 227-S2, was dismissed prior to the expiration of his fixed duration contract on the basis of insufficient attention to work and refusal to follow the supervisor's direction. The employer gave him a warning letter on 5 March 2011 and he signed to accept the dismissal notice. His final three month contract was effective from 15 December 2010 to 15 March 2011.
    - The dismissal notice of Chheang Bunsok, dated 17 February 2011, reads: "Grounds for dismissal, failure to follow work discipline, laziness, using working hours to work on personal tasks without permission, and committing sexual acts in the factory." However, there was no warning letter for him. Chheang Bunsok did not acknowledge the dismissal notice.
    - The dismissal notice of Pon Raththiny, dated 17 February 2011, reads: "Grounds for dismissal, failure to follow work discipline, laziness, and insults the employer's management." However, there was no warning letter for him. Pon Raththiny did not acknowledge the dismissal notice
    - The dismissal notice of Sorn Vuthy, dated 17 February 2011, reads: "Grounds for dismissal, failure to follow work discipline and laziness. However, there was no warning letter for him. Sorn Vuthy did not acknowledge the dismissal notice.
    - Apart from the abovementioned documents, the employer also submitted the resignation letters of seven workers and the receipts of severance pay of two probationary workers.

Issue 4: The workers demand that the employer set up a day-care centre and a breastfeeding room.

- There is no day-care centre or breastfeeding room at the factory.
- The employer employs 160 workers, 120 of whom are female.
- The workers make this demand on the basis of the Labour Law.
- The employer acknowledges the requirement in the Labour Law to set up a day-care centre and a breastfeeding room and plans to do so in the future.

Issue 9: The workers demand that the employer set up an infirmary and provide a physician and a sufficient amount of medicine in the factory.

- There are 160 workers at the factory, 120 of whom are female.

- The employer has not set up an infirmary, nor does it provide a physician or a sufficient amount of medicine in the factory. The workers claim that there are spare rooms in the factory.
- The workers make this demand on the basis of their health.
- The employer acknowledges that the workers' demand is legally founded.

Issue 13: The workers demand that the employer offer six month fixed duration contracts to workers upon completion of the probationary period.

- The employer's practice is to offer three month fixed duration contracts upon the workers' completion of the probationary period.
- The workers make this demand because short-term contracts allow the employer to easily dismiss workers and means that workers lose certain rights, particularly freedom of association.
- The employer refuses to accommodate the workers' demand on the basis of its production needs.

REASONS FOR DECISION

Issue 3: The workers demand that the employer reinstate Chheang Bunsok, Sorn Vuthy, and Pon Raththiny.

Before determining this issue, the Arbitration Council will consider whether 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 with the above interpretation in this case; a rights dispute is a dispute concerning entitlements in the law, an agreement, or a collective agreement. This issue concerns reinstatement, which has basis in the Labour Law, making this a rights dispute.

The Arbitration Council considers the issue below.

According to the facts, Chheang Bunsok is the president of the Local Union of KYFTU, Sorn Vuthy, is the vice-president, and Pon Raththiny is an advisor to the union. While Chheang Bunsok and Sorn Vuthy are union leaders, Pon Raththiny is not. The Arbitration

Council will separate the two cases for consideration: the case of Chhean Bunsok and Sorn Vuthy and the case of Pon Rathtiny.

A. Case of Chheang Bunsok and Sorn Vuthy

Article 293 of the Labour Law states that "[t]he dismissal of a shop steward or a candidate for shop steward can take place only after authorisation from the Labour Inspector".

Clause 3, paragraph three of *Prakas* No. 305 SKBY dated 22 November 2001 states:

> All workers who are candidates for union leadership positions shall receive the same protection from work dismissal as worker delegates [shop stewards]. This protection begins 45 days prior to the election and ends 45 days after the election if the candidate is not elected. The union shall notify the employer of the worker's candidacy through all reliable means. However, the employer shall only be required to comply with this provision once for each election of union leaders.

Based on Clause 3, paragraph three of *Prakas* No. 305 set out above, the Arbitration Council considers that protection from dismissal is provided to all candidates for union leadership as well as to worker delegates. The protection begins 45 days prior to the election and ends 45 days after the election if s/he is not elected. The duration of protection for elected candidates is not specified in Clause 3, paragraph three, of *Prakas* No. 305 above. In this case, the Arbitration Council notes that the duration of protection for elected candidates should be at least 45 days after the election and may extend until the date the application for union registration is submitted *(see Arbitral Award 40/10-Meng Yang)*.

In previous arbitral awards, the Arbitration Council has ruled that workers should be protected if:

> 1) the worker is the type of worker entitled to special protection; 2) the dismissal occurs within the special protection period; and 3) the union has notified the employer of the candidates entitled to special protection through all reliable means *(see Arbitral Awards 07/06-Dai Young, reasons for decision, issue 1; 09/06-Grand Diamond, reasons for decision, issue 1; 148/07-Pay Her; and 71/09-Hytex, reasons for decision, issue 1)*.

According to the facts, Chheang Bunsok and Sorn Vuthy were elected as union leaders on 8 February 2011; therefore, they are entitled to special protection. The union duly notified the employer of the newly-elected leaders on 9 February 2011. The employer dismissed them on 17 February 2011 during the protection period, that is, within 45 days after the election. The employer failed to seek authorisation from the Labour Inspector.

In previous arbitral awards, the Arbitration Council has ruled that workers entitled to special protection cannot be dismissed without authorisation from the Labour Inspector and the Minister in Charge of Labour *(see Arbitral Awards 79/06-Woosu, reasons for decision, issue 1; 74/08-Generation International, reasons for decision, issue 1; and 107/08-Seratex, reasons for decision, issue 2)*.

In conclusion, the Arbitration Council orders the employer to reinstate Chheang Bunsok and Sorn Vuthy as their dismissal was inconsistent with the correct legal procedure.

B. Case of Pon Rathtiny:

Article 73, paragraphs one, two, and three of the Labour Law state:

> A labour contract of specific duration normally terminates at the specified ending date. It can, however, be terminated before the ending date if both parties are in agreement on the condition that this agreement is made in form of writing in the presence of a Labour Inspector and signed by the two parties to the contract.
>
> If both parties do not agree, a contract of specified duration can be cancelled before its termination date only in the event of the serious misconduct or acts of God.
>
> The premature termination of the contract by the will of the employer alone for reasons other than those mentioned in paragraphs 1 and 2 of this article entitles the worker to damages in an amount at least equal to the remuneration he would have received until the termination of the contract.

In Arbitral Award 30/08-E-Garment, the Arbitration Council interpreted paragraph three as follows:

> Based on paragraph three of Article 67 of the Labour Law, the Arbitration Council considers that if a fixed duration contract is terminated by the employer before its expiration, for reasons other than those stated in paragraphs one and two of that article, the worker is entitled to damages equal to the wages that the worker would have received until the contract's expiration date.

According to the facts, the employer dismissed Pon Rathtiny on the basis of a failure to follow work discipline. The employer failed to prove that a failure to follow work discipline is serious misconduct justifying immediate dismissal, and it acknowledges that Pon Rathtiny did not receive any warning letters. Therefore, the Arbitration Council considers that Pon Rathtiny's dismissal was not justified on the basis of misconduct.

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 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 found:

> both the decision not to renew a contract of fixed duration and the decision to dismiss a worker on an undetermined duration contract should be considered to fall within the category of decisions which an employer cannot make for reasons of union membership or participation in union activity.

Based on the foregoing, the Arbitration Council considers that the dismissal of union activists on the basis of union activism contravenes the Labour Law and the Council's jurisprudence.

According to the facts, Pon Raththiny was dismissed on the same date as other union leaders without being given prior notice after the employer learned of his union membership.

The Arbitration Council considers that the workers have presented facts supporting their assertion that the dismissal was due to union participation, i.e. there was no specified ground for the dismissal and he was dismissed after the election. The employer has the burden of refuting the workers' claim. The Arbitration Council considers that the employer's evidence does not conclusively determine that the dismissal was based on misconduct.

The Arbitration Council considers that the Pon Raththiny's dismissal was the result of his union membership and activism. Thus, the employer must reinstate Pon Raththiny.

In conclusion, the Arbitration Council orders the employer to reinstate Chheang Bunsok, Sorn Vuthy, and Pon Raththiny.

Issue 4: The workers demand that the employer set up a day-care centre and a breastfeeding room.

Before determining this issue, the Arbitration Council will consider whether the demand gives rise to a rights dispute.

The workers' demand concerns entitlements in the Labour Law, making this a rights dispute (please see the interpretation regarding rights disputes in issue 3, above).

In this case, the employer has not set up a day-care centre or a breastfeeding room in the factory. The Arbitration Council considers the issue as follows:

Article 186 of the Labour Law states:

> Managers of enterprises employing a minimum of one hundred women or girls shall set up, within their establishments or nearby, a nursing room and a day-care centre.
>
> If the company is not able to set up a day-care centre on its premises for children over eighteen months of age, female workers can place their children in any day-care centre and the charges shall be paid by the employer.

Based on this provision, the Arbitration Council considers that the employer is obliged to set up a nursing room [breastfeeding room] and a day-care centre. If it is unable to do so for children aged over 18 months, female workers can place their children in any external day-care centre and associated charges will be paid by the employer.

In previous arbitral awards, the Arbitration Council has ruled that employers employing at least 100 female workers are obligated to provide a breastfeeding room and a day-care centre. If the employer is unable to provide a day-care centre for children aged over 18 months, female workers can place their children in any external day-care centre and associated charges will be paid by the employer on the basis of valid receipts *(see Arbitral Awards 63/04-Shine Well, reasons for decision, issue 2; 68/04-City New, reasons for decision, issue 1; 103/08-Vivatino Design, reasons for decision, issue 2; and 115/08-Top One, reasons for decision, issue 2)*.

The Arbitration Council considers that the purpose of the requirement in the Labour Law that the employer set up a day-care centre is to enable the mother and child to be close to each other and to provide the child with loving care and natural breastmilk without the use of milk formula during the first six months, in accordance with the policy of the Cambodian government, and to maintain the safety of the children while their mothers are working *(see Arbitral Awards 63/04-Shine Well, reasons for decision, issue 2; 68/04-City New, reasons for decision, issue 1; 79/07-Terratex, reasons for decision, issue 8; 77/08-Xing Tai, reasons for*

decision, issue 3; 103/08-Vivatino Design, reasons for decision, issue 2; and 115/08-Top One, reasons for decision, issue 2).

The Arbitration Council considers that the employer is obliged to set up a day-care centre and a breastfeeding room. The employer has the option to provide payment in lieu of setting up a day-care centre if it is unable to do so for children aged over 18 months.

In conclusion, the Arbitration Council orders the employer to set up a breastfeeding room and a day-care centre at the factory. If the employer is unable to do so for children aged over 18 months, female workers can place their children in an external day-care centre and associated charges must be paid by the employer based on valid receipts.

Issue 9: The workers demand that the employer set up an infirmary and provide a physician and a sufficient amount of medicine in the factory.

Before determining this issue, the Arbitration Council will consider whether the demand gives rise to a rights dispute.

The workers' demand concerns entitlements in the Labour Law, making this a rights dispute (please see the interpretation regarding rights disputes in issue 3, above).

The Arbitration Council considers the issue below.

Article 1 of the Labour Law states:

> This law governs relations between employers and workers resulting from employment contracts to be performed within the territory of the Kingdom of Cambodia, regardless of where the contract was made and what the nationality and residences of the contracted parties are.

Article 238 of the Labour Law states that "[e]nterprises and establishments covered by Article 1 of this law must provide the primary health care to their workers."

Clause 1 of *Prakas* No. 330 SKBY on enterprise infirmary, dated 6 December 2000, provides that "[e]mployers of enterprises and establishments stipulated in Article 1 of the Labour Law employing at least 50 employees must establish a permanent infirmary at the workplace."

Based on this clause, the Arbitration Council considers that an employer employing 50 workers or more must set up an infirmary at the workplace.

According to the facts, there is no infirmary but there are spare rooms in the factory. Thus, the Arbitration Council orders the employer to turn the spare rooms into an infirmary.

Clause 3 of *Prakas* No. 330 SKBY, dated 6 December 2000, states:

The number and quality of medical personnel shall be determined according to the number of employees at the enterprise or establishment as prescribed in the table below:

Number of employees at the enterprise	Number of nurses (male or female)	Number of physicians	Minimum number of hours that medical personnel must be present in each eight hour shift.
50 - 300	One on standby	One physician or junior physician	Two hours
301-600	One on standby	One physician	Two hours
601 - 900	Two on standby	One physician	Three hours
901 - 1400	Two on standby	One physician	Four hours
1401-2000	Two on standby	One physician	Six hours
Over 2000	Three on standby	One physician	Eight hours

When the enterprise or institution needs to work over time, the infirmary shall have nurses and physicians to standby during that time.

Based on this clause, the Arbitration Council has ruled that employers are obliged to arrange medical treatment for workers and place physicians on standby (i.e. labour physicians led by one or more senior physicians) as well as providing medicine for first aid *(see Arbitral Awards 03/03-Tonga, reasons for decision, issues 3, 4, and 6 and 68/06-Hong Mei, reasons for decision, issue 4)*.

The Arbitration Council applies the abovementioned ruling in this case.

In this case, the Arbitration Council finds that the employer has not arranged first aid for the workers. According to the facts, the employer employs 160 workers. Therefore, the Arbitration Council orders the employer to set up a permanent infirmary, place a nurse on standby and a ensure a physician is present at the factory for two hours in out of every eight working hours, and provide a sufficient amount of medicine and medical equipment.

Issue 13: The workers demand that the employer offer six month fixed duration contracts to workers upon completion of the probationary period.

Before determining this issue, the Arbitration Council will consider whether the demand gives rise to a rights dispute.

The workers' demand concerns entitlements in the Labour Law, making this a rights dispute (please see the interpretation regarding rights disputes in issue 3, above).

In this case, the workers demand that the employer offer six month fixed duration contracts rather than three month contracts to workers upon completion of the probationary period. The Arbitration Council considers the issue below.

Article 65, paragraph one of the Labour Law, states 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."

Based on this article, an employment contract is subject to ordinary law. Decree 38 on Contracts and Other Liabilities, dated 28 October 1988, contains the law regarding contracts.

Article 1 of Decree 38 on Contracts and Other Liabilities states that "[a] contract is an agreement freely entered into by 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."

Based on Articles 1 and 22 set out above, the Arbitration Council considers that an employment contract is established when a worker and an employer agree to the contract. The agreement to conclude a contract must occur in a free and legal manner.

In previous arbitral awards, the Arbitration Council has ruled that:

> a labour contract establishes working relations between the worker and the employer and can be made in a form that is agreed upon by the contracting parties as long as it complies with the conditions of the Labour Law. A labour contract is subject to ordinary law. Neither of the contracting parties can force the other party to sign a contract or to accept any conditions that would not otherwise be accepted by the other party. Any contracts made under duress can be voided by the law or by the other contracting party *(see Arbitral Award 56/06-Boric Garment, reasons for decision, issue 1).*

The Arbitration Council will apply the aforesaid ruling in this case. The workers' demand requires an agreement from the employer. If there is no agreement, an employment contract cannot be established. Neither party (the employer or the worker) can force the other to sign a contract. In any event, the Arbitration Council considers that the signing of a three month contract does not violate the Labour Law as it is subject to negotiation and agreement by the contracting parties. The workers have the right to agree to the terms of employment offered by the employer, and the employer has the right to reject the workers' demand that the employment period be extended. In principle, neither of the parties can force the other party to accept working conditions that he/she refuses. In this case, the workers cannot force the employer to offer six month contracts and the employer cannot force the workers to agree to an employment period of three months.

Based on the foregoing, the Arbitration Council rejects the workers' demand that the employer offer six month fixed duration contracts rather than three month contracts. This

rejection does not preclude the workers from making a similar demand if the employer agrees to it.

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 reinstate Chheang Bunsok, Sorn Vuthy, and Pon Rathtiny as their dismissal violated the correct legal procedure.

Issue 4: Order the employer to set up a breastfeeding room and a day-care centre at the factory. If the employer is unable to do so for children aged over 18 months, female workers can place their children in an external day-care centre and associated charges must be paid by the employer based on valid receipts.

Issue 9: Order the employer to set up a permanent infirmary, place a nurse on standby and a ensure a physician is present at the factory for two hours in out of every eight working hours, and provide a sufficient amount of medicine and medical equipment.

Issue 13: Reject the workers' demand that the employer offer six month fixed duration contracts rather than three month contracts. This rejection does not preclude the workers from making a similar demand if the employer agrees to it.

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: N/A

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: **Ing Sothy**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Vong Vanna**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: .....