KINGDOM OF CAMBODIA

NATION RELIGION KING

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THE ARBITRATION COUNCIL

Case number and name: 127/13-Quint Major Industrial

Date of award: 18 July 2013

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRAL PANEL

Arbitrator chosen by the employer party: **Kol Vathana**

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

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

DISPUTANT PARTIES

Employer party:

Name: **124/13-Quint Major Industrial Co., Ltd. (QMI)**

Address: Trayeung Village, Peuk Commune, Ang Snoul District, Kandal Province

Telephone: 017 908 093 Fax: N/A

Representatives:

1. Mr Peter Pan — General Manager
2. Mr Touch Borey — Administration Officer

Worker party:

Name: **- Khmer Workers Power federation Union (KWPFU)**

- Local Union of KWPFU (the union)

Address: #2G, National Road 4, Borey Kamakor Village, Beik Chan Commune, Ang Snoul District, Kandal Province

Telephone: 092 957 472 Fax: N/A

Representatives:

1. Mr Prum Bunthoeun — Vice-President of KWPFU
2. Mr Roeun Khom — Officer of KWPFU

3. Mr Lor Sopheak	Secretary-General of KWPFU
4. Ms Chan Sophearum	President of the union
5. Ms Min Pov	Vice-President of the union
6. Ms Run Sokun Pidor	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 increase the overtime meal allowance by 2,000 to 4,000 riel to workers working overtime from 4 p.m. to 6 p.m.
2. The workers demand that the employer provide a daily 3,000 riel payment in lieu of lunch.
3. The workers demand that the employer provide an additional US$10 accommodation and transportation allowance which brings it to a total US$17 because, the workers claim, they spend at least US$17 on transportation.
4. The workers demand that the employer specify the company's name on their new ID Cards.
5. The workers demand that the employer permit the workers to punch in twice a day: one in the morning before starting work and the other in the evening before leaving work.
6. The workers demand that the employer maintain wage and bonuses when the workers take special leave for wedding, parents' illness or death, children or spouse's illness or death.
7. The workers demand that the employer provide 18 days annual leave and an additional 2 days annual leave for each year of seniority (like the practice at Q.M.I G).

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. 155 dated 17 June 2012 (Eleventh 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 unsuccessful conciliation report No. 461/13 dated 21 June 2013 was submitted to the Secretariat of the Arbitration Council on 21 June 2013.

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: 2 July 2013 (2 p.m.)

Procedural issues:

On 20 June 2013, the Department of Labour Disputes (the department) received a complaint outlining the workers' demands for the improvement of working conditions by the employer. Upon receiving the claim, the department assigned an expert officer to resolve the labour dispute and the last conciliation session was held, resulting in none of seven issues being resolved. The seven non-conciliated issues were referred to the Secretariat of the Arbitration Council (SAC) on 21 June 2013 via a non-conciliation report no. 461/13.

Upon receipt of the case, the SAC summoned the employer and the workers to a hearing and conciliation of the seven non-conciliated issues, held on 2 July 2013 at 2 p.m. Both parties were present as summoned by the Arbitration Council.

At the hearing, the Arbitration Council conducted a further conciliation of the seven non-conciliated issues, but they remained unresolved. At the hearing, the Arbitration Council sets 5 July 2013 as the deadline to submit evidence and 9 July as the deadline to object the evidence.

The Arbitration Council divided the issues into two types: rights disputes and interests disputes. In this case, the parties are signatories to the Memorandum of Understanding on Improving Industrial Relations in the Garment Industry (MoU), dated 3 October 2012. According to the MoU, both parties have agreed to binding arbitration for rights disputes. However, the MoU does not create binding obligations regarding interest disputes. The parties are able to choose non-binding arbitration for interest 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 choose non-binding arbitration for their interests disputes. In this case, the parties choose non-binding Arbitral Award for the interests dispute.

Both parties agree to defer the date of award issue from 12 July 2013 to 18 July 2013.

Therefore, the Arbitration Council will consider 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:

- Quint Major Industrial Co., Ltd. (QMI) is a garment factory which is registered into the trade preference system no. Inv.E.538/GSP/MFN/2006 dated 1 December 2012.
- According to the unsuccessful conciliation report mentioned in the Procedural Issues, QMI employs 4,470 workers.
- KWPFU is the claimant in this case. There are three workers (Chan Sophearum, Min Pov, and Run Kunthea Pidor) and three KWPFU officers attend the hearing on 2 July 2013.
- According to the evidence submitted to the Arbitration Council, the Arbitration Council finds that:
    - KWPFU has notified the employer about its new leaders, Ms Chan Sophearum-President, Ms Min Pov-Vice President, and Ms Run Sokunthea Pidor-Secretary of the union via Notification no. 039/13 dated 23 May 2013.
    - A receipt of union leader recognition request issued by the department of Ministry of Labour and Vocational Training dated 2 July 2013.
    - A list of ID numbers and unspecified and undated thumbprints of QMI workers cause the Arbitration Council to be unable to conclude whether or not it is the list of ID numbers and thumbprints of workers who authorise KWPFU to represent them in the dispute resolution process.

Issue 1: The workers demand that the employer increase the overtime meal allowance by 2,000 to 4,000 riel to workers working overtime from 4 p.m. to 6 p.m.

- QMI provides a 2,000 riel overtime meal allowance per day to workers working overtime from 4 p.m. to 6 p.m.
- At the hearing, the workers demand the employer to provide a 4,000 riel overtime meal allowance per day to each worker who works from 4 p.m. to 6 p.m. They demand for an additional 2,000 riel on top of the existing 2,000 riel per day that the employer is providing.
- The workers contend that the cost of living is rising which makes the allowance not enough for them. In the past, each worker spent only 1,500 riel (500 riel to purchase rice and from 500 to 1,000 riel to purchase a dish) for a meal. However, today each

worker spends 2,500 riel (1,000 riel to purchase rice and from 1,000 to 1,500 riel to purchase a dish) for a meal.

- The employer claims it will provide an overtime meal allowance in accordance with the Labour Law. It will provide a 2,000 riel overtime meal allowance per day to each worker who works overtime from 4 p.m. to 6 p.m.
- The parties do not have any agreement or collective agreement in relation to the issue.

Issue 2: The workers demand that the employer provide a daily 3,000 riel payment in lieu of lunch.

- QMI does not provide an allowance to purchase lunch to workers.
- At the hearing, the workers demand the employer provide a daily 3,000 riel payment in lieu of lunch to each worker.
- The workers contend that:
    - Workers who receive this allowance will be motivated to work.
    - Other factories provide allowance to purchase lunch such as Master & Frank, Yak Jean, and Generation.
- The employer claims that it does not agree to the demand because there is no law stipulating the obligation of the employer to provide an allowance to purchase lunch.

Issue 3: The workers demand that the employer increase accommodation and transportation allowance by US$10 to reach US$17 because, the workers claim, they spend at least US$17 on transportation.

- QMI provides a US$7 accommodation and transportation allowance per month to each worker.
- At the hearing, the workers demand the employer to provide US$17 accommodation and transportation allowance to each worker. They demand an additional US$10 on top of the existing US$7 accommodation and transportation allowance per month.
- The workers contend that the demand is based on the current situation:
    - Transportation costs are rising. Each worker spends from US$10 to US$20 per month on transportation.
    - Accommodation costs are rising. Each worker spends on average US$10 per month on accommodation, US$3 per month on water supply and US$2 per month on electricity.
- The employer claims that it will provide a US$7 accommodation and transportation allowance per month to each worker in accordance with the Labour Law.

Issue 4: The workers demand that the employer specify the company name on their new ID Cards.

- The workers clarify their demand that the employer specify company name on their new ID Cards.
- The workers submit evidence to the Arbitration Council including 3 different workers' ID cards which reflects 3 different phases of ID card development. The Arbitration Council finds that:
    - The ID cards in the past were printed with the full company name "Quint Major Industrial" and the trademark "QM". The current ID cards are printed without the company name. Only the term "Workers' ID Card" and trademark "QM" are seen.
    - Though there have been 3 phases of ID card development, each ID card in different phases are printed with trademark "QM" and there has been no objection to the trademark.
- The workers do not provide any evidence to prove that the ID cards on which the company name is not printed cause any consequence or affect the workers' interests.
- The employer claims:
    - The workers' ID cards are internal documents. Additionally, the change of ID card does not affect the workers' wage, seniority, and interests. The workers do not object to the claim.
    - ID cards currently provided to the workers are not illegitimate.

Issue 5: The workers demand that the employer permit the workers to punch in twice a day: one in the morning before starting work and the other in the evening before leaving work.

- The employer requires the workers to punch in four times a day: at 7 a.m., 11:30, 12:30 p.m. and 4 p.m. or 6 p.m.
- The workers demand that the employer cuts down the number of punch in from four times to twice a day: once at 7 a.m. and 4 p.m. or 6 p.m.
- The workers claim that lunch break is short while it takes 20 minutes to punch in. For instance, the punch in at 11:30 a.m. shortens the workers' lunch break.
- The employer claims:
    - It cannot cut down the number of punch in because it is used to control the workers' attendance.
    - Each punch in needs only 7 to 10 minutes.
- The Arbitration Council orders the parties to submit evidence to prove how much time the workers need for a punch in, but the parties failed to submit it to the Arbitration Council according to the deadline.

Issue 6: The workers demand that the employer refrain from reducing their payment in lieu of remaining annual leave, wage, and bonuses when the workers take special leave for wedding, parents' illness or death, children or spouse's illness or death.

- The workers claim that they demand the employer refrain from reducing their remaining annual leave or their wage or attendance bonus when the workers take special leave.
    - A. The workers who have remaining annual leave demand that the employer refrain from reducing their remaining annual leave when they take special leave.
    - B. The workers who do not have remaining annual leave demand that the employer refrain from reducing their wage or attendance bonus in proportion to the number of special days that the workers take or the employer reduce nothing at all when the workers take special leave.
- The workers contend that they take special leave for urgent reasons with documentation certified by village or commune authority as well.
- The employer claims it does not agree to the demand.

Issue 7: The workers demand that the employer provide 18 days' annual leave and an additional 2 days' annual leave for each year of seniority (like the practice at Q.M.I G).

- The workers clarify their demand that the employer increase annual leave by 2 days for each year of seniority to each worker annually:
    - 18 days of annual leave is provided to the workers in the first year.
    - 20 days of annual leave is provided to the workers in the second year.
    - 22 days of annual leave is provided to the workers in the third year.
    - And so on…
- The workers claim that the employer practices this at Q.M.I G. Therefore, the workers demand the employer practice the same thing at Quint Major because both factories share the same owner.
- The employer contends that Quint Major and Q.M.I G (Grand Twin) are two separate factories and are registered as two different entities.
- The employer claims that it will comply with the Labour Law.

REASONS FOR DECISION

Before considering the demand, the Arbitration Council will:

1. Consider the status of workers who attend the hearing:

According to the non-conciliation report no. 461/13 dated 21 June 2013, KWPFU is the claimant in this case. There are three workers (Ms Chan Sophearum, Ms Min Pov, and Ms Run Sophea Pidor) and three KWPFU officers attending the hearing on 2 July 2013. Based on the evidence submitted to the Arbitration Council, the Arbitration Council finds that

the workers have notified the employer about the new union leaders and requested the Ministry of Labour and Vocational Training to recognise them. The workers fail to submit evidence to prove that the Ministry of Labour and Education Training formally recognises the new union leaders.

Article 268 of the Labour Law states:

> In order for their professional organisation to enjoy the rights and benefits recognised by this law, the founders of those professional organisations must file their statutes and list of names of those responsible for management and administration, with the Ministry in Charge of Labour for registration.
>
> … The filing will be renewed when there are changes in the statutes or management.

The Arbitration Council finds that Article 268 of the Labour Law above means professional organisations enjoy rights and benefits recognised by this law only when they register at the Ministry of Labour and Vocational Training and list of names of those responsible for management and administration is recognised by the Ministry of Labour and Vocational Training.

In previous awards, the Arbitration Council finds that rights and interests include right to represent their member in dispute resolution at the Arbitration Council *(see Arbitral Award no. 62/06-Quicksew Cambodia, Issue 2, 30/08-E Garment, 31/08-South Bay Garment, and 94/09-Tack Fat Garment).*

The Arbitration Panel in this case agrees with the interpretation made in the previous cases.

In this case, the Arbitration Council finds that three workers attending the hearing are not leaders recognised by law of the union of KWPFU because they have not received any recognition from the Ministry of Labour and Vocational Training.

Therefore, the three workers have no legal right to represent KWPFU members at Quint Major.

Moreover, the workers submit the list of ID numbers and thumbprints of Quint Major workers, but the list does not specify the purpose of providing thumbprints and is undated. Therefore, the Arbitration Council assumes that it is just a list of ID numbers and thumbprints authorising KWPFU to represent them in dispute resolution in this case.

Clause 19 of Prakas no. 99 dated 21 April 2004 states:

> A party may appear before the arbitration panel in person, be represented by a lawyer who is a member of the Bar Association of the Kingdom of Cambodia, or be represented by any other person expressly authorized in writing by that party.

According to Clause 19 of Prakas no. 99/04 above, the Arbitration Council finds that the term *"authorised in writing"* means parties in dispute can authorise other persons to represent them in dispute resolution before the Arbitration Council only those persons

receive authorisation in writing *(see Arbitral Award no. 161/09-Prek Treng Trading, 43/10-Ming Jian, and 144/12-E Garment).*

Therefore, in reference to Clause 19 of Prakas 99/04 above and previous Arbitral Awards, the Arbitration Council finds that union officers attending hearing have no legal right to represent workers at Quint Major when they don't possess a written authorisation letter from workers.

The three workers at Quint Major attend hearing at the Arbitration Council. The three workers are 1) Chan Sophearum, 2) Min Pov, and 3) Run Sokun Pidor. Therefore, according to Clause 19 of Prakas no. 99/04 above, the Arbitration Council finds that only the three workers are claimant in this case and the Arbitration Council will decide for only the three workers.

2. Interpret rights and interests dispute

Paragraph 2 of Article 312 of the Labour Law states *"The Arbitration Council 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 the Prakas 099 on the Arbitration Council dated 21 April 2004 states:

> An Arbitral Award which settles an interests 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.

Paragraph 2 of Article 312 of the Labour Law and Clause 43 of the Prakas no.099 on the Arbitration Council states that the Arbitration Council 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. The Arbitration Council concludes that disputes concerning the interpretation and enforcement of laws or regulations or of a collective agreement are rights disputes and the Arbitration Council has jurisdiction to settle the rights disputes *(see the Arbitration Award 05/11-M & V (Branch 1), Issue 1&5, 13/11-Gold Kamvimex, Issue 1&2, 14/11-GXG, Issue 4).* Any kinds of disputes that are not stipulated in the agreement or collective agreement are interests disputes and the Arbitration Council settles interests disputes based on equity *(see the Arbitral Award 31/11-Quint Major Industrial, Issue 4 and 62/11-Ocean Garment, Issue 1).*

Issue 1: The workers demand that the employer increase the overtime meal allowance by 2,000 riel to 4,000 riel to workers working overtime from 4 p.m. to 6 p.m.

First, the Arbitration Council considers whether the issue gives rise to a rights or an interests dispute.

- Point 2 of the Notification 041/11 dated 7 March 2011 said, *"The workers who volunteer to work overtime at the employer's request shall receive a 2,000 riel meal allowance per day or be provided with a free meal."*

In this case, the employer provides a 2,000 riel meal allowance to each worker who works from 4 p.m. to 6 p.m. The Arbitration Council finds that the employer does this in accordance with the Notification 041/11. Moreover, the Arbitration Council finds that there is no legal provision, agreement, collective agreement, internal work rule, or any past practice of the parties that places an obligation on the employer to provide an additional 2,000 riel per day on top of an existing meal allowance to each worker who works from 4 p.m. to 6 p.m. The Arbitration Council finds that the workers' demand exceeds what the law stipulates, so this is an interests dispute.

The Arbitration Council will consider whether or not the employer is obliged to provide an additional 2,000 riel on top of an existing 2,000 riel meal allowance per day to each worker who works from 4 p.m. to 6 p.m.

Concerning rights dispute, the Arbitration Council considers:

Paragraph 2 of Article 96 of the Labour Law 1997 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…

Moreover, Clause 9 of the Prakas 305 dated 22 November 2001 states:

> The union having most representative status has the right to request the employer to negotiate a collective agreement which applies to all workers represented by that union. In this case, the employer has the obligation to negotiate with the union.

According to Article 96 and Clause 9 of the Prakas above, in interests disputes generally, the Arbitration Council takes the most representative status (MRS) of the union into consideration because it provides unions with the legal right to negotiate a collective agreement with the employer, and the union also has the legal right to bring an interests dispute case to the Arbitration Council for resolution.

Clause 43 of Prakas Number 099 dated 21 April 2004 states:

> An arbitral award which settles an interests 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 reference to the above Clause 43, an arbitral award which settles an interests dispute takes the place of a collective bargaining agreement. It binds all workers in the company and strips them of their right to strike over interests disputes covered in collective agreement for one year period and this includes other workers who are not the members of this union. Hence, the Arbitration Council can only settle interests disputes brought in by unions which have MRS in the enterprise or collective unions which have more than half the

number of workers as members in the enterprise *(see Arbitral Award no. 81/04-Evergreen, Issue 4, and 98/04-Great Union, Issue 3).*

In 169/11-Fortune Teo, Issue 5, the Arbitration Council declined to consider an interests dispute because the union that brought the case did not have MRS in the factory *(see Arbitral Award no. 02/11-Pou Yuen, Reasons of Issue 2, and 66/11-In Han Sung, Reasons of Issue 1).*

The Arbitration Panel agrees with the interpretation of the previous Arbitration Panel.

In this case, three workers (Ms Chan Sophearum, Ms Min Pov, and Run Sokun Pidor) who make the demand do not hold MRS at Quint Major. Therefore, the Arbitration Council finds that the three workers attending the hearing do not meet legal requirements to bring the interests disputes to the Arbitration Council.

In conclusion, the Arbitration Council decides to decline to consider the workers' demand that the employer increase the overtime meal allowance by 2,000 riel to 4,000 riel to workers working overtime from 4 p.m. to 6 p.m.

Issue 2: The workers demand that the employer provide a daily 3,000 riel payment in lieu of lunch.

First, the Arbitration Council considers whether the issue gives rise to a rights or an interests dispute.

The Arbitration Council finds that there is no legal provision in the Labour Law, agreement, collective agreement, internal work rule, or past practice of the parties that places an obligation on the employer to provide a daily 3,000 riel payment in lieu of lunch per day to each worker. Therefore, the Arbitration Council finds that the demand is an interests dispute *(see the interpretation about interests dispute in the Reasons for Decision, Issue 1 above).*

In conclusion, the Arbitration Council decides to decline to consider the workers' demand that the employer provide a daily 3,000 riel payment in lieu of lunch.

Issue 3: The workers demand that the employer provide an additional US$10 on top of an existing US$7 accommodation and transportation allowance per month to each worker.

First, the Arbitration Council considers whether the issue gives rise to a rights or an interests dispute.

Point 1 of the Notification no. 230 dated 25 July 2012 states: *"Provide an accommodation and transportation allowance of US$7 per month…"*

In this case, the employer provides an accommodation and transportation allowance of US$7 per month to each worker. The Arbitration Council finds that the employer complies with the Notification no. 230/12. Moreover, the Arbitration Council finds that there is no legal provision, agreement, collective agreement, internal work rule, or past practice that places an

obligation on the employer to provide US$10 in addition to the existing US$7 accommodation and transportation allowance currently paid to each worker. Therefore, the Arbitration Council finds that the workers' demand exceeds what is set by law, so the demand is an interests dispute *(see the interpretation about interests dispute in the Reasons for Decision, Issue 1 above).*

In conclusion, the Arbitration Council decides to decline to consider the workers' demand that the employer provide an additional US$10 accommodation and transportation allowance on top of an existing US$7 allowance per month to each worker.

Issue 4: The workers demand that the employer specify company name on their new ID Cards.

First, the Arbitration Council considers whether the issue gives rise to a rights or an interests dispute.

The Arbitration Council finds that this issue is related to the employer's arrangement to provide ID cards to workers. In reference to the interpretation about rights and interests dispute above, the Arbitration Council finds that this is a rights dispute.

The Arbitration Council will consider whether the employer is under obligation to print the company name on worker's new ID cards.

Article 2 of the Labour law 1997 states: *"Every enterprise may consist of several establishments, each employing a group of people working together in a defined place such as in factory, workshop, work site, etc., under the supervision and direction of the employer…"*

In the previous cases, the Arbitration Council finds that Article 2 of the Labour Law above means the employer has right to manage and supervise as long as it complies with the law and is reasonable *(see Arbitral Award no. 62/06-Quicksew Cambodia, Reasons for Decision, Issue 5, 108/06-Trinunggal Komara, 33/07-Goldfame Enterprise, Issue 3, and 119/09-SL Garment, Issues 4 & 5).*

The Arbitration Panel in this case agrees with the interpretation made in previous cases.

The Arbitration Council finds that there is no legal provision and internal work rule of QM stating about the format of workers' ID cards. Therefore, it is the right of the employer to arrange the format of workers' ID cards as long as it complies with the law and is reasonable. This means the arrangement shall make the format clear to serve the purpose of being an ID card that can identify workers of the institution that issues the card and does not affect the workers' interests.

In this case, the employer removes the full name of the company from their ID cards but keeps its trademark "QM" which is agreed by the parties to be the company's trademark. Therefore, the Arbitration Council finds that this ID card can identify QM workers. Moreover,

the employer claims the removal of full name of the company from workers' ID cards does not affect workers' wage, seniority, and benefits. The workers do not object to this claim and they do not prove that the removal has any material consequence or affect their benefits. The Arbitration Council finds that the employer is not obliged to print the full name of the company on workers' new ID cards.

In conclusion, the Arbitration Council decides to reject the workers' demand that the employer specify company name on their new ID Cards.

Issue 5: The workers demand that the employer cut down the number of punch in from 4 times to twice per day: once at 7 a.m. and the other at 4 p.m. or 6 p.m.

First, the Arbitration Council considers whether the issue gives rise to a rights or an interests dispute.

The Arbitration Council finds that the issue is related to the employer's arrangement to let the workers punch in, so this is considered an employer's right stipulated in the Labour Law. In reference to the interpretation on rights and interests dispute above, the Arbitration Council finds that this is a rights dispute.

The Arbitration Council will consider whether or not the employer is under obligation to cut down the number of punch in from 4 times to twice per day: once at 7 a.m. and 4 p.m. or 6 p.m. *(see Article 2 of the Labour Law (1997) and the interpretation about the employer's right to arrangement in the Reasons for Decision, Issue 4).*

The Arbitration Council finds that the employer needs to know the time that workers start and finish their work for the purpose of: managing the workers' attendance; wage calculations; and recording of production in comparison to attendance. Therefore, the number of punch in times arranged by the employer is under the employer's legitimate right to arrangement. The Arbitration Council finds that the punch in twice per day does not enable the employer to manage the workers' attendance for the aforementioned purposes. The employer's arrangement in this case is legitimate and reasonable.

The Arbitration Council finds that the workers cannot demand the employer to cut down the number of punch in time from 4 times to twice per day.

In this case, the Arbitration Council does not receive any evidence from the parties in relation to how much time the workers need to punch in each time or general conditions of workers' punch in. The Arbitration Council finds that in general, the employer shall arrange proper punch in process which does not affect various workers' rights and freedoms. The unjustifiable punch in time should not cause any serious effects.

In conclusion, the Arbitration Council decides to reject the workers' demand that the employer cut down the number of punch in from 4 times to twice per day: once at 7 a.m. and the other at 4 p.m. or 6 p.m.

Issue 6: The workers demand that the employer refrain from deducting special leave from annual leave balances of workers who have remaining annual leave. It should refrain from deducting special leave from wages and bonuses of workers who do not have any remaining annual leave.

First, the Arbitration Council considers whether the issue gives rise to a rights or an interests dispute.

The Arbitration Council finds that the issue is related to special leave that the workers take which is stipulated in provisions of the Labour law. In reference to the interpretation about rights and interests dispute above, the Arbitration Council finds that the issue is a rights dispute.

The Arbitration Council considers:

A. Workers who have remaining annual leave

The Arbitration Council considers whether the workers have right to demand that the employer refrain from deducting special leave from their remaining annual leave.

Article 171 of the Labour Law (1997) states:

The employer has the right to grant his/her workers special leave during an event directly affecting the worker's immediate family.

If the worker has not yet taken his/her annual leave, the employer can deduct the special leave from the worker's annual leave.

If the worker has taken all his annual leave, the employer cannot deduct the special leave from the worker's annual leave for the next year.

Hours lost during the special leave can be made up under the conditions set by a Prakas of the Ministry in Charge of Labour.

Clause 2 of Prakas 267 dated 11 October 2001 on Special Leave states:

> Employer may reduce workers' annual leave, if the workers have not used up all their annual leave or demand workers to have make-up work if they have already used up all their annual leave.

In this case, the workers demand that the employer refrain from reducing their remaining annual leave when they take special leave. The Arbitration Council finds that the demand is in contravention of the aforementioned legal provision.

In conclusion, the Arbitration Council decides to reject the workers' demand that the employer refrain from deducting special leave from annual leave balances of workers who have remaining annual leave.

B. Workers who do not have remaining annual leave

The Arbitration Council considers whether or not the workers have right to demand the employer refrain from deducting special leave from wages and bonuses of workers who do not have remaining annual leave.

Clause 4 of Prakas 267/01 states *"The make-up work shall be paid in accordance with the normal one."*

According to Article 171 of the Labour Law 1997 and Clause 2 and 4 of Prakas no. 267/01 above, the Arbitration Council finds that if the workers use all their annual leave, they are able to have make-up work for special leave taken according to this article and Prakas. In this case, the Arbitration Council finds that the employer can reduce workers' daily wages and benefits for special leave taken and workers can restore their wages and benefits once they made up the hours/days taken in special leave.

In this case, the workers demand that the employer refrain from reducing their wage and benefits for special leave that they take. The Arbitration Council finds that the demand is in contradiction to the legal provision above.

In conclusion, the Arbitration Council decides to reject the workers' demand that the employer refrain from deducting special leave from wages and bonuses of workers who do not have any remaining annual leave.

Issue 7: The workers demand that the employer increase the number of days of paid annual leave by two days for each year of seniority.

First, the Arbitration Council considers whether the issue gives rise to a rights or an interests dispute.

Paragraph 1, Article 166 of the Labour Law (1997) states *"…all workers are entitled to paid annual leave to be given by the employer at the rate of one and a half work days of paid leave per month of continuous service."*

Paragraph 4, Article 166 of the Labour Law states *"The length of paid leave as stated above is increased according to the seniority of workers at the rate of one day per three years of service."*

According to both paragraphs of Article 166 of the Labour Law (1997), the Arbitration Council finds that all workers are entitled to one and a half day of paid leave for one month of work at the enterprise. Therefore, the workers will receive 18 days of annual leave for one year of work at the enterprise. The number of days of paid annual leave will increase by "one day" for every three years of work at the enterprise.

In this case, the workers demand that the employer increase the number of days of annual leave by 2 days per year every year. The Arbitration Council finds that the demand exceeds what is stipulated in the law; therefore, this is an interests dispute. (See the interpretation about interests dispute in Reasons for Decision, Issue 1 above)

In conclusion, the Arbitration Council decides to decline to consider the workers' demand that the employer increase the number of days of paid annual leave by two days for each year of seniority.

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 4: Reject the workers' demand that the employer specify company name on their new ID Cards.

Issue 5: Reject the workers' demand that the employer cut down the number of punch in from 4 times to twice per day: once at 7 a.m. and the other at 4 p.m. or 6 p.m.

Issue 6: - Reject the workers' demand that the employer refrain from deducting special leave from annual leave balances of workers who have remaining annual leave.

- Reject the workers' demand that the employer refrain from deducting special leave from wages and bonuses of workers who do not have any remaining annual 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 1: Decline to consider the workers demand that the employer increase the overtime meal allowance by 2,000 riel to 4,000 riel to workers working overtime from 4 p.m. to 6 p.m.

Issue 2: Decline to consider the workers demand that the employer provide a daily 3,000 riel payment in lieu of lunch.

Issue 3: Decline to consider the workers demand that the employer provide an additional US$10 accommodation and transportation allowance on top of an existing US$7 allowance per month to each worker.

Issue 7: Decline to consider the worker's demand that the employer increase the number of days of paid annual leave by two days for each year of seniority.

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: **Kol Vathana**

Signature: .....

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: .....