KINGDOM OF CAMBODIA

NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 31/12-B & N

Date of award: 9 March 2012

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: **Liv Sovanna**

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

DISPUTANT PARTIES

Employer party:

Name: **B & N Garment (Cambodia) Co., Ltd. (the employer)**

Address: Tuol Sangke Commune, Russei Keo District, Phnom Penh

Telephone: 016 778 687 Fax: N/A

Representative: Absent

Worker party:

Name: **Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC)**

Local Union of FTUWKC

Address: No. 28 B, Street 222, Boeung Raing Commune, Daun Penh District, Phnom Penh

Telephone: 012 724 450 Fax: N/A

Representatives:

1. Mr Men Senghak Advisor to FTUWKC
2. Mr Ban Thara President of the Local Union of FTUWKC
3. Ms Dek Keomarady Vice-President of the Local Union of FTUWKC

ISSUES IN DISPUTE

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

1. The workers demand that the employer allow pregnant workers to leave 15 minutes early and that it grant them two days off for medical checks with their wages and benefits maintained.

2.
   a) The workers demand that the employer grant them six days off if they agree to be paid in lieu of the remaining [12] days of annual leave.
   b) The workers demand that the employer provide payment in lieu of annual leave before every Khmer New Year even if workers have only one month of service.
   c) The workers demand that the employer deduct from the workers' annual leave when they take leave for personal commitments rather than requiring them to take special leave.

3. The workers demand that the employer hold a party and lucky draw on Khmer New Year and *Pchum Ben* days.

4. The workers demand that the employer make wage payments by 4:00 p.m. and that it immediately remedy past underpayment of wages or mistakenly deducted payments.

5.
   a) The workers demand that the employer raise the roof of the parking lot to ensure that workers' vehicles are safe.
   b) The workers demand that the employer provide workers with masks during working hours.

6. The workers demand that the employer provide clean toilets with higher roofs [for ventilation].

7. The workers demand that the employer place a doctor on stand-by in the emergency room.

8. The workers demand that the employer set an alarm clock to make [the start and end of] working hours clear to workers.

9.
   a) The workers demand that the employer pay them at two and a half times the normal rate and provide a 2,000 riel meal allowance for work on Sundays and public holidays.
   b) The workers demand that the employer deduct US$ 0.25 from the monthly attendance bonus for each day of unauthorised leave.

10. The workers demand that the employer replace unprofessional security guards with professional ones.

11. The workers demand that the employer allow workers to authorise others to obtain wages on their behalf when they are busy, and that the employer recruit more interpreters.

12. The workers demand that the employer provide a proper place for posting information about the union and other activities.

13. The workers demand that the employer be responsible for work-related accidents.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this award from Chapter XII, Section 2B of the Labour Law (1997); the *Prakas* on the Arbitration Council No. 099 dated 21 April 2004; the Arbitration Council Procedural Rules which form an Annex to the same *Prakas*; and the *Prakas* on the Appointment of Arbitrators No. 136 dated 7 June 2011 (Ninth 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. 171 KB/RK/VK dated 13 February 2012 was submitted to the Secretariat of the Arbitration Council on 15 February 2012.

HEARING AND SUMMARY OF PROCEDURE

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

Date of hearing: 29 February 2012 at 8:30 a.m.

Procedural issues:

On 25 January 2012, the Department of Labour Disputes received a complaint from the Local Union of FTUWKC outlining its demands for the improvement of working conditions. Upon receiving the complaint, the Department of Labour Disputes assigned an expert officer to conciliate the 13 issues and the last conciliation session was held on 10 February 2012. None of the issues were resolved. The 13 non-conciliated issues were referred to the Arbitration Council on 15 February 2012 via non-conciliation report No. 171 KB/RK/VK dated 13 February 2012.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer and the workers to a hearing and conciliation of the 13 non-conciliated issues, held on 29 February 2012 at 8:30 a.m. The workers were present at the hearing but the employer was absent. The workers withdrew issues 3, 5(a), and 11 from their complaint. The Arbitration Council found that there were 14 issues in total to be considered because some issues consisted of two separate issues.

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

an arbitral award on such disputes. Such an objection will not affect the parties' obligation to implement an award on rights disputes in accordance with the MoU.

In this case, the employer was absent from the hearing. The employer and the workers did not have any prior agreement to binding arbitration of interests disputes. Therefore, any award in relation to interests disputes will be non-binding and the parties will have the right to object to such an award.

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 more information regarding the 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:

- B & N Garment (Cambodia) Co., Ltd. operates a garment factory employing a total of 720 workers.
- The Local Union of FTUWKC is the claimant in this case and holds a certificate of most representative status (MRS) dated 27 October 2010, effective until 10 October 2012.

Issue 1: (a) The workers demand that the employer allow pregnant workers to leave 15 minutes early.

- The workers demand that the employer allow pregnant workers to finish work 15 minutes before the conclusion of normal working hours each afternoon. They make this demand because the workers' pregnancies may be put at risk by crushing from the crowd of workers leaving work at the same time.
- The employer's practice is to allow pregnant workers to leave five minutes earlier than the finish time.
- The workers agree that five minutes is enough time for pregnant workers to leave the factory.

(b) The workers demand that the employer grant pregnant workers two days off for medical checks with their wages and benefits maintained.

- The employer's practice is to grant pregnant workers half a day off each month for medical checks without deduction from their wages and benefits.

- The workers contend that a half day off is not sufficient. They claim that doctors in public hospitals handle many patients. Thus, female workers are likely to need to either make a later appointment in the afternoon of the same day or to wait longer at the hospital until the afternoon on the same day. The workers maintain their demand that the employer grant pregnant workers two days off each month for medical checks without deduction from their wages and benefits.

Issue 2: The workers demand that the employer grant them six days off if they agree to be paid in lieu of the remaining [12] days of annual leave, and that the employer provide payment in lieu of annual leave before every Khmer New Year even if workers have only one month of service.

- The workers clarified that their demand is that the employer allow them to take one day of annual leave before and one day after Khmer New Year and *Pchum Ben* Days as well as when they have personal commitments, rather than requiring them to take special leave.
- The employer's practice is to not allow workers to take annual leave, even for Khmer New Year, and to provide payment in lieu of annual leave.
- The workers make this demand because of the high cost of transportation during major public holidays. Therefore, the workers want to commence leave early in order to save on the cost of travel. The workers do not specify how many days off they want before Khmer New Year and *Pchum Ben* Days nor for personal commitments.

Issue 4: (a) The workers demand that the employer make wage payments by 4:00 p.m on pay day.

- The workers demand that the employer make wage payments by the end of working hours at 4:00 p.m., as wages must be paid during working hours.
- Normally, wages are paid before the conclusion of working hours at 4:00 p.m.

(b) The workers demand that the employer immediately rectify underpaid or mistakenly deducted payments.

- The workers clarified that their demand is that the employer pay the outstanding amount of any under-paid wages within a week of the under-payment.
- The employer's practice is to pay the outstanding amount on the payday of the following month. Payday falls on the 10th of each month.

Issue 5: (b) The workers demand that the employer provide workers with masks during working hours.

- The workers make this demand because scraps of material swirl up and affect the workers' health and hygiene.
- The workers demand that the employer provide two masks per week to each worker.

Issue 6: The workers demand that the employer provide clean toilets with higher roofs [for ventilation].

- At the hearing, the workers demanded that the employer provide clean toilets but withdrew their demand in relation to the toilets' roofs.
- The workers make this demand because water usually overflows from the toilets and they become clogged when there is heavy rain. This causes a bad smell which adversely affects the workers' health.
- The workers state that there are 15 toilets in the factory.

Issue 7: The workers demand that the employer place a doctor on stand-by in the emergency room.

- The workers demand that the employer place a doctor on standby during working hours and provide a sufficient amount of medicine.
- Currently, there is a doctor who is employed by the factory but he/she does not attend work regularly.

Issue 8: The workers demand that the employer set a clock to make working hours clearly visible to workers.

- The workers clarified that their demand is that the employer set up a clock where the punching-card machine is located. They make this demand so that workers can adhere to working hours and prevent the employer from shortening their break period.
- The working hours at the factory are set by the clock on the card punching machines. The workers allege that the time on that clock is constantly changing, affecting the starting and finishing times of the workers because they do not have another clock determining the time. Furthermore, the workers allege that the employer has the intention of making time run slower than usual when the lunch break is approaching in order to shorten the workers' break period.

Issue 9: (a) The workers demand that the employer pay them at two and a half times the normal rate and provide a 2,000 riel meal allowance for work on Sundays and public holidays.

- The workers demand that the employer pay them an overtime rate of 250% [of normal wages] and provide a 2,000 riel meal allowance for work on public holidays and Sundays. The demand is based on the fact that the payment will encourage workers to volunteer to work overtime for the employer.
- The employer's practice is to pay for overtime at the rate of 200% for work on Sundays and at a rate of increase of 100% for work on public holidays [200%]. No overtime meal allowance is provided for additional work on Sundays and public holidays.

(b) The workers demand that the employer deduct only US$ 0.25 from the attendance bonus for each day of unauthorised leave.

- The workers make this demand because workers have difficulty asking the employer for leave.
- The employer's practice is to deduct the entire monthly US$ 7 attendance bonus when a worker takes either authorised or unauthorised leave.

Issue 10: The workers demand that the employer replace rude security guards with polite ones.

- At the hearing, the workers demanded that the employer implement the agreement dated 14 July 2008 that requires the security guards to be polite and behave well towards the workers. The workers make this demand because the security guards use bad language and scold them. More importantly, the behaviour of the security guards is inconsistent with the agreement.
- The agreement dated 14 July 2008 was entered into by three parties: the employer, the security guards, and the workers.

Issue 12: The workers demand that the employer provide a proper place for posting information about union and other activities.

- At the hearing, the workers demanded that the employer arrange a proper place for posting information concerning workers.
- There is no proper bulletin board in the factory. The employer posts information on the walls of the building or the entry/exit gates, which makes it difficult for workers to find out the information.

Issue 13: The workers demand that the employer be responsible for work-related accidents.

- The workers demand that the employer pay treatment fees associated with work-related accidents. Some workers are members of the National Social Security Fund (NSSF) and some are not. The workers assert that the employer has not paid treatment fees associated with previous work-related accidents. The employer has also failed to report to the NSSF when accidents happen to workers who are members of the NSSF. Thus, the workers demand that the employer pay the treatment fees associated with work-related accidents.

REASONS FOR DECISION

The employer was not present at the hearing as notified by the Secretariat of the Arbitration Council. Thus, before considering the issues in this case, the Arbitration Council considers whether it can proceed with the hearing in the absence of the employer.

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

> In the case that one of the parties, although duly invited, fails to appear before the arbitration panel without showing good cause, the arbitration panel may proceed in the absence of that party or may terminate the arbitral proceedings by means of an award.

Based on this clause, the Arbitration Council can proceed with the hearing in the absence of the employer if it was duly notified but failed to appear before the Arbitration Council without proper reasons (see Arbitral Awards 53/04-Kong Hong; 63/04-Shine Well; 148/07-Pay Her; 99/09-Kingsland; and 173/11-Zhen Yun).

In this case, the employer and the workers were duly notified to attend the hearing by the Secretariat of the Arbitration Council. However, only the workers appeared at the hearing. The employer was absent and did not provide any reasons for its non-appearance.

In this case, the Arbitration Council applies its previous ruling that it can proceed with the hearing in the absence of the employer.

As both parties are signatories to the MoU dated 28 September 2010, they do not have the right to lodge an objection to an award on rights disputes. However, the parties can object to an award on interests disputes because such awards are not binding in this case. The Arbitration Council defines rights and interests disputes as follows:

The Arbitration Council finds that no provision of the law specifically defines rights and interests disputes. Thus, the Arbitration Council must define the two types of dispute based on the provisions of the Labour Law and labour-related regulations.

Article 312, paragraph two of the Labour Law states that "[t]he Council of Arbitration legally decides on disputes concerning the interpretation and enforcement of laws or regulations or of a collective agreement. The Council's decisions are in equity for all other disputes."

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

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

Based on the abovementioned article and clause, the Arbitration Council decides based on the law disputes concerning the law, related regulations, or a collective agreement. In other disputes concerning interests, the Council's decisions are in equity.

Therefore, the Arbitration Council concludes that a rights dispute is a dispute which has a basis in the law, an agreement [employment contract], or a collective agreement (see Arbitral Awards 05/11-M & V (Branch 1), reasons for decision, issues 1 & 5; 13/11-Gold Kamvimex, reasons for decision, issues 1 & 2; and 14/11-GHG, reasons for decision, issue 4) while an interests dispute is a dispute which has no basis in the law, an agreement, or a collective agreement, and is resolved in equity by the Arbitration Council (see Arbitral Awards 31/11-Quint Major Industrial, reasons for decision, issue 4 and 62/11-Ocean, reasons for decision, issue 1).

Issue 1: (a) The workers demand that the employer allow pregnant workers to leave 15 minutes early.

Before considering this issue, the Arbitration Council consider whether or not it gives rise to a rights or an interests dispute.

The Arbitration Council finds that no provision in the Labour Law, a collective agreement, or an agreement between the two parties allows pregnant workers to finish work 15 minutes prior to the conclusion of normal working hours, thus making this an interests dispute.

With respect to interests disputes, the Arbitration Council considers whether or not the disputant union holds most representative status (MRS). The Arbitration Council considers that holding MRS gives a union the legal capacity to negotiate with an employer to establish a collective agreement and gives it legal standing to bring an interests dispute before the Arbitration Council for resolution.

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

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

Based on this provision, the Arbitration Council considers that if it issues an arbitral award to settle an interests dispute, that award will become a one-year collective agreement applicable to all workers at the enterprise, meaning that non-members of the union lose their right to strike in future interests disputes relating to the same claim. Thus, the Arbitration Council can rule on an interests dispute only if it is brought by the union holding MRS or by a collection of unions representing more than half of the total workers in the enterprise (see Arbitral Awards 81/04-Evergreen, reasons for decision, issue 4 and 98/04-Great Union, reasons for decision, issue 3).

In this case, the Local Union of FTUWKC holds a certificate of MRS dated 27 October 2010, effective until 10 October 2012. Hence, the Arbitration Council considers that this union has legal standing to represent the workers in resolving an interests dispute.

The Arbitration Council considers the issue based on the principles of equity whether or not pregnant workers should be allowed to finish work 15 minutes early.

The employer's practice is to allow pregnant workers to finish work five minutes prior to the conclusion of normal working hours, but the workers demand to leave 15 minutes early (an additional 10 minutes) because the crush of workers leaving for home may endanger the workers' pregnancies.

The workers concede that pregnant workers can leave the factory five minutes early. In this way, they can avoid the crush and the consequent danger to their pregnancies.

The Arbitration Council considers that there is no existing risk posed to the female workers' pregnancies by the crush of the crowd leaving work.

Therefore, the Arbitration Council rejects the workers' demand that the employer allow pregnant workers to finish work 15 minutes prior to the conclusion of normal working hours.

(b) The workers demand that the employer grant pregnant workers two days off for medical checks with their wages and benefits maintained.

Before considering this issue, the Arbitration Council considers whether or not it gives rise to a rights or an interests dispute.

The Arbitration Council finds that no provision in the Labour Law, a collective agreement, or an agreement between the parties allows pregnant workers to take two days off each month with their wages and benefits maintained for medical checks, making this an interests dispute (see the interpretation regarding interests disputes in the reasons for decision, issue 1(a)).

The Arbitration Council will consider the issue based on the principles of equity whether or not pregnant workers should be allowed to take two days off per month with pay for medical checks.

In the strategic plan of the Ministry of Health for 2008-2015, the promotion of health checks for pregnant women is included as a health priority and an essential service towards reproductive, maternal, and newborn infant health. In fact, the Ministry of Health carried out a campaign entitled "Health checks for pregnant women in the first month of their pregnancy" from January to December 2009. This campaign was intended to increase the number of pregnant women attending health checks at health centres in their first month of pregnancy. The Arbitration Council considers that regular medical checks allow pregnant women to access basic medical services, which is an important factor in ensuring and maintaining the health of mothers and foetuses.

Moreover, it is widely accepted that pregnant women need to have regular medical checks in order to monitor and maintain the health of the mother and foetus through medical advice.

The employer's practice is to grant pregnant workers half a day off each month for medical checks without deduction of their wages and benefits. However, the workers demand two days off each month because it is not possible to complete a medical check within a half day period as public hospitals are very busy with many patients, meaning that pregnant workers often need to make another appointment or wait until the afternoon of the same day.

Having considered the time spent travelling, waiting for appointments, and actually having medical checks, the Arbitration Council is of the view that it is possible that a half day off is not sufficient for workers to have medical checks at public hospitals or health centres. Therefore, pregnant workers need additional time to undergo proper medical checks.

However, the Arbitration Council considers that a two day period is more than enough for pregnant workers to have medical checks because the check is normally done in one day unless irregularities have been detected in the health of the mother or the foetus. In this case, the workers do not argue this point, but rather assert the possibility of workers waiting until the end of the day. They fail

to present any facts to prove that two days off per month is necessary to have their pregnancies checked, or to support their demand that pregnant workers' wages and benefits be maintained during their absence.

Thus, the Arbitration Council considers that a one day period is sufficient for pregnant workers to have proper medical checks.

The Arbitration Council acknowledges that the employer has provided benefits to pregnant workers above what is required by the law, because no provision of the law requires the employer to maintain their wages and benefits when they are absent for medical checks.

Based on the principles of equity, the Arbitration Council considers that the employer must grant pregnant workers one day off each month for medical checks but they will not be paid wages and benefits for the second half of the day off, which is additional to the time off allowed by the employer.

In conclusion, the Arbitration Council rejects the workers' demand that the employer grant pregnant workers two days off each month with their wages and benefits maintained for medical checks, and orders the employer to grant pregnant workers one day off each month for medical checks with their wages and benefits proportionally deducted for the second half of the day, which is more than what is currently provided by the employer.

Issue 2: The workers demand that the employer allow workers to take annual leave before Khmer New Year and *Pchum Ben* Days as well as when they have personal commitments.

Before considering this issue, the Arbitration Council will consider whether or not it gives rise to a rights or an interests dispute.

In this case, the Arbitration Council finds that the employer does not allow workers to take annual leave, even for the purpose of Khmer New Year. For this reason, the workers demand that the employer allow them to use the annual leave to which they are entitled under the Labour Law for the purposes of Khmer New Year and *Pchum Ben* Days, as well as personal commitments. Thus, the Arbitration Council considers the issue in question to be a rights dispute (see the interpretation of rights disputes in reasons for decision, issue 1(a)).

1. Are the workers entitled to take annual leave for the purpose of Khmer New Year?

Article 170 of the Labour Law states:

> In principle, annual leave is normally given for the Khmer New Year unless there is a different agreement between the employer and the worker. In this case, the employer must inform the Labour Inspector of this arrangement.
>
> In every case of the paid annual leave exceeding fifteen days, employers have the right to grant the remaining days off at another time of the year, except for the leave for children and apprentices less than eighteen years of age.

This article clearly confirms that the employer must allow the workers to take annual leave for Khmer New Year, and an agreement between the employer and the workers is required if annual leave is to be taken for different occasions, and this arrangement must be reported to the Labour Inspector before it takes effect (see Arbitral Award 06/06-M & V (Branch 1), reasons for decision, issue 1).

Article 167, paragraph one of the Labour Law states that "[t]he right to use paid leave is acquired after one year of service."

This article means that all workers can use their annual leave as long as they have one year of service.

According to the facts, the workers demand that the employer comply with the law. The employer does not allow workers to take annual leave for Khmer New Year, even after many years of service. As stated above, all workers have the right to use annual leave for Khmer New Year if they have [at least] one year of service.

In conclusion, the Arbitration Council orders the employer to allow workers with over one year of service to take annual leave for one day before and one day after Khmer New Year.

2. Are the workers entitled to use annual leave before and after *Pchum Ben* Days?

Annual leave for *Pchum Ben* Days is not provided for in Article 170 of the Labour Law. The workers' demand in relation to this issue is more than what is required by the law, making this an interests dispute.

The Arbitration Council will consider whether or not the workers have the right to demand that the employer allow them to take one day of annual leave before and after *Pchum Ben* based on the principles of equity.

In Arbitral Award 81/07-Supreme, reasons for decision, issue 1, the Arbitration Council ruled that:

> *Pchum Ben* is as important as the New Year; both are traditional festivals where family members need to go back to their hometowns to celebrate and dedicate to their late ancestors. Therefore, based on this tradition, the Arbitration Council considers that the workers should be permitted to take leave during *Pchum Ben*.

The Arbitration Council applies this ruling in this case.

In this case, the workers assert that the cost of transportation increases due to major holidays such as *Pchum Ben*, and therefore they demand that the employer allow them to take one day off before and one day after *Pchum Ben* in order to save travel costs.

In conclusion, the Arbitration Council orders the employer to allow the workers to take one day off before and after *Pchum Ben*.

3. Are the workers entitled to take annual leave for personal commitments?

Based on the abovementioned Article 170 of the Labour Law, annual leave for occasions other than Khmer New Year cannot be taken unless there is an agreement between the employer and the workers and the Labour Inspector is informed of that agreement.

The Arbitration Council considers that an agreement between the employer and the workers is required for annual leave to be taken at times other than Khmer New Year and that the implementation of that agreement must be reported to the Labour Inspector. In this case, the parties do not have an agreement in relation to taking annual leave at times other than Khmer New Year.

In conclusion, the Arbitration Council rejects the workers' demand that the employer allow workers to use annual leave for personal commitments.

Issue 4: (a) The workers demand that the employer make wage payments by 4:00 p.m. on payday.

The workers demand that the employer make wage payments by 4:00 p.m. for the reason that wages must be paid during working hours.

Before considering this issue, the Arbitration Council will consider whether or not it gives rise to a rights or an interests dispute.

As it has a basis in the Labour Law, it is a rights dispute (see the interpretation regarding rights disputes in the reasons for decision, issue 1).

Article 115, paragraph three of the Labour Law states that "[p]ayment shall not be made on a day-off. If payday falls on a day-off, the payment of wages shall be made a day earlier."

In Arbitral Award 143/08-Charm Textile, reasons for decision, issue 5, the Arbitration Council interpreted Article 115, paragraph three of the Labour Law to mean that:

> Payment of wages shall not be made on a day that the workers are entitled to take a day-off. Thus, payment of wages shall be made on the day when the workers work and the ***day*** when the workers work refers to the period within working hours.

The Arbitration Council applies this interpretation in this case.

Article 137 of the Labour Law states that: "…the number of hours worked by workers of either sex cannot exceed eight hours per day, or 48 hours per week."

Based on Article 115, paragraph three and Article 137, the Arbitration Council considers that the employer must make wage payments during the factory's working hours (see Arbitral Awards 143/08-Charm Textile, reasons for decision, issue 5 and 72/10-Haiyun, reasons for decision, issue 7).

According to the facts, the factory's working hours are from 7:00 to 11:00 in the morning and from 12:00 to 4:00 in the afternoon. Normally, the workers receive their wages after 4:00 p.m. which is their finishing time.

In conclusion, the Arbitration Council orders the employer to make wage payments by 4:00 p.m.

(b) The workers demand that the employer immediately rectify underpaid or mistakenly deducted payments.

Before considering this issue, the Arbitration Council will consider whether or not it gives rise to a rights or an interests dispute.

The Arbitration Council considers this issue to be a rights dispute as it concerns the payment of wages under the Labour Law (see the interpretation regarding rights disputes in the reasons for decision, issue 1).

The Arbitration Council considers whether or not the employer is obliged to rectify under-payment of wages within one week of the workers' wages have been paid.

Article 102 of the Labour Law states:

> For the purposes of this law, the term "wage", irrespective of what the determination or the method of calculation is, means the remuneration for the employment or service that is convertible in cash or set by agreement or by the national legislation, and that shall be given to a worker by an employer, by virtue of a written or verbal contract of employment or service, either for work already done or to be done or for services already rendered or to be rendered.

In this case, the employer makes wage payments on the 10th of each month. If the employer underpays or mistakenly deducts from the workers' wages, it rectifies this and pays the difference in the following month.

Based on Article 102 of the Labour Law and the facts, the Arbitration Council considers that wage is remuneration for the workers' service and the employer is obliged to pay it in full, commensurate with the service performed, on the 10th of each month.

In this case, the workers demand that the employer pay the outstanding balance within one week of payday.

Article 13 of the Labour Law states:

> The provisions of this law are of the nature of public order, excepting derogations provided expressly. Consequently, all rules resulted from a unilateral decision, a contract or a convention that do not comply with the provisions of this law or any legal text for its enforcement, are null and void.
>
> 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 the rights superior to the benefits and the rights defined in this law, granted to 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 has ruled in previous arbitral awards that it does not have the right to grant interests or entitlements inferior to what is provided by the Labour Law.

The Arbitration Council applies the abovementioned ruling in this case (see Arbitral Awards 66/06-Gold Lida, reasons for decision, issue 5; 170/11-M & V (Kampong Chhnang Branch), reasons for decision, issue 1; 176/11-All Super Enterprise, reasons for decision, issue 1; and 169/11-Fortune Teo, reasons for decision, issue 1).

Therefore, the Arbitration Council rejects the workers' demand that the employer pay under-paid wages to workers within one week of payday and orders the employer to immediately implement paying the workers' wages in full on payday.

Issue 5: The workers demand that the employer provide masks to protect the workers' health during working hours.

Before considering this issue, the Arbitration Council will consider whether or not it gives rise to a rights or an interests dispute

In this case, the Arbitration Council finds that there is a strong swirling of scraps of material in the factory that impacts on the workers' hygiene and health. As this issue has a basis in the Labour Law, the Arbitration Council considers it to be a rights dispute (see the interpretation regarding rights dispute in the reasons for decision, issue 1).

Article 229, paragraph one of the Labour Law (1997) states that "[a]ll establishments and work places must always be kept clean and must maintain standards of hygiene and sanitation or generally must maintain the working conditions necessary for the health of the workers."

This article obligates the employer to keep the workplace clean and hygienic as well as maintain the working conditions necessary for the health of the workers.

According to the facts, the workers argue that there is a strong swirling of scraps of material in the workplace and that no masks are provided. This adversely affects the workers' hygiene and health. Article 229 clearly necessitates the protection of the workers' health and hygiene at the workplace. The Arbitration Council finds that the workers' health has been affected by the swirling up of fabric and no measure has been taken to protect the workers' health and hygiene. The Arbitration Council considers that the employer must provide masks for the workers to wear during working hours in order to protect their health and maintain the standard of hygiene at the workplace.

In conclusion, the Arbitration Council orders the employer to provide two masks for each worker for use during working hours each week.

Issue 6: The workers demand that the employer provide clean toilets.

Before considering this issue, the Arbitration Council will consider whether or not it gives rise to a rights or an interests dispute.

This issue gives rise to a rights dispute as it has a basis in the Labour Law (see the interpretation regarding rights disputes in the reasons for decision, issue 1).

Article 229, paragraph one of the Labour Law (1997) states that "[a]ll establishments and work places must always be kept clean and must maintain standards of hygiene and sanitation or generally must maintain the working conditions necessary for the health of the workers."

Clause 1 of *Prakas* No. 052 SKBY of the Ministry of Social Affairs, Labour and Vocational Training dated 10 February 2000 states that "[e]mployers of enterprises and establishments stipulated in Article 1 of the Labour Law shall install decent and sanitised toilets for workers on the premises of their enterprises or establishments."

The workers state that water usually overflows in the toilets and they become clogged when there is heavy rain. This causes a bad smell which affects the workers' health.

Clause 4 of the abovementioned *Prakas* states that "[s]ewage must be drained in conformity with an acceptable standard of hygiene.''

Based on Clause 1, the employers of enterprises and establishments are obliged to install decent sanitised toilets for workers. One criterion of a sanitised toilet is that sewage is drained in conformity with an acceptable standard of hygiene.

In this case, the workers' health has been affected by the bad smell caused by sewage and blocked toilets. The Arbitration Council considers that the issue is caused by sewage not being drained in conformity with an acceptable standard of hygiene.

The use of a toilet is routine for people. The use of unclean toilets will affect the health of the workers at the factory, meaning that the employer has failed to maintain the working conditions necessary for the workers' health.

In conclusion, the Arbitration Council orders the employer to set up a sewage system in conformity with an acceptable standard of hygiene in order to avoid the bad smell caused when the toilets become blocked.

Issue 7: The workers demand that the employer arrange a sufficient number of doctors to be in the factory during working hours.

Before considering this issue, the Arbitration Council will consider whether or not it gives rise to a rights or an interests dispute.

In this case, the Arbitration Council finds that the requirement to have doctors on stand-by is stipulated in *Prakas* No. 330 SKBY on the Establishment of an Infirmary within an Enterprise dated 6 December 2000, thus making this a rights dispute (see the interpretation regarding rights disputes in the reasons for decision, issue 1).

Clause 3 of *Prakas* No. 330 SKBY dated 6 December 2000 on the Establishment of an Infirmary within an Enterprise, states that:

> 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 from 601 to 900 requires two nurses on stand-by and one doctor to be present at the minimum of three hours in each eight hour shift… [paraphrase]

In Arbitral Award 62/08-Pao Da, reasons for decision, issue 2, the Arbitration Council ruled that:

> Pao Da does not provide on-duty doctors or nurses, or medicine for workers to use when they are sick. Thus, in order to be consistent with the above *Prakas*, the Arbitration Council decides to order the employer to properly implement the joint *Prakas* 330 [i.e. issued by two or more Ministries], dated 6 December 2000, regarding the Establishment of an Infirmary within an Enterprise.

According to the facts, the workers state that the employer has one doctor on stand-by in the factory, but he/she does not attend work regularly. The Arbitration Council finds that the employer hires about 720 workers and only has one doctor who does not come to the factory regularly. The employer must provide a number of doctors in accordance with the number of workers in the factory in accordance with Clause 3 and the abovementioned ruling.

In conclusion, the Arbitration Council orders the employer to place two nurses on stand-by and ensure one doctor is present for a minimum of three hours in each eight hour shift.

Issue 8: The workers demand that the employer set up a clock to set working hours and make it clearly visible to the workers.

Before considering this issue, the Arbitration Council considers whether or not it gives rise to a rights or an interests dispute.

In this case, the Arbitration Council finds that there are eight working hours per day. The employer uses the clock on the card-punching machine to set the working hours. As this issue concerns working hours under the Labour Law, the Arbitration Council considers it to be a rights dispute (see the interpretation regarding rights disputes in the reasons for decision, issue 1).

Article 137 of the Labour Law states:

> In all establishments of any nature, whether they provide vocational training, or they are of a charitable nature or liberal profession, the number of hours worked by workers of either sex cannot exceed eight hours per day, or 48 hours per week.

Article 139 of the Labour Law states:

> In case of special urgency which requires workers to work overtime other than the usual working hours, the overtime hours shall be paid at a rating of increase of 50% [i.e. 150%]. Working

overtime at night between 10:00 p.m. to 5:00 a.m. or weekly time off shall be paid at a rate of increase of 100% [i.e. 200%].

Based on the aforesaid articles, normal working hours consist of eight hours per day or 48 hours per week. Any working hours beyond the number of hours prescribed by Article 137 will be overtime work. Calculation of the overtime payment is based on Article 139 of the Labour Law.

According to the facts, the employer uses the clock on the card-punching machine to set the starting and finishing times. The workers state that the employer keeps changing the time, which affects their working hours. The workers allege that the change is aimed at increasing working hours as the lunch break approaches, and the workers are not informed of the change. Article 137 of the Labour Law indicates that working hours must not exceed eight hours per day; otherwise, the additional hours will be overtime work in accordance with Article 139 of the Labour Law. Further, the payment for overtime work is calculated based on Article 139. For these reasons, the Arbitration Council considers that the employer must place a clock in the room where the card-punching card machine is located, makes it clearly visible to the workers, and the employer must not change the time arbitrarily.

In conclusion, the Arbitration Council orders the employer to place a clock in the room where the card-punching machine is located, and make it clearly visible to the workers.

Issue 9: (a) The workers demand that the employer pay them at two and a half times the normal rate and provide a 2,000 riel meal allowance for work on Sundays and public holidays.

Before considering this issue, the Arbitration Council will consider whether or not it gives rise to a rights or an interests dispute.

In this case, the workers make two demands concerning the calculation of overtime payments on Sundays and public holidays at two and a half times the normal rate plus a 2,000 riel meal allowance.

9 (a) (i): the workers demand that the employer pay them at two and a half times the normal rate for work on Sundays and public holidays.

At the hearing, the workers stated that the employer pays double the normal rate for work on Sundays and at the rate of increase of 100% of normal wages on public holidays. The workers demand a further 50% of the normal rate. This demand is above what is required by the law, making this an interests dispute (see the interpretation regarding interests disputes in the reasons for decision, issue 1).

Based on the principles of equity, the Arbitration Council considers whether or not the workers should be paid an additional 50% of the normal rate for work on Sundays and public holidays.

The employer's practice is to provide an overtime payment at the double rate of normal wages for work on Sundays and at the rate of increase of 100% of normal wages for work on public holidays. However, the workers demand a further 50% of the normal rate as an incentive for them to work

overtime. Apart from this, the workers provided no other reasons or consequences to support their claim.

Thus, the Arbitration Council rejects the workers' demand that the employer calculate the overtime payment at two and a half times the normal rate on Sundays and public holidays.

9 (a) (ii) : the workers demand that the employer provide a 2,000 riel overtime meal allowance for work on Sundays and public holidays.

Before considering this issue, the Arbitration Council will consider whether or not it gives rise to a rights or an interests dispute.

- **Work on Sundays**

This issue is a rights dispute because it has a basis in the Labour Law (see the interpretation relating to rights disputes in the reasons for decision, issue 1).

Article 137 of the Labour Law states:

> In all establishments of any nature, whether they provide vocational training, or they are of a charitable nature or liberal profession, the number of hours worked by workers of either sex cannot exceed eight hours per day, or 48 hours per week.

Based on this article, normal working hours must not exceed eight hours per day or 48 hours per week.

In Arbitral Award 114/08-Whitex, reasons for decision, issue 5, the Arbitration Council ruled that:

> …the normal working period is eight hours per day or 48 hours per week from Monday to Saturday. The Arbitration Council considers that extra hours worked on normal working days are overtime hours. Thus, [if workers] volunteer to work on a Sunday, it is additional to their normal working days and hours. Thus, the Arbitration Council considers that [if workers] volunteer to work on Sundays it is overtime work…

The Arbitration Council applies this ruling in this case. The Council considers that work performed on a Sunday which exceeds the total weekly hours of 48 hours is overtime work.

As work on Sundays is additional to normal working hours from Monday to Saturday and it is not make-up hours compensating for lost time, it is overtime work. The Arbitration Council will consider what benefits the workers are entitled to.

Point 2 of Notification No. 041 SKBY dated 7 March 2011 stipulates that "workers who volunteer to work overtime at the employer's request will receive an overtime meal allowance of 2,000 riel per day or a free meal".

According to the facts, the employer does not provide a 2,000 riel meal allowance or a free meal. Thus, the Arbitration Council considers that the employer must comply with Notification No. 041 SKBY dated 7 March 2011.

In conclusion, the Arbitration Council orders the employer to provide a 2,000 riel meal allowance to workers who volunteer to work overtime on Sundays.

- **Work on public holidays**

Article 137 of the Labour Law states:

> In all establishments of any nature, whether they provide vocational training, or they are of a charitable nature or liberal profession, the number of hours worked by workers of either sex cannot exceed eight hours per day, or 48 hours per week.

The (new) Article 139 of the Labour Law states:

> If workers are required to work overtime for exceptional and urgent jobs, the overtime hours shall be paid at a rate of increase of 50% of normal wages [i.e. 150%] . If the overtime hours are worked between 10:00 p.m. to 5:00 a.m. or during weekly time off, the rate of increase shall be 100% [i.e. 200%].

Based on the (new) Article 139 of the Labour Law, overtime hours must be paid at a rate of increase of 50% of normal wages which is equal to 150% of normal wages.

Article 164 of the Labour Law states:

> In establishments or enterprises where work cannot be interrupted because of the nature of their activities requiring the workers to occupy with working during holidays; those workers shall be entitled to an indemnity in addition to wages for the work performed. The amount of this indemnity to be paid by the employer shall be set by a *Prakas* of the Ministry in Charge of Labour.

Clause 2 of *Prakas* No. 10 SKBY dated 4 February 1999 states:

> In necessary cases where the establishments or enterprises cannot stop their activities during holidays mentioned in the *Prakas* of the Ministry of Social Affairs, Labour, Vocational Training, and Youth Rehabilitation, the owners or managers of establishments and enterprises can come to an arrangement with their workers and employees to work during these holidays.

Clause 4 of the same *Prakas* states that "[e]mployees working on holidays are entitled to remuneration equivalent to their pay on a normal working day…"

Based on the aforesaid articles and clauses, the Arbitration Council considers that attending work on public holidays is the same as attending on normal days; the only difference between the two is that workers are entitled to paid leave on public holidays. If the workers attend work on these days, they are entitled to remuneration equal to their wages on normal days; that is, an additional one day's wages is added to their monthly wage if they attend work regularly. Work on public holidays does not exceed the total weekly hours of 48 hours if only eight hours of work takes place per day and the payment rate of this work also differs from the overtime payment rate.

In Arbitral Award 115/08-Top One, reasons for decision, issue 4, the Arbitration Council ruled that "work on holidays is not overtime work…". The Arbitration Council applies this ruling in this case.

Hence, the Arbitration Council considers this to be an interests dispute (see the interpretation regarding interests disputes in the reasons for decision, issue 1).

According to the facts, the workers did not provide specific reasons to support their demand.

Therefore, the Arbitration Council rejects the workers' demand that the employer provide a 2,000 riel meal allowance when workers volunteer to work on public holidays.

9(b): the workers demand that the employer deduct US$ 0.25 from the attendance bonus for each day of unauthorised leave.

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

As the subject of this issue is contained in the said notification, the Arbitration Council considers this to be a rights dispute.

In this case, the workers are provided with the monthly US$ 7 attendance bonus. However, if they take either authorised or unauthorised leave, the employer will not provide the bonus.

The Arbitration Council will consider whether or not the employer is obliged to provide the attendance bonus minus US$ 0.25 for each day of unauthorised leave.

Point 1 of the said notification requires the employer to provide an attendance bonus to workers who attend work regularly in accordance with the number of working days in each month. However, this notification does not state that attendance bonus will be provided where a worker takes unauthorised leave.

The key phrase in this notification is the number of working days in each month. The Arbitration Council will consider what the number of working days of each month consists of.

In Arbitral Award 112/11-Yung Wah (Branch 1), reasons for decision, issue 3, the Arbitration Council considered that:

> the number of regular working days in each month refers to the number of days in each month that the employer requires the workers to attend work or that the law obligates the workers to serve the employer. Based on the law and the current practice of enterprises and establishments in Cambodia, the term **"working days in each month"** can mean:
>
> (1) Full working days of each month (where there are no statutory holidays, meaning 26 days per month or 21-22 days per month depending on the practice of each employer).

(2) Non-full working days (where there are statutory holidays, meaning that there may be less than 26 days or 21-22 days per month depending on the number of statutory holidays and the practice of each employer).

(3) Non-full working days (where a worker's leave is authorised by the employer, meaning that there may be less than 26 days or 21-22 days per month depending on the practice of each employer and the number of days of authorised leave).

The Arbitration Council applies this ruling in this case.

Regarding point (3) concerning non-full working days, the Arbitration Council considers that although the workers fail to attend each day of work required in a month, they are considered as having attended work regularly in accordance with the number of working days in each month only if they take leave that is authorised by the employer. This means that they will not be considered as having attended work regularly if they take unauthorised leave.

Therefore, the workers are not entitled to the monthly US$ 7 attendance bonus provided for in point 1 of Notification No. 041/11 KB/SCN dated 7 March 2011, and the employer is not obligated to provide the bonus minus US$ 0.25 for each day of unauthorised leave.

In conclusion, the Arbitration Council rejects the workers' demand that the employer deduct US$ 0.25 from the attendance bonus for each day of unauthorised leave.

Issue 10: The workers demand that the employer instruct the security guards to have good manners and use appropriate language towards workers in accordance with the agreement dated 14 July 2008.

Before considering this issue, the Arbitration Council will consider whether or not it gives rise to a rights or an interests dispute.

Point 4 of the agreement dated 14 July 2008 made between the employer, the security guards, and the workers, states that "[s]ecurity guards must be serious and have good manners."

Given that this issue concerns the agreement between the employer and the workers, the Arbitration Council considers it to be a rights dispute.

Article 311 of the Civil Code states that "[a] contract is the matching of intentions held by two or more parties to create, change or extinguish an obligation."

This article means that a contract arises from the intentions held by two or more parties and the parties can change or extinguish this contract in accordance with their intentions.

Article 336 of the Civil Code states that "[a] contract is formed when an offer and an acceptance thereof conform to each other."

This article means that a contract comes into existence if there is an agreement between the offeror and the acceptor.

Article 337, paragraphs one and three of the Civil Code, states that "[a]n offer is an invitation to enter into a contract based on the offeror's intention to be legally bound by the other party's acceptance thereof. Acceptance is a declaration of intention to the offer".

This article means that parties are legally bound to enforce a contract that they have entered into.

According to the facts, the representatives of the employer, the security guards, and the workers entered into an agreement on 14 July 2008 regarding the manner of the security guards. Thus, the employer is obligated to ensure that the security guards comply with the terms of the agreement. However, the security guards failed to follow the agreement; for instance, they use bad language and scold workers. The Arbitration Council considers that the security guards are, in fact, in breach of the agreement dated 14 July 2008. The said Article 337 also obligates the employer to enforce this agreement.

Therefore, the Arbitration Council orders the employer to comply with the agreement dated 14 July 2008.

Issue 12: The workers demand that the employer provide a proper place for posting information about union and other activities.

Before considering this issue, the Arbitration Council will consider whether or not it gives rise to a rights or an interests dispute.

The Arbitration Council finds that there is no provision in the Labour Law, a collective agreement, or an agreement between the two parties providing for a place for posting information concerning workers, thus making this an interests dispute (see the interpretation regarding rights disputes in the reasons for decision, issue 1).

Based on the principles of equity, the Arbitration Council considers whether or not the employer must provide a place for posting information concerning workers.

There is no proper place for posting any information in the factory. The employer usually posts information on the walls of the buildings or on the exit gate. Given the importance of the workers to be well informed of announcements and regulations by the employer, the Arbitration Council considers that the employer must provide a proper place for posting information concerning workers.

In conclusion, the Arbitration Council orders the employer to provide a proper place for posting information.

Issue 13: The workers demand that the employer be responsible for work-related accidents.

Before considering this issue, the Arbitration Council will consider whether or not it gives rise to a rights or an interests dispute.

The Arbitration Council considers this issue to be a rights dispute as work-related accidents are the subject of provisions in the Labour Law (see the interpretation relating to rights disputes in the reasons for decision, issue 1).

The Arbitration Council considers whether or not the employer is responsible for work-related accidents.

Article 252 of the Labour Law states:

> The victim or his beneficiaries are entitled to compensation from the manager of [the] enterprise or the employer in the event of work-related accidents inflict[ed] on him and resulting in temporary incapacitation. However, this compensation can be paid on the condition that the accidents cause incapacitation for longer than four days. If the work-related accidents lead to a temporary incapacitation of four days or less, the victim is entitled to his regular wage.

Clause 1 of *Prakas* No. 109 KB/PRK dated 16 June 2008 on Insurance for Occupational Risks, states:

> 1.1…
>
> 1.2 Occupational Risks include work-related accidents, accidents whilst commuting directly to the workplace or home from the workplace and occupational diseases.
>
> 1.3 Benefits determined in this *Prakas* shall be under the responsibility of the National Social Security Fund.
>
> 1.4…

In addition, Clause 7 of the same *Prakas* states:

> 7.1 The period of temporary loss of working ability is set as follows:
>
> The period of hospitalisation for treatment of injury or occupational disease in a hospital or poly-clinic.
>
> The period of rest after the recovery of injury based on the doctor's order.
>
> 7.2 During the period of temporary loss of working ability as stated in point 7.1 above, the employee sustaining a workplace accident has the right to receive benefits from the NSSF as follows:
>
> Payment of the daily allowance to be given from the second day after the date of the accident.
>
> An allowance for the patient's caregiver during hospitalisation in cases where the patient's condition is critical and requires caregivers as requested by the doctor.
>
> 7.3 Payment of the daily allowance for temporary loss of working ability shall only be given in cases of work-related accidents requiring hospitalisation for over four days.

7.4 Payment of the daily allowance for temporary loss of working ability shall be equal to 70% of the daily average wage. The allowance for the caregiver shall be equal to 50% of the daily severance pay payable to the victim.

Based on the said article and clauses, workers who have work-related accidents are entitled to daily wages provided by the National Social Security Fund if medical treatment takes place or they are unable to attend work for more than four days. If the medical treatment takes place for four days or less, then the workers will receive wages from the employer. However, the workers will not be entitled to any remuneration if they intentionally cause the accident.

In this case, the workers demand that the employer be responsible for work-related accidents. However, the workers did not provide any specific facts concerning any breach of the abovementioned provisions or the employer's failure to be responsible for workers suffering from work-related accidents. Thus, the Arbitration Council considers that there is no existing issue to be considered.

In Arbitral Award 10/03-Jacqsintex, the Arbitration Council ruled that "[t]he Arbitration Council was created to resolve existing labour disputes and not to resolve disputes which have not yet occurred."

The Arbitration Council applies this ruling in this case because no one can predict what will happen in the future, when there will be a renewed relationship between this group of workers and the employer, or whether or not a dispute concerning work-related accidents will exist.

In previous arbitral awards, the Arbitration Council has declined to consider demands by workers which relate to claims in the future (see Arbitral Awards 68/04-City New, reasons for decision, issue 4; 36/06-Mondotex, reasons for decision, issue 5; and 58/07-8 Star Sportswear, reasons for decision, issue 1).

The Arbitration Council applies this decision in this case.

In conclusion, the Arbitration Council declines to consider the workers' demand that the employer be responsible for work-related accidents.

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

DECISION AND ORDER

Part I. Rights disputes:

Issue 2: (1) Order the employer to allow the workers with over one year of service to take annual leave for one day before and one day after Khmer New Year.

Issue 4: (a) Order the employer to make wage payments by 4:00 p.m. on payday.

(b) (i) Reject the workers' demand that the employer rectify under-paid wages to workers within one week of payday.

(ii) Order the employer to immediately implement payment of the workers' wages in full to workers on payday.

Issue 5: Order the employer to provide workers with two masks for each worker for use during working hours each week.

Issue 6: Order the employer to set up a sewage system in conformity with an acceptable standard of hygiene in order to avoid the bad smell caused when the toilets become blocked.

Issue 7: Order the employer to place two nurses on stand-by and ensure one doctor is present for a minimum of three hours in each eight hour shift.

Issue 8: Order the employer to place a clock in the room where the card-punching machine is located, and make it clearly visible to the workers.

Issue 9: (a) (ii) Order the employer to provide a 2,000 riel meal allowance to workers who volunteer to work overtime on Sundays.

(b) Reject the workers' demand that the employer deduct US$ 0.25 from the attendance bonus for each day of unauthorised leave.

Issue 10: Order the employer to comply with the agreement dated 14 July 2008.

Issue 13: Decline to consider the workers' demand that the employer be responsible for work-related accidents.

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 disputes:

Issue 1: (a) Reject the workers' demand that the employer allow pregnant workers to finish work 15 minutes prior to the conclusion of normal working hours.

(b) (i) Reject the workers' demand that the employer grant pregnant workers two days off each month with their wages and benefits maintained for medical checks.

(ii) Order the employer to grant pregnant workers one day off each month for medical checks with their wages and benefits proportionally deducted for the half day which is additional to the time currently allowed by the employer.

Issue 2: (ii) Order the employer to allow the workers to take one day of annual leave before and after *Pchum Ben* Days.

(iii) Reject the workers' demand that the employer allow the workers to use annual leave for personal commitments.

Issue 9: (a) (i) Reject the workers' demand that the employer calculate the overtime payment at two and a half times the normal rate on Sundays and public holidays.

(ii) Reject the workers' demand that the employer provide a 2,000 riel meal allowance when workers volunteer to work on public holidays.

Issue 12: Order the employer to provide a proper place for posting information.

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: **Liv Sovanna**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: .....