



5. Mr. Nget Kosal, Secretary of Cambodia Workers Labour Union
6. Mr. Bu Bela, Advisor to Cambodia Workers Labour Union'
7. Mr. Man Phierun, Treasurer of Cambodia Workers Labour Union

### **Issues In Dispute**

According to the non-conciliation report, the following are the non-conciliated issues:

1. The workers demanded that the company reinstate Mr. Nhet Vanny, the Vice President of Cambodia Workers Labour Union and maintain his position and wage.
2. The worker party demanded that the company provide a full day's break with pay in the event the workers work overtime overnight.
3. The workers demanded that the company pay the workers triple their wages for their work on Sunday and on holidays.
4. The workers demanded that the company increase the workers' wage from US\$45 to US\$81.
5. The workers demanded the re-election of the second-term worker delegates.

### **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 (99/04); the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of Arbitrators (Third Term) (513/05).

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 hearing was unsuccessful, and the non-conciliation report No. 130 KKBV/VK, dated 24 January 2006 was submitted to the Secretariat of the Arbitration Council on 26 January 2005.

### **Hearing and Summary of Procedure before the Arbitration Council**

**Place of hearing:** Arbitration Council; Phnom Penh Center; 3<sup>rd</sup> Floor, Room 331; Bldg. A; Sothearos Blvd; Tonle Bassac; Phnom Penh.

**Date of hearing:**

**First Hearing:** 31 January 2006 (2:00 – 4:00 p.m.)

**Second Hearing:** 6 February 2006 (2:00 – 5:30 p.m.)

**Procedural issues:**

On 3 January 2006, the Department of Labour Disputes received a petition from CWLFTU No. 001/2006 SSKKK dated 1 January 2006, demanding the improvement of working

conditions in the company in respect of 12 issues. Following the receipt of the petition, the Department of Labour Disputes designated its labour dispute settlement officer to conciliate the dispute. The last conciliation took place on 18 January 2006, and seven of the twelve issues were successfully conciliated.

On 26 January 2006, the Arbitration Council received the case and the non-conciliation report No. 130 AABV/AK/VK, dated 24 January 2006 by Mr. Koy Tepdaravuth, the Chief of Department of Labour Disputes. After the receipt of the case, the Arbitration Council invited the employer and employee parties to the hearing and conciliated the remaining five unsuccessfully-conciliated issues on 31 January 2006 starting from 2:00 p.m., and on 6 February 2006, commencing from 2:00 p.m. Both parties were present on both occasions upon the invitation of the Arbitration Council. At the first hearing, the employer party requested for a postponement of the date of the hearing on the ground that buyers were visiting the factory. The worker party agreed to the request. At the second hearing, the Arbitration Council attempted to further conciliate the five non-conciliated issues, and Issue 2 was successfully conciliated. Therefore, in this award the Arbitration Council will consider the remaining issues: Issue 1, Issue 3, Issue 4, and Issue 5 on the basis of evidence and findings of fact as follows:

### **Evidence**

**Witnesses and experts:** N/A

### **Documents, Exhibits and other evidence considered by the Arbitration Council**

#### **Provided by the employer party:**

1. Power of attorney from the Director of the company to Mr. Preap Len, dated 31 January 2006
2. Statement of reasons for not reinstating Mr. Nhet Vanny
3. Certificate of commercial registration, dated 9 May 2003
4. Registered Internal Work Rules No. 023 SKBY.AK, dated 17 March 2004
5. Articles of Incorporation

#### **Provided by the worker party:**

1. Certificate of Registration of Cambodia Workers Labour Union at Dai Young Company, dated 6 February 2004
2. Petition of support and name list of a number of workers
3. Letter No. 085/2005 SSKKK, dated 8 December 2005, from CWLFTU to the Director of Dai Young Company regarding the election of Cambodia Workers Labour Union at Dai Young

4. Letter, dated 3 February 2006, from CWLFTU to the Secretariat of the Arbitration Council regarding the facts and law supporting the demands raised by the worker party
5. Minute of inquiry from the Cambodia Workers Labour Union, dated 12 January 2006
6. Letter No. 037, KKBV/AK/VK, dated 10 January 2006, from the Chief of the Department of Labour Disputes to the Director of Dai Young, on the election of the second term of shop stewards
7. Minute of the collective labour dispute conciliation, dated 19 January 2006
8. Letter No. 2488 KBV/AK, dated 23 September 2004 from the Chief of the Labour Inspectorate to the President of Cambodia Workers Labour Union at Dai Young regarding its request for the recognition of union leaders
9. Letter dated 17 January 2006 regarding the notice of strike to take place on 25 January 2006
10. Statement of Cambodia Workers Labour Union
11. Notice from the company to Mr. Nhet Vanny, dated 28 December 2005

Provided by the Ministry of Labour and Vocational Training:

1. Letter No. 070 KKBV dated 27 January 2006 from H.E. Nhep Bunchin, Minister of Labour and Vocational Training, regarding the request for settlement of a collective dispute at Dai Young Cambodia Co. Ltd.
2. Report No. 130 KKBV/VK, dated 24 January 2006, from Mr. Koy Tepdaravuth, Chief of the Department of Labour Disputes, regarding collective labour dispute resolution at Dai Young Cambodia Co. Ltd.
3. Minute of the collective labour dispute conciliation, dated 19 January 2006

Provided by the Secretariat of the Arbitration Council:

1. Letter of invitation to the hearing to the worker party, No. 033, dated 27 January 2006
2. Letter of invitation to the hearing to the employer party, No. 034, dated 27 January 2006
3. Letter to of invitation to the second hearing to the worker party, No. 045, dated 31 January 2006
4. Letter of invitation to the second hearing to the employer party, No. 044, dated 31 January 2006

## **Facts**

- Having examined the documents submitted to the Arbitration Council
- Having reviewed the report of the collective dispute conciliation
- Having listened to the arguments raised by the worker party and the employer party

### **The Arbitration Council finds that:**

#### **Issue 1: The demand for the reinstatement of Mr. Nhet Vanny**

- There is only one labour union at Dai Young; that is the Cambodia Workers Labour Union. The union applied for union registration for its second term on 7 December 2005 and received the receipt of registration on 3 January 2006. The union has approximately 800 members; however, it did not present evidence of its most representative status.
- On 12 December 2006, through a union letter No. 085/2005 dated 8 December 2005, Ms Chen Srey Neang, the President of the union to Dai Young Cambodia Co. Ltd. notified Mr. Preap Len, the company's Administration Officer, of the result of the union election for the second term with the enclosure of the list of winning candidates. At the hearing, Mr. Preap Len pointed out that he received the notice from Ms Chen Srey Neang but did not endorse his signature of receipt.
- Mr. Nhet Vanny started work in October 2003 as a normal worker, and was later nominated as an assistant supervisor of the packaging section. He was elected the Vice President of the union on 26 November 2005.
- The company employed Mr. Nhet Vanny without a written employment contract. On 28 December 2005, the company gave him notice of his termination to take place on 31 December 2005. However, he was actually terminated on 29 December 2005. In terminating Mr. Nhet Vanny, the company did not give notice to the [Ministry of Labour and Vocational Training] (MoLVT). The workers alleged that the termination of Mr. Nhet Vanny was based on the ground of union discrimination and vengeance because he had represented the workers in bringing a complaint [consisting] of 11 issues to the employer, which had infuriated the employer.
- The company asserted that the reason for the termination of Mr. Nhet Vanny was not related to union discrimination but because he lacked the capacity to handle his job. The company proposed to switch his job but was rejected. Buyers had made several complaints that the products contained in a carton were missing and the wrong size labels were attached to the products. The company had summoned [Mr. Nhet Vanny] for instruction several times but did not keep a record of any of them. The employer could not recall when the last summons had taken place.

- Mr. Nhet Vanny testified that he could not remember the date of his last summons. He acknowledged that he was sent for [by the employer] several times. He asserted that the alleged misconduct was not solely his responsibility. The [Quality Controller (QC)] shared those [relevant] duties because every stage of production involves the QC double checking the work, with the QC of the buyer monitoring the final packaging.
- Mr. Preap Len asserted that although it was not the sole responsibility of Mr. Nhet Vanny, the misconduct occurred several times. It was on that basis that the company decided to terminate him and provide compensation as required by law.
- Mr. Preap Len asserted that it was the position of the company to terminate Mr. Nhet Vanny.
- The Arbitration Council inquired to Mr. Preap Len about who would take responsibility when a worker committed misconduct. Mr. Preap Len mentioned that besides the worker who committed the misconduct, it was the supervisor who took responsibility.

**Issue 3: The workers demanded for triple wage payment for overtime work on Sunday and on holidays**

- The workers received payment for overtime work as entitled pursuant to Prakas No. 10/ SKBY, dated 04 February 1999. The workers regarded their work on holiday as overtime work.
- The workers demanded that the company pay their wage in triple on the grounds of the increase in the price of commodities, the voluntary nature of their work, and the practice of Roo Hsing and Chu Hsing factory.
- The company did not agree to the demand, but wished to comply with the law.

**Issue 4: The workers demanded an increase in their wage from US\$45 to US\$81 per month**

- The workers demanded that the company raise their wages from US\$45 to US\$81 per month for the following reasons:
  1. The wage of US\$45 per month is not reasonable to meet the basic expenses of workers such as accommodation costs of US\$10-US\$15, meal costs of US\$15-US\$17 [and] expense for clothes of US\$5-US\$10. Such expenses do not include medical expenses in the event of illness and a budgetary allocation for the costs related to their family. Some [workers] who had worked for five years got ill and could not afford medical expenses.

2. Pursuant to the Labour Law, the wage of workers changes according to the economic situation. Currently, the price of petroleum has gone up, which subsequently increases the price index of other commodities.
  3. Research conducted by an inter-federation of unions under the auspices of the ILO indicated that a worker with one to three children needs to earn at least US\$81 to survive. However, the Arbitration Council did not receive the document proving the research result.
- The company did not agree to the demand, but wished to comply with the Labour Law and regulations.

**Issue 5: The workers demanded the re-election of workers' delegates**

- The workers demanded the re-election of worker delegates on the ground that the election of the worker delegates did not follow the proper legal procedure. No notice had been given to the workers and as a matter of fact the election did not take place as the list of names of nominated worker delegates was referred directly to the MoLVT for registration.
- The last term of worker delegates ended in December 2005, and the new term started in January 2006.
- The company testified that it gave notice of the election to the representatives of workers, but not the union. The election was not conducted because there were only eight candidates to stand for the election, which was insufficient for an election to take place. The company requested advice from the MoLVT, and was advised to secure another eight candidates to meet the registration requirement.
- The worker party asserted that the Cambodia Workers Labour Union at Dai Young possesses representative status. However, the worker party did not present evidence to that effect to the Arbitration Council. Therefore, the Arbitration Council does not have any other option but to conclude that the union does not have representative status.

**Reasons for Decision**

**Issue 1**

**1. Whether the company can terminate Mr. Nhet Vanny on the ground of his work-related misconduct**

Having heard the testimony given by the employer and the worker party, the Arbitration Council finds that the misconduct described above [must have] occurred a long time ago because the company could not recall when the last misconduct occurred. Mr. Nhet Vanny

could not recall his last summons, although he acknowledged that he had been summoned several times.

Thus, the Arbitration Council finds that Mr. Nhet Vanny committed several [instances of] misconduct in the past. In this case, the question is whether the company can terminate him in accordance with the Labour Law.

Paragraph 1 of Article 26 of the Labour Law states that *“An employer cannot impose disciplinary action against a worker for any misconduct of which the employer or one of his representatives has been awarded for over fifteen days.”* In this case, the misconduct of Mr. Nhet Vanny occurred a long time ago; therefore, the Arbitration Council determines that the termination of Mr. Nhet Vanny is inconsistent with the language of Article 26 of the Labour Law (1997). Further, the Arbitration Council finds that Clause 10 of the Internal Work Rules of the company delineate the procedures for terminating a worker; however, the company failed to comply with its own Internal Work Rules.

On the basis of Article 26 and Clause 10 of the Internal Work Rules of the company, the Arbitration Council finds that the employer has renounced his right to dismiss Mr. Nhet Vanny. Thus [on this basis], the company cannot dismiss Mr. Nhet Vanny.

## **2. Whether the company can terminate Mr. Nhet Vanny [in consideration of] union discrimination**

Having heard the arguments given by both parties, the Arbitration Council finds that the termination of Mr. Nhet Vanny is related to his union involvement rather than his lack of employment capacity because the termination took place after Mr. Preap Len received the notice from Ms. Chen Srey Neang on 12 December 2005 that Mr. Nhet Vanny was elected to the Vice Presidency of the union on 26 November 2005. At the hearing, the worker party added that the company had once terminated the former Vice President of the union. The employer party did not present any evidence to counter the contentions raised by the workers. The employer party merely stated that the termination did not carry the motive of union discrimination, although the [employer] was informed that Mr. Nhet Vanny was elected Vice President of the union, and that it was simply the position of the company to dismiss him.

In sum, the Arbitration Council finds that the termination of Mr. Nhet Vanny was grounded in union discrimination rather than based on his work-related misconduct because the Arbitration Council finds that the burden of responsibility in the packing section falls on the

QC staff and supervisor, not on Mr. Nhet Vanny. The Arbitration Council determines that the conduct of the employer is prohibited by Article 12 of the Labour Law, which forbids the employer to discriminate on the basis of union [involvement].

### **3. Whether the company can terminate Mr. Nhet Vanny lawfully**

In the present case, the company first employed Mr. Nhet Vanny on October 2003 without a written labour contract. The labour contract must therefore be an undetermined duration one on the basis of Article 67(7) of the Labour Law, which provides that “*A contract of a fixed duration must be in writing. If not, it becomes a labour contract of undetermined duration.*”

Article 74 of the Labour Law stipulates that:

*“The labour contract of unspecified duration can be terminated at will by one of the contracting parties. This termination shall be subject to the prior notice made in writing by the party who intends to terminate the contract to the other party.*

*However, no layoff can be taken without a valid reason relating to the worker’s aptitude or behaviour, based on the requirements of the operation of the enterprise, establishment or group.”*

Pursuant to this Article, the employer can terminate an undetermined duration contract only if the employer gives the worker prior notice and a reasonable ground [for dismissal] related to the employee’s aptitude or behavior based on the necessity of the operation of the enterprise or establishment. Without a valid reason for termination, the worker is entitled to compensation under Article 91 of the Labour Law.

In this case, the Arbitration Council finds that the aptitude and behavior of Mr. Nhet Vanny was not grounds for his termination.

As far as a fixed duration contract or an undetermined duration contract is concerned, the employer is strictly forbidden to terminate or employ a worker on the basis of his membership of a workers’ union or participation in union activities according to Article 12 and Article 279 of the Labour Law.

Article 12 of the Labour Law states that “*...no employer shall consider on account of membership of workers’ union or the exercise of union activities to be invocation to make decision hiring or termination of an employment contract.*” Article 279 of the Labour Law specifies that, “*Employers are forbidden to take into consideration union affiliation or*

*participation in union activities when making decisions concerning recruitment and...dismissal.*" In the present case, the Arbitration Council finds that the dismissal of Mr. Nhet Vanny was grounded on union discrimination rather than on his work-related misconduct.

Further, Article 293 of the Labour Law reads that the dismissal of a workers' delegate or candidate for workers' delegate can take place only after authorisation from the Labour Inspector. The same protective measures apply to former workers' delegates whose [dismissals] are subject to the same procedure.

Clause 3 of Prakas No. 305/[01] states that, *"Every candidate for the election of union leaders shall enjoy special protection from dismissal like a worker delgate does. The dismissal shall take place 45 days prior to the election and 45 days following the election if the candidate does not get elected. The union shall notify the employer of the candidacy through any acceptable means of communication."*

Further, Clause 4 of Prakas No. 305/[01] ensures this special safeguard to a worker who is a founder of a union or who becomes a union member. Such safeguard lasts up to 30 days from the date of registration of the union. To acquire such safeguard, the union must notify the employer of the name of the beneficiary through any acceptable means of communication and deliver a copy of such notification to the MoLVT.

The Arbitration Council finds that during the registration process of a union, the candidates for the election of union leaders and union members enjoy protection from dismissal after the employer receives a notice of their candidacy or membership to the union. Hence, a worker must satisfy the criteria as set forth under Prakas No. 305/[01] for a union activist, as in the case of Mr. Nhet Vanny, to enjoy the protection from dismissal. Therefore, a worker enjoys the special protection when he or she has met the following criteria: (1) a worker is specified under Prakas No. 305/[01], (2) the dismissal took place within the period of special protection, and (3) the worker has notified the employer of the name of the protected person through any acceptable means of communication.

Pursuant to the facts, Mr. Nhet Vanny is a leader of the union within the period of union registration; therefore, he qualifies under paragraph 1 of Clause 4 of Prakas No. 305/[01]. Mr. Nhet Vanny also meets the requirement of the second criterion because his termination took place within 30 days from the date of union registration. The union received the notice registration on 3 January 2006. The third prerequisite concerns whether or not the worker

notified the employer of the name of the workers who enjoy the special protection status. At the hearing, Mr. Preap Len stated that he received the notice from Ms. Chen Srey Neang, the President of the labour union, on 12 December 2005, through the union letter No. 085/2005, dated 8 December 2005. Mr. Preap Len mentioned that he did receive the notice but did not endorse his signature of receipt. The Arbitration Council determines that the notice is acceptable.

Furthermore, notice of the termination of Mr. Nhet Vanny was not provided to the MoLVT. In sum, the Arbitration Council determines that the dismissal of Mr. Nhet Vanny is unlawful.

Therefore, the Arbitration Council determines that the employer must reinstate Mr. Nhet Vanny and settle the wages that he is entitled to from 29 December 2005 onward.

### **Issue 3**

In the present case, the workers demanded payment in triple of normal wages for their overtime work on holidays due to an increase in the price of commodities, the voluntary nature of their [overtime work] and the practice of Roo Hsing factory and Chu Hsing factory. The company did not agree to the demand but wished to comply with the Labour Law.

At the hearing, the worker party testified that their work on holidays was overtime work. The price of commodities and living are high, so they made the demand even though they received a payment as provided by law.

Clause 4 of Prakas No. 10/ SKBY, dated 4 February 1999 reads that "*A worker who works on holiday is entitled to an indemnity equaling to one time of his normal wage.*"

According to the Prakas, the Arbitration Council determines that a worker is entitled to 200 per cent of their normal wage when he or she works on holidays. Because the demand made by the workers in this case, goes beyond what they are entitled to under the law, the demand is an interests dispute.

In general, as far as an interests dispute is concerned, the Arbitration Council will determine if the union has most representative status. As per the Arbitration Council's findings of fact, the union does not possess such status yet. The Arbitration Council determines that most representative status of a union provides it with a legal capacity to negotiate for the conclusion of a collective bargaining agreement with the company and the legal right to institute a proceeding at the Arbitration Council for settlement. To acquire most

representative status, Article 277 of the Labour Law (1997) states that the union must register and meet other requirements as set forth under the Article.

Thus, the union does not have a legal right to conclude a collective agreement on behalf of all the workers in the factory (See Article 96(2)(b) of the Labour Law and Clause 9(1) of Prakas 305/[01]). This right belongs to the registered union with most representative status and which has complied with the other criteria under Article 277 of the Labour Law. Thus, for the purpose of consistency, the Arbitration Council finds that the union does not possess the legal capacity to represent all workers in the factory in the settlement of a dispute involving their interests.

Moreover, Clause 43 of Prakas 099/ dated 21 April 2004 stipulates that *“The arbitral award which settles an interest dispute will replace the collective agreement for a period of one year starting from the effective date of the award, unless the parties conclude another collective agreement to substitute it.”*

So far, the Arbitration Council has found that if it rendered its arbitral award on [an interests] issue, the award will become a collective agreement applicable to all the workers in a company, and would deprive other workers of their right to strike on grounds of such interest dispute in the future. Such deprivation results in unfairness and injustice to other workers. (See 04/03-Ly Da, 24/03-Top One, 06/04-Chuo Shing, 61/04-Best Honour, 62/04-Ecent, and 09/05-Kin Tai.) Further, the Arbitration Council previously concluded that a union without representativeness does not possess a legal capacity to bring an interests dispute before the Arbitration Council. (See 31/03-Hong Va, 60/04-United Art and 99/04-AIA.)

Furthermore, in the extant case, the workers do not present sufficient evidence to support their demand. Hence, the Arbitration Council decides not to consider the demand.

#### **Issue 4**

The workers demanded that the company increase their wage from US\$45 to US\$81 per month. The company did not agree to the demand and wished to comply with the Labour Law and regulations.

As far as the demand for a wage increase is concerned, in principle the Arbitration Council will consider it only if the union has sufficient evidence to support its demand. [Evidence required may be as follows]:

1. The financial ability of the company to increase the wage: in this case, the union did not discuss this point, while the company argued that it was not able to increase the wage at that time.
2. Industrial standards in Cambodia: in general, which companies follow that standard? Are they operating in the garment industry or in another industry? In this case, the worker party did not specify [what the industrial standard was].
3. Inflation: How much should the wage be increased to respond to inflation? In the present case, the worker party referred to a report based on research conducted by a group of union federations and the ILO, which indicates that a worker with one to three children must earn at least US\$81 to survive. The Arbitration Council determines that this is merely the result of a study, which may be used as a reference, but this is not a legally-binding document which obliges an employer to conform.
4. Previous practice of wage payment: Has the company ever provided that amount of wage previously? In the present case, the company did not provide such wage previously.
5. Law and public policy of the State: Is there any law or public policy of the State to clarify the issue? In this case, both parties stated that there is no such law or public policy yet. The Arbitration Council determines that such law and public policy do not exist. Further, Notice 017/00, sets up a minimum wage of US\$45 per month.
6. Productivity of the company: Has the productivity of the company increased? In the present case, the workers did not present sufficient evidence to support their demand.

In conclusion, the Arbitration Council determines that because the demand made by the workers is more than what they are entitled to under the law, the demand is an interests dispute. Therefore, the Arbitration Council must refuse to consider the demand. (See reasons for decision in Issue 3.)

#### **Issue 5**

To reach a decision on this issue, the Arbitration Council will consider if the dispute is a collective dispute, and whether the Arbitration Council has the jurisdiction to hear this matter.

Pursuant to the Labour Law (1997), the Arbitration Council has a duty to settle a non-conciliated collective dispute. Article 312 of the Labour Law states that the Arbitration Council does not have a duty to examine issues other than those specified in the non-

conciliation report or matters which arise from events subsequent to the report that are a direct consequence of the current dispute.

Article 302 of the Labour Law (1997) defines a collective labour dispute as:

*“A collective labour dispute is any dispute that arises between one or more employers and a certain number of their staff over working conditions, the exercise of their recognized rights of professional organizations, the recognition of professional organizations within the enterprise, and issues regarding relations between employers and workers, and this dispute could jeopardize the effective operation of the enterprise or social peace.”* (See 66/04-Winner Garment and 67/04-Jusca.)

Therefore, the Arbitration Council determines that the demand for a re-election of workers’ delegates is a collective labour dispute, which arises from the exercise of their recognised rights [in respect] of professional organizations.

However, Article 298 of the Labour Law (1997) states that *“Disputes relating to the election, eligibility and the fairness of the elections of worker delegates shall be referred to the Labour Court, or to the general court that has jurisdiction to rule promptly without the possibility of appeal recourse if the Labour Court does not exist.”*

Based on the evidence and testimony presented in the hearing, the Arbitration Council determines that this demand does not concern the election or eligibility for the election, but relates rather to the improper procedure [followed] for an election of worker delegates. Thus, the Arbitration Council determines that it has jurisdiction to settle this dispute arising out of the demand for a re-election.

At the hearing, the company testified that it gave notice of the election to the representatives of workers, but not the union. The election was not conducted because there were only eight candidates to stand for the election, which was an insufficient number for an election to take place. The company requested advice from the MoLVT, and was advised to secure another eight candidates to meet the registration requirement.

According to the findings of the Arbitration Council, the Cambodia Workers Labour Union at Dai Young does not have representative status. Article 288 of the Labour Law and Clause 2 of Prakas 286/01 states that if a union does not have representative status, all the workers, including the union, have the right to nominate candidates for election. The employer is

under an obligation to invite the workers' representatives to discuss the form, date, and number of seats to be allocated to the electorate.

In the present case, the company notified only the group leaders about the election for worker delegates; however, the company did not arrange the election. The company merely brought a list of names of 16 candidates to MoLVT for recognition. This conduct is against the spirit of Article 288 of the Labour Law and Clause 2 of Prakas 286/01.

According to above reasons, the Arbitration Council determines that the company did not follow the legal procedures for the election of worker delegates for the new mandate.

Therefore, the Arbitration Council decides that the company devise a re-election for worker delegates in the company. (See 67/04-Jusca.)

### **Decision**

1. Order the company to reinstate Mr. Nhet Vanny, and pay back pay from 29 December 2005.
2. Refuse to consider the demand made by the workers against the company for payment of wages in triple for work on Sunday and on holidays.
3. Refuse to consider the demand made by the workers against the company to increase their wages from US\$45 to US\$81 per month.
4. Order the company to organise a re-election for regular worker delegates and assistant worker delegates and deliver the list [of elected worker delegates] to the MoLVT for registration in accordance with legal procedures.

### **Type of Award: Non-binding award**

This Award will become binding after 8 days of the date of its notification unless one of the parties lodges a written opposition with the Secretariat of the Arbitration Council within this time period.

**Signatures of Members of the Arbitration Panel:**

Arbitrator chosen by the employer party:

Name: Mr. Kao Thach

Signature: .....

Arbitrator chosen by the worker party:

Name: Mr. Huon Chundy

Signature: .....

Chair of arbitration panel:

Name: Mr. Kong Phallack

Signature: .....