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THE ARBITRATION COUNCIL

KINGDOM OF CAMBODIA

NATION RELIGION KING

Case number and name: 102/08-Terratex

Date of Award: 24 October 2007

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION 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**

DISPUTING PARTIES

Employer party:

Name: **Terratex Knitting and Garment International Factory Limited (Terratex)**

Address: National Road No. 2, Sangkat Chak Angre Krom, Khann Mean Chey, Phnom Penh

Telephone: 012 499 756

Representative:

1. Ms. Chey Mom	General Manager
2. Ms. Mak Kanika	Administration staff
3. Ms. Mao Monibopha	Administration staff

Worker party:

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

Address: #28B, Street 222, Sangkat Boeung Rang, Sangkat Doun Penh, Phnom Penh

Telephone: 012 929 174/ 012 941 308/ 012 935 496

Representative:

1. Ms. Saut Chanthou	Officer of FTUWKC
2. Ms. Tho Channa	President of the local union of FTUWKC at Terratex Factory

3. Mr. Ouk Kimsean	Vice-president of the local union of FTUWKC at Terratex Factory
4. Ms. Chhel Sokhoeurn	Secretary of the local union of FTUWKC at Terratex Factory

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1- The workers demand that the Company issue the piece rate within two days of the result of the sewing [test] coming out. The Company [says it will] determine what day to issue the piece rate as follow:

- For the entire sewing section – issue within five days.
- For the knitting section - issue within nine days.

The number of days above is working days only and it will be issued at 09:00 am.

2- The workers demand that the Company permit them to take sick leave and accept medical certificates from a private hospital when workers take sick leave of less than five days. The company confirmed that it would not accept a medical certificate from a private hospital, but it allows [workers] to take normal leave in accordance with the agreement dated 04 December 2002.

3- The workers demand that the company provide a 1,000 riel to 2,000 riel meal allowance when the workers work overtime from 3:30 pm to 5:30 pm. The company provides them with a 1000 riel [meal allowance] in accordance with Notification No 017 of the Ministry of Labor and Vocational Training dated 18 July 2000.

4- The workers in the pool section demand that the Company increase their main wage from US$50 to US$60 dollars because this section is very difficult. The Company states that it is not able to increase the main wage. The Company follows the Ministry's Notification No.745 dated 20 October 2006.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labor 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. 076 dated 10 May 2007 (Fifth 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 hearing

was unsuccessful, and the non-conciliation report No.1013 KB/AK/VK, dated 18 September 2007, was submitted to the Secretariat of the Arbitration Council on 18 September 2007.

HEARING AND SUMMARY OF PROCEDURE

Place of hearing: The Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd., Sangkat Tonle Basak, Khann Chamkarmorn, Phnom Penh.

Date of hearing: 05 October 2007 (from 8:00pm to 11:00 a.m.)

Procedural issues:

On 23 August 2007 the Department of Labour Disputes received a complaint from the Free Trade Union of the Kingdom of Cambodia demanding the improvement of some working conditions. Having received the complaint, the Department of Labour Disputes designated its officials to conciliate the dispute at the factory and the last conciliation session took place on 11 September 2007. This resulted in four out of eight issues being conciliated. The four remaining non-conciliation issues were forwarded to the Arbitration Council on 20 September 2007.

Having received the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party in the factory to a hearing and conciliation on the four non-conciliation issues on 05 October 2007 at 2:00pm. Both parties were present as summoned by the Arbitration Council.

On the hearing date, the Arbitration Council attempted to conciliate the four non-conciliation issues stated in the non-conciliation report of the Department of Labour Dispute and the worker party agreed to withdraw issue 1. Thus in this case, the Arbitration Council will consider only issues 2, 3, and 4 based on the 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:

- Employment contract of Yun Sophy, dated 24 December 2001;
- Employment contract of Mao Chanthou, dated 24 December 2001;
- Employment contract of Sun Kuynang, dated 24 December 2001;
- Employment contract of Sok Mol, dated 24 December 2000;

- Letter of patient discharge No. 31/06 by Rormeas Hek Referral Hospital regarding the release of Ms. Kong Sam Art, dated 02 May 2006;
- Medical certificate No. 1330/05 RB, by Chey Chomnas Hospital regarding medical check of Phong Vin, dated 19 February 2005;
- Medical certificate No. 21/06 MSKS, by Kandal Steung District Hospital regarding medical check of Phong Vin, dated 21 December 2005;
- Medical certificate by Chey Chomnas Hospital regarding medical check of Vann Channy, dated 31 May 2007;
- Medical certificate by Doctor Ouch Bunna regarding medical check of Ket Rattana, dated 123 March 2007;
- Medical certificate by Chak Angre Health Center regarding medical check of Mao Ren, dated 28 May 2007;
- Certificate of commercial registration of Terratex Company, dated 06 April 2006;
- Minutes of collective labour dispute conciliation at Terratex Company, dated 25 April 2006;
- Agreement between Terratex Company and FTUWKC, dated 04 December 2002;
- Notification No. 017 SKBY, dated 18 July 2000;
- Notification No. 745 KKBV, dated 23 October 2000;
- Certification of full-right worker delegate of Terratex Company, dated 01 November 1999;
- Request for visa on the Internal Work Rules of Terratex Company, dated 01 November 2007.

Provided by the worker party:

- Letter No. 69/07 SSKPK, dated 08 August 2007 regarding a complaint about the Director TerratexTerratex Company of interference in union affairs;
- List of names of members of board of director, dated 27 April 2007;
- Minutes of the third general convention of FTUWKC at TerratexTerratex Company, dated 27 April 2007;
- Letter by FTUWKC at TerratexTerratex Company, dated 27 April 2007, regarding recognition of the new structure and leaders of the union;
- Certificate of registration of FTUWKC at TerratexTerratex Company, dated 08 April 2002;
- Letter No. 240 KKBV/VK by Department of Labour Dispute regarding recognition of new union leaders in its second mandate, dated 24 August 2005.

Provided by the Ministry of Labour and Vocational Training [*MoLVT]:*

- Report of the collective labour dispute at TerratexTerratex Company, No. 1022 KB/AK/VK, dated 19 September 2007;
- Minutes of collective labour dispute conciliation at TerratexTerratex Company, dated 11 September 2007.

Provided by the Secretariat of the Arbitration Council:

- Letter No. 453 KB/AK/VK/LKA, dated 28 September 2007 to invite the worker party to attend the hearing.
- Letter No. 452 KB/AK/VK/LKA, dated 28 September 2007 to invite the employer party to attend the hearing.

FACTS

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

The Arbitration Council finds that:

- Terratex Company employs approximately 3200 workers.
- FTUWKC at Terratex Company, who is the claimant in this case, has approximately 400 members. This union does not have most representative status in the factory.

Issue 2: The workers demand that the Company permit [the workers to take] sick leave and accept medical certificates from a private hospital when workers take sick leave of less than five days.

- The workers demand that the Company allow [workers to take] sick leave and accept medical certificates from a private hospital when workers ask for sick leave of less than five days. The workers argue that the service provided by the public hospitals is not good and expensive. The workers do not show any evidence to support this claim.
- The Company does not agree but [says it] will follow the agreement made on 04 December 2002 with Mr. Chea Vichea, former president of FTUWKC. Point 4 of the agreement states that *"If a worker falls sick in the Company, the patient should proceed to the Company doctor for a check up to determine the exact type of sickness before they are allowed to take leave. However, if a worker falls sick outside of the Company, the worker should provide a medical certificate from a*

public hospital (such as communal, district, provincial, municipal hospitals) for the Company to consider and decide upon their return to work."

- The workers demand that the Company choose one private clinic that the Company can trust such as the clinic located opposite the factory for the workers to go to when they get typhoid, dengue fever, high temperature, diarrhea of between two or three days and feminine diseases, etc.
- The Company does not agree but will follow the agreement dated 04 December 2002.
- According to Clause 4 of the Company's Internal Work Rules: "*Permission for sick leave with proper doctors prescription, other than when a worker is sick as a result of a work-related accident: the Company permits [workers to take] sick leave on full pay in the first month, with 60% pay in the second and third month. For the fourth to sixth month, payment is not provided but [a worker's] position is maintained the same. If the leave exceeds six months, the Company will consider termination of employment."*

Issue 3: The workers demand that the Company provide them with a 1,000 to 2,000 riel meal allowance if the workers work overtime from 3:30 p.m. to 5:30 p.m.

- The worker party and the employer party agree that overtime work is in accordance with the law and is voluntary.
- The Company provides a 1,000 riel meal allowance for overtime work from 3:30 p.m. to 5:30 p.m.
- The workers make the above mentioned demand for the reason that food prices have increased. The workers mention that in the past they spent around 300 riel to 500 riel on rice and 500 riel on food. However, now they spend around 500 riel to 1,000 riel on rice and 500 riel on food.
- The Company does not agree to provide [this] but asks to follow the provisions in Notification 017 SKBY, dated 18 July 2000 regarding the provision of one meal or payment for a meal allowance during overtime work.
- Clause 4 of Notification 017 SKBY, dated 18 July 2000 states that:
  "Workers who voluntarily work overtime as requested by the employer shall receive a meal cost of 1,000 riels per day or receive a free meal allowance."
- The normal working hours of the Company are from 6:30 a.m. to 11:30 a.m. and 12:30 p.m. to 3:30 p.m. Overtime work is from 3:30 p.m. to 5:30 p.m.

Issue 4: The workers demand that the Company increase the main wage of nine workers in the pool section from US$ 50 to US$ 60

- The workers demand that the Company increase the main wage of nine workers in the pool section from US$ 50 to US$ 60 claiming that they perform many kinds of work such as ensuring the water in the pool is clear, cutting grass, tiling, and cementing. The workers state that they perfom work cutting grass, tiling, and cementing once in a while.
- The Company does not agree stating that these are the jobs they are supposed to do. These workers are employed as mobile workers.
- The Company has two clear water pools. One pool is the responsibility of four workers and another one of five workers. They receive US$ 50 per month and do overtime work like normal workers, if there is overtime work.
- Point 1 of Notification 745 KKBV, dated 23 October 2006 states, *"The minimum wage for garment, textile workers and shoe making workers is set at US$45.00 per month for probationary period of 01 month to 03 months. At the end of probationary period, a full-right worker receives the minimum wage of US$ 50 per month."*

REASONS FOR DECISION

Issue 2: The workers demand that the Company permit [workers to take] sick leave and accept medical certificates from private hospitals when workers take sick leave for less than five days.

In this case, the Arbitration Council will consider what type of doctor can issue a medical certificate for workers which the Company should legally recognize.

1. Interpretation under the Labour Law

Article 71 of the Labour Law states, "The following serve to suspend a labor contract: *3. The absence of the worker for illness certified by a qualified doctor..."*

In previous Arbitral Awards, the Arbitration Council found that the Labour Law does not state whether a qualified doctor who issues a medical certificate means a public doctor or a private doctor. However, these Arbitral Awards do not interpret the labour law to mean that doctor is limited to a public doctor but state that it can include a private doctor as long as they are a qualified doctor. The practice in Cambodia is that, both public servants, NGO staff and many large companies recognize medical certificates from any doctor who has permission from the responsible authorities certifying that [the workers] are genuinely sick, regardless of whether it is from a public or private doctor (see Arbitral Awards: 62/04-E Cent, Issue 1; 68/04-City New, Issue 3, and 81/05-Supreme, Issue 1).

In this case, the Arbitration Council adds: based on this Article, a qualified doctor refers to a doctor trained by a medical school recognized by the Ministry of Health and who has a proper certificate of recognition to permit them to practice their profession. The Article does not refer to a hospital or clinic or health center. This Article refers to a qualified doctor. Thus, sick workers must obtain certification from a doctor who is trained by a medical school recognized by the Ministry of Health and who holds a proper certificate of recognition and has permission to practice their profession by the Ministry of Health.

Article 72, paragraph 1, of the Labour Law states, *"The suspension of a labor contract affects only the main obligations of the contract, that are those under which the worker has to work for the employer, and the employer has to pay the worker, unless there is some provision to the contrary that require the employer to pay the worker."*

According to Article 72, paragraph 1, of the Labour Law as mentioned above the Arbitration Council considers that an employer is not obliged to pay a workers' wage during their absence on sick leave with a certificate from a qualified doctor.

2. Interpretation under the Company's Internal Work Rules and under the parties' agreement dated 04 December 2002.

According to Clause 4 of the Company's Internal Work Rules, *"Permission for sick leave with a proper doctor's prescription, other than where the worker's is sick as a result of a work-related accident: the Company permits [workers to take] sick leave on full pay in the first month, with 60% pay in the second and third month. In the fourth to sixth month, payment is not provided but [the worker's] position is maintained the same. If the leave exceeds six months, the Company will consider termination of employment."*

Based on the above interpretation, the Labour Law does not restrict the employer [but states that the employer] should pay workers' wages when they are absent on sick leave and [they] provide certification from a qualified doctor. In this case, the Company's Internal Work Rules stipulate that the employer must provide full payment or a part payment to workers who take sick leave [and provide] a proper medical prescription. The Arbitration Council considers that the provision of wage during workers' absence for sick leave provides a better benefit to workers than [is provided for under] the law. However, the Internal Work Rules do not state clearly what "proper medical prescription" refers to.

Point 4 of the agreement between the two parties, dated 4 December 2002, states: *"If a worker falls sick in the Company, the patient should proceed to the Company doctor for a check up to determine the exact type of sickness before they are allowed to take leave. However, if a worker falls sick outside of the Company, the worker should provide a medical certificate from a public hospital (such as communal, district, provincial, municipal hospitals) for the Company to consider and decide upon their return to work."*

The Arbitration Council considers that this agreement clarifies the meaning of the words “proper doctor’s prescription” as stated in the Company’s Internal Work Rules. This means that in order for a worker to be entitled to receive wages during sick leave, when a worker falls sick outside of work, upon their return to work, they need to provide a medical certificate from a public hospital (such as communal, district, provincial, municipal hospital) for the Company to consider and make a decision. The Arbitration Council considers that this agreement clarifies the meaning of the Company’s Internal Work Rules as the agreement states that in order for workers to be entitled to their wage it is a condition that the medical certificate is issued by a public hospital. The Arbitration Council considers that this agreement provides a benefit in relation to paid sick leave which is greater than what the law provides.

In this case, the workers demand that the employer accept a medical certificate from a private doctor when workers need to take leave of less than five days. Based on the agreement mentioned, the workers are not entitled to this demand. In addition, the workers do not have clear legal basis to support their demand.

Therefore, the Arbitration Council decides to reject the workers’ demand for the Company to permit [workers to take] sick leave and accept medical certificates from a private doctor when workers take sick leave of less than five days.

Issue 3: The workers demand that the Company provide a 1,000 to 2,000 riel meal allowance if workers work overtime from 3:30 p.m. to 5:30 p.m.

Clause 4 of Notification 017 SKBY, dated 18 July 2000 states, “*Workers who voluntarily work overtime as requested by the employer shall receive a meal cost of 1,000 riels per day or receive a free meal allowance.”*

According to this Notification, the Arbitration Council considers that the employer has an obligation to provide a 1,000 riel [meal allowance] to workers who work overtime. In this case, the Arbitration Council considers that the employer has fulfilled its legal obligation. The Arbitration Council considers that the workers’ demand for the employer to pay a 2,000 riel meal allowance is an interests dispute because it is a demand for something greater than what is provided by the law.

Generally, the Arbitration Council declines to consider an interests dispute if the union who brings the dispute does not have most representative status in the factory. Most representative status gives a union legal standing to negotiate a collective bargaining agreement in a factory (see Article 96, paragraph 2B and Prakas 305, Clause 9, paragraph 1) and the legal right to bring an interests dispute to the Arbitration Council for a solution. In order to have most representative status, Article 277 of the Labour Law 1997 states that the union has to register and fulfil other requirements stated in the Article (see Arbitral Awards

57/04-Evergreen; 60/04-United Arts, issue 3; 08/07-Siu Quinh, issue 3 and 33/07-Goldfame, issue 2).

In this case, the FTUWKC in Terratex factory does not have most representative status. In conclusion, the Arbitration Council decides to decline to consider the workers' demand for the Company to provide a 1,000 riel to 2,000 riel meal allowance if workers work overtime from 3:30 to 5:30 p.m.

Issue 4: The workers demand that the Company increase the main wage of nine workers in the pool section from US$ 50 to US$ 60

Point 1 of Notification 745 KKBV, dated 23 October 2006, states *"The minimum wage for garment, textile workers and shoe making workers is set at US$45.00 per month for probationary period of 01 month to 03 months. At the end of probationary period, a full-right worker receives the minimum wage of US$ 50 per month."*

Paragraph 2 of point 2 of the same Notification also mentions that *"The new Notification regarding minimum wage shall be in effect from 01 January 2007."*

Based on this Notification 745, the Ministry of Labour and Vocational Training issued Notification No. 806 KKBV, dated 15 December 2006, on the implementation of the minimum wage of workers in the garment and shoe making sector.

The nine workers in this dispute receive at least US$ 50 per month. In previous Arbitral Awards, the Arbitration Council held that Clause 1 of Notification 745 KKBV, dated 23 October 2006, provides that workers who are full-right [workers] should receive a minimum wage of US$ 50 per month. The Arbitration Council considers that this Notification only ensures a minimum wage of US$ 50 per month. Thus, workers who already receive a wage higher than the minimum wage of US$ 50 per month are not entitled to a wage increase according to this Notification (see Arbitral Award 33/07-Goldfame, Issue 6).

In this case, the Arbitration Council agrees with the Arbitration Council in previous awards. Because the Arbitration Council found that no workers receive a wage less than US$ 50 and because there is no any agreement between the workers and the employer regarding an increase of the minimum wage, the Arbitration Council considers that the employer has complied with its obligation under the Law in relation to the provision of wage to the nine workers.

In this case, the workers do not have any legal basis to support their demand. The workers' demand is an interests demand because it is a demand for [something greater than] what is provided by the law. Because FTUWKC in Terratex factory does not have the most representative status in the enterprise, the Arbitration Council decides to decline to consider the demand (see the reasons for decision in relation to an interests dispute in issue 1 above).

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

<u>DECISION</u>

Issue 2: Reject the workers' demand for the Company to permit sick leave with and accept a medical certificate from a private doctor when workers ask for sick leave of less than five days.

Issue 3: Decline to consider the workers' demand for the Company to provide a 1,000 riel to 2,000 riel meal allowance if workers work overtime from 3:30 to 5:30 p.m.

Issue 4: Decline to consider the workers' demand for the Company to increase the main wage of nine workers in the pool section from US$ 50 to US$ 60.

<u>Type of Award: Non-binding award</u>

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

<u>SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:</u>

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature: ....

Arbitrator chosen by the worker party:

Name: **Live Sovanna**

Signature: ....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: ....

Annex to Arbitral Award 102/07-Terratex

<u>Dissenting Opinion on Issue 2</u>

Based on Clause 37 of Prakas 099 SKBY, dated 21 April 2004, by the Ministry of Labour and Vocational Training, I, **Liv Sovanna**, would like to give a dissenting opinion on Issue 2 of the Arbitral Award 102/07-Terratex as follows:

1. **Finding of Facts**: In this Issue 2, the Arbitration Panel is in consensus on the facts that:
   - The workers demand that the Company allow them to take sick leave and accept medical certificates from private hospitals when workers ask for sick leave of less than five days for the reason that the service provided by the public hospitals is not good and expensive. The workers do not provide any evidence to support this claim.
   - The Company does not agree but will follow the agreement dated 04 December 2002 with Mr. Chea Vichea, former president of FTUWKC. Point 4 of the agreement states that *"If a worker falls sick in the Company, the patient should proceed to the Company doctor for a check up to determine the exact type of sickness before they are allowed to take leave. However, if a worker falls sick outside of the Company, the worker should provide a medical certificate from a public hospital (such as communal, district, provincial, municipal hospitals) for the Company to consider and decide upon their return to work."*
   - The workers demand that the Company choose one private clinic that the Company can trust such as the clinic located opposite the factory for the workers to attend when they get typhoid, dengue fever, high temperature, diarrhea for two or three days and feminine diseases, etc.
   - The Company does not agree but [says it] will follow the agreement dated 04 December 2002.
   - According to Clause 4 in the Company's Internal Work Rules: "*Permission for sick leave with a proper doctors prescription, other than when a worker is sick as a result of a work-related accident: the Company permits [workers to take] sick leave on full pay in the first month, with 60% pay in the second and third month. For the fourth to sixth months, payment is not provided but [a worker's] position is maintained the same. If the leave exceeds six months, the Company will consider termination of employment."*
2. **Reasons for Decision**: I would like give an dissenting opinion on Issue 2 as I consider as follows:

In this case, the Arbitration Council will consider what type of doctor can issue a medical certificate for workers which the Company will legally recognize.

1. Interpretation under the Labour Law

Article 71 of the Labour Law states, "The labour contract shall be suspended under the following reasons: *3. The absence of the worker for illness verified by qualified doctor..."*

In previous Arbitral Awards, the Arbitration Council found that the Labour Law does not state whether a qualified doctor who issues a medical certificate is a public doctor or private doctor. However, [previous] Arbitral Awards have held that the Labour Law does not specify that the doctor must be a public doctor but it can include a private doctor as long as the [doctor is] a qualified doctor. The practice in Cambodia is that both public servants and NGO staff and many big companies recognize medical certificates from any doctor, who is registered with the responsible authorities, certifying that [the workers] are truly sick regardless of whether it is from a public doctor or a private one (see Arbitral Awards: 62/04-E Cent, issue 1; 68/04-City New, issue 3, and 81/05-Supreme, issue 1).

In this case, the Arbitration Council adds as follows: based on this Article [71], qualified doctor refers to a doctor who trained at a medical school recognized by the Ministry of Health and has proper letter of recognition to permit them to practice the profession. The Article does not refer to a hospital or clinic or health center. This Article refers to a qualified doctor. Thus, sick workers need certification from a doctor who trained at a medical school recognized by the Ministry of Health and has a proper certificate of recognition and permission to practice their profession by the Ministry of Health.

Article 72, paragraph 1, of the Labour Law states, *"The suspension of a labor contract affects only the main obligations of the contract, which are, on the one hand, to work, and on the other hand, to pay the worker, unless there is some provision to the contrary for this latter obligation..."*

According to Article 72, paragraph 1, of the Labour Law as mentioned above the Arbitration Council considers that the employer is not obliged to pay workers' wage during their absence on sick leave [when they provide a] a medical certificate from a qualified doctor.

2. Interpretation under the Company's Internal Work Rules and under the parties' agreement dated 04 December 2002.

According to Clause 4 of the Company's Internal Work Rules, "*Permission for sick leave with a proper doctors prescription, other than when a worker is sick as a result of a work-related accident: the Company permits [workers to take] sick leave on full pay in the first month, with 60% pay in the second and third month. For the fourth to sixth months, payment is not*

provided but [a worker's] position is maintained the same. If the leave exceeds six months, the Company will consider termination of employment."

Based on the interpretation above, the Labour Law does not prohibit the employer from paying the workers' wages when they take sick leave with proper certification from a qualified doctor. In this case, under the Company's Internal Work Rules, the employer provides full payment or part payment [of wages] to workers who take sick leave, [when they provide a proper doctors certificate. The Arbitration Council considers that the provision of wages during workers' absence on sick leave is a better benefit to workers than is provided for under the law.

Based on the interpretation of the Arbitration Council in point 1 regarding "The interpretation under the Labour Law", mentioned above, I consider that the term doctors prescription in clause 4 of the Company's Internal Work Rules refers to a prescription issued by a doctor recognized by the Ministry of Health, whether they are working for the government or in the private sector. Thus, based on Clause 4 of the Company's Internal Work Rules, the Company should allow workers to take paid sick leave when they provide a proper doctors prescription to prove that they need to stay in a hospital even if it is issued by a private doctor. Thus, the workers' demand for the Company to maintain their wages when workers take sick leave of less than five days with a medical certificate from a private doctor is a valid demand according to Clause 4 of the Internal Work Rules, if the workers provide a medical prescription issued by a doctor proving they need to stay in a hospital.

Clause 4 of the agreement between the two parties, dated 04 December 2002, states: *"If a worker falls sick in the Company, the patient should proceed to the Company doctor for a check up to determine the exact type of sickness before they are allowed to take leave. However, if a worker falls sick outside of the Company, the worker should provide a medical certificate from a public hospital (such as communal, district, provincial, municipal hospitals) for the Company to consider and decide upon their return to work."*

According to Clause 4 of the agreement between the two parties, dated 04 December 2002, I consider that the term "medical certificate from a public hospital" is not a prescription; it is a letter issued by a health centre, referral hospital, or a government hospital that evidences that the patient received medical treatment. Doctor's prescription, on the other hand, refers to prescription letter by a doctor ordering a patient to buy medicine or to stay in a hospital. Only after having a doctor's prescription can a patient be treated in a clinic, health centre, referral hospital or government hospital. Thus, Clause 4 of the agreement does not refer to the term prescription [but helps clarify the meaning of] Clause 4 of the Company's Internal Work Rules and they do not have contradictory meanings. The workers who are sick

can choose either to follow Clause 4 of the Company's Internal Work Rules or Clause 4 of the agreement between the two parties, dated 04 December 2002.

Based on the findings of fact and reasons above, I consider that the workers' demand in Issue 2 is a valid demand according to Clause 4 of the Internal Work Rules of Terratex Company.

Arbitrator chosen by the employee party

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Liv Sovanna