



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 106/06-Quicksew

Date of Award: 01 December 2006

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **You Suonty**

Arbitrator chosen by the worker party: **Ven Pov**

Chair Arbitrator (chosen by the two Arbitrators): **Tan Try**

DISPUTING PARTIES

Employer party:

Name: **Quicksew (Cambodia) Ltd.**

Address: Vattanak Industrial Park, Damnak Thom Village, Sangkat Steung Mean Chey,
Khann

Mean Chey, Phnom Penh.

Telephone: 023 995 596/ 995 597/ 013 588 580 Fax: 023 995 595

Representative:

- | | |
|----------------------|---------------------------------------|
| 1. Mr. Sok Chantha | Company Advisor |
| 2. Mr. Siev Kimchhay | Head of Administration of the Company |

Worker party:

Name: **Local KYFTU at Quicksew Factory**

Address: # 34, Street 265, Sangkat Toeuk Laak 3, Khann Tuol Kork, Phnom Penh

Telephone: 012 435 466/ 012 940 548 Fax: N/A

Representative:

- | | |
|-----------------------|-------------------------------|
| 1. Mr. Sie Sorn | Facilitating officer of KYFTU |
| 2. Mr. Hing Bunthoeun | Facilitating officer of KYFTU |

**THIS IS AN UNOFFICIAL ENGLISH TRANSLATION OF THE AUTHORITATIVE
KHMER ORIGINAL.**

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|--------------------|---|
| 3. Mr. Nhang Sambo | President of Local KYFTU at Quicksew Factory |
| 4. Mr. But Mara | Vice-president of Local KYFTU at Quicksew Factory |
| 5. Mr. Chan Dara | Secretary of Local KYFTU at Quicksew Factory |

ISSUES IN DISPUTE

(In the non-conciliation report)

1. Workers demand the company to open the toilet door at 7:00 because they need to use it. The company cannot do it at 7:00 but can do it at 7:15 because the company needs time for the cleaner to clean the toilet.

2. Workers demand the company to arrange a meeting room for union stewards and worker delegates and the company has to arrange a place for posting about the activities and leaders of the union because this demand is stated in Circular 40 SKBY dated 01 October 1998. The company cannot comply with the demand because the building is rented and the company has no right to build any additional attachment.

3. Workers demand the company to re-elect worker delegates because currently there are not enough worker delegates to the number of seats and some worker delegates are not working to help resolve workers' problems. The company does not agree with the workers' demand because the present worker delegates have not finished their mandate and the company has appointed the assistant of worker delegates for the vacated seats.

4. Workers demand the company to cancel fixed duration contracts but if the company cannot cancel them, workers request that the company use fixed duration contract of 1 year and up because the duration of the present contracts are too short. The company does not agree with the demand.

5. Workers demand the company to reinstate Mr. Chan Dara and pay back his wages in the past because Mr. Chan Dara is a union leader. The company does not wish to settle Mr. Chan Dara's issue because the Arbitration Council has issued an Award on this issue and the company agrees to comply with the Award.

6. Workers demand the company to keep the attendance bonus if they are absent for one day without permission and three days with permission.

7. Workers demand the company to deduct 1000 riels from the wage of workers who are members of KYFTU because this demand is stated in the law. The company does not agree with the workers' demand.

8. Workers demand the company to take the gangster police force out of the company because the police force has taken workers' ID cards or head wraps and threatens and causes fear among workers. The company, on the other hand, cannot take the police force out because these police are body guards to the factory owner.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B (Article 309 to 317) 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. 513 dated 11 May 2006 (Fourth 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. 1605 KKBV/AK/VK dated 27 October 2006 was submitted to the Secretariat of the Arbitration Council on 27 October 2007.

HEARING AND SUMMARY OF PROCEDURE

Place of hearing: Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd.,
Sangkat Tonle Basak, Khan Cham Kar Mon, Phnom Penh

Date of hearing:

- 16 November 2006
 - From 08:00 a.m. to 12:30 p.m.
 - From 02:00 p.m. to 05:00 p.m.
- 17 November 2006 (From 08:00 a.m. to 11:00 a.m.)

Procedural issues:

On 09 October 2006, the Department of Labour Dispute received a complaint from KYFTU regarding the demand that the company improve 8 working conditions. Upon receipt of the complaint, the Department of Labour Dispute assigned officer(s) to handle the labour dispute and the last conciliation was on 23 October 2006 with the result that 8 issues of 8 issues were not conciliated.

On 27 October 2006, the Secretariat of the Arbitration Council received the case and report of the non-conciliated collective labour dispute No. 1605 KKBV/AK/VK dated 27 October 2006 by the Chief of the Department of Labour Dispute. After receiving the case, the Arbitration Council summoned the employer party and the worker union in the factory to the hearing and conciliation on the eight non-conciliated issues on 16 and 17 November 2006. Both parties were present as invited by the Arbitration Council. On the hearing day, the Arbitration Council attempted to further the conciliation but none of the eight issues were conciliated.

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

1. Agreement of the employer party and worker union party in resolving collective labour dispute of Quicksew Company, dated 08 August 2006
2. Statute of Quicksew Company
3. Announcement of enterprise opening, registration No. 620 KKBV/AK/AThK, dated 19 December 2005
4. Letter No. 2124 PN.BAP, dated 12 September 2005, certificate of TPD registration
5. Letter No. 1341 PN.NTK dated 10 June 2005, certificate of commercial registration
6. Internal work rules of Quicksew Company, registration No. 146 KKBV/AK/AThK, dated 21 December 2005
7. Announcement No. 018/2006, dated 27 July 2006 by Quicksew Company regarding the opening of the toilet door after the start of working hours.
8. Agreement, dated 14 January 2006, between company representatives and worker representatives regarding absence without permission, monthly payroll date and probationary workers.
9. Mr. Chan Dara's ID card at Quicksew Company
10. Attendance record of Mr. Chan Dara for June 2006
11. Probationary contract of Mr. Chan Dara
12. Termination letter of Mr. Chan Dara dated 23 June 2006
13. Minute of collective labour dispute conciliation dated 19 July 2006
14. Minute of collective labour dispute conciliation dated 23 October 2006
15. Arbitral Award of case No. 62/06-Quicksew, dated 18 August 2006
16. Letter dated 23 November 2006 by Quicksew Company regarding objection to KYFTU's claim of having handed document of request for wage deduction to the employer.
17. Letter of resignation from being worker delegate of Kan Mom dated 15 February 2006.
18. Letter by Quicksew Company dated 15 February 2006 regarding request to appoint Ms. Kheng Sokheang as full-right worker delegate.
19. Letter No. 691 KKBV/AK/VK dated 02 December 2005 by the Department of Labour Dispute regarding election of worker delegate, 1st mandate.
20. Minute of worker delegate election dated 28 November 2005
21. Resignation letters of some workers of Quicksew Company.

Provided by the worker party:

1. Statute of Local KYFTU at Quicksew Company dated 24 June 2006
2. Internal work rules of Quicksew Company, registration No. 146 KKBV/AK/AThK dated 21 December 2005.
3. Probationary contract of Mr. Chan Dara
4. Letter to terminate Mr. Chan Dara dated 23 June 2006
5. Minute of collective labour dispute conciliation dated 23 October 2006
6. Certificate of registration of the Local KYFTU at Quicksew Company, registration number 1034 KKBV/VK, dated 09 October 2006
7. Request for wage deduction for union contribution fee by some workers at Quicksew Company.
8. Letter dated 28 August 2006 by the Local KYFTU at Quicksew Company to reject Arbitral Award No. 62/06.
9. Letter dated 376 SSYK, dated 24 June 2006, by KYFTU to inform about the election of the committee of the Local KYFTU at Quicksew Company.
10. Letter No. 675 SYK dated 18 September 2006 by KYFTU regarding request for deduction of 1,000 riel from wage of each member for union contribution fee.
11. Letter No. 558 SYK dated 25 August 2006 by KYFTU regarding request for deduction of 1,000 riel from wage of each member for union contribution fee.

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

1. Letter No. 1570 K.K.B.V regarding a request to resolve a collective labour dispute at Quicksew Company dated 14 November 2006 from the Minister of the Ministry of Labour and Vocational Training.
2. Report on the resolution of the collective dispute at Quicksew Company No. 1605 K.K.B.V./A.K/V.K from the head of the Department of Labour Dispute dated 27 October 2006
3. Minute of the collective dispute conciliation dated 23 October 2006.

Provided by the Secretariat of the Arbitration Council:

1. Letter of invitation to the worker party to attend the hearing No. 485 LKA dated 02 November 2006.
2. Letter of invitation to the employer party to attend the hearing No. 486 LKA dated 02 November 2006.

FINDING OF FACTS

- Having examined the documents parties submitted to the Arbitration Council

- Having examined the report of the collective dispute conciliation
- Having listened to the statements of the worker party and the employer party.

The Arbitration Council finds that:

Issue 1:

- **Quicksew (Cambodia) Ltd.**, employs about 800 to 900 workers and has only one union, the local KYFTU at Quicksew Company.
- Point 4 of the Internal Work Rules mentions working hours as follows:
 - Morning: from 7:00 to 12:00
 - Afternoon: from 13:00 to 16:00
- This company has only one building which includes administrative office and production assembly line building in the factory compound together.
- There are all together 37 toilets in the whole factory: 28 for women, 3 for men and 6 for pregnant women.
- In the hearing, the worker party asserted that most of the workers arrived at the factory premises at 6:30 a.m. Before the working hours, i.e., from 6:30 to 6:45 workers can enter the factory go back and forth freely to the toilet but they have walk around the factory building approximately 100 meters which takes about 5 to 10 minutes because there is only one building for the production assembly line and it opens at 7:00.
- When the company rings the bell for the first time at 6:45 a.m., workers have to enter the factory area and when the 2nd bell rings at 7:00 workers have to be at their workplace to start work.
- From 7:00 to 7:15 a.m., the company locks the door for entry to the toilet so that workers cannot use the toilet during this 15 minutes.
- In the hearing, the employer mentions that the closure of toilet for 15 minutes from 7:00 to 7:15 a.m. during which the company does not allow workers to pass in and out of the toilet is because the company needs the cleaners to clean the toilet and the head of each group needs time to check and divide work to their group members; after 7:15 they can pass in and out of the toilet as usual.
- In the hearing the workers demanded the company to open the door and allow them to pass in and out of the toilet from 7:00 a.m. onwards because workers have difficulties in waiting for this 15 minutes and it is difficult to walk around the whole factory because it takes from 5 to 10 minutes.
- In the hearing, the company mentioned that generally the head of group can start recording workers' absence and presence from 7:00 or 8:00 a.m. onward.
- In the hearing, workers refuted the employer's claim that the 15 minutes during which the company does not allow workers to pass in and out of the toilet was for cleaners

to clean the toilet as not true; they asserted the company explanation was not true because in fact the cleaning group always starts cleaning in the afternoon around 1:00 p.m. In addition, the toilet is not hygienic enough as it is very dirty that workers are even afraid of using it.

- The company still rejects the demand and claims that the company already made a announcement regarding the 15 minute time period on 27 July 2006.
- The company also mentions in the hearing that in case there is an actual case in which a worker needs to go to the toilet urgently during that 15 minute period, s/he can go to her/his head of group who will assist her/him to be able go to the toilet.

Issue 2:

- The worker party demands the employer to provide a meeting space for the union to resolve workers' problems so that the company can operate smoothly and to collect all complaints to be forwarded to the company for resolution. The worker party adds that it never sees worker delegates work to resolve workers' problem; thus the employer must arrange a meeting place for the union.
- So far the company has never allowed the union to post information regarding union activities nor the pictures of the union leaders.
- In the hearing the employer mentions that it allows the union to post only guidelines of the Ministry of Labour and Vocational Training and other related institutions and the Arbitration Council's Awards. The company does not allow posting of information related to advertisements or union campaign activities.
- So far, the company provides a room for worker delegates to have a meeting for two hours every Saturday.
- The employer claims that it cannot arrange a meeting room for the union because the Labour Law does not require the employer to do so. In addition, the company has no right to build new room in the building as the company rents this building.
- The employer mentions that if the union wants to have meetings to resolve workers' problems, the company will allow the union to hold such meetings with participation from the employer. If the union wants to have meeting regarding the union's affairs, it can do so outside the factory area.

Issue 3

- Quicksew company commenced its enterprise operation on 05 August 2005 with 433 workers which includes 419 female workers and 18 male workers.

- On 28 November 2005, the company arranged for an election of worker delegates with participation from representative from the Ministry of Labour and Vocational Training.
- In the election, workers elected 5 full-right worker delegates and 5 assistant workers delegates.
- Up to now there were two full-right worker delegates who resigned from work and two assistant workers delegates who were assigned to be full-right worker delegates to replace the two people who resigned.
- The worker party also mentions that the workers want the company to arrange for a re-election of worker delegates and cancel the present full-right and assistant worker delegates because the present worker delegates do not resolve workers' problems. In addition, only members the company appointed were candidates for the election in 2005.
- The employer arranged for the worker delegate election on 28 November 2005 in compliance with the determination of and participation from the representatives of the Ministry of Labour and Vocational Training.
- The worker party adds that currently the number of workers has increased to about 800 workers in which 35 to 40 percent are workers who have been working since the commencement of the company and other 60 percent are workers who started working after the election of the present worker delegates. Because of the increase in the number of workers, the number of worker delegates should increase correspondingly. Therefore, the company should arrange a new election. If the company cannot arrange a new election, the company has to arrange for the election of additional worker delegates to hold seats in accordance with the increase in the number of workers.
- The employer party asserts that the company does not object to the election for the new worker delegate if the mandate of the present worker delegates is completed. But the company cannot arrange for an election as demanded by they workers because the present worker delegates have not finished their term and the officer of the Ministry of Labour and Vocational Training made a similar assertion. Thus, if the company arranges for a re-election or election for additional members as demanded by the workers, the company has to do it every year in accordance with the increase of the number of workers and the employer must spend time for production and money for the election. In addition, the election must be recognized by the officer of the Ministry of Labour and Vocational Training who participates in observing the election and determines legal procedures for the election and the mandate of the worker delegates.

- The company claims that the present worker delegates have 11 more months of their mandate and the company will arrange for the re-election when the mandate is over.

Issue 4

- According to the current practice of Quicksew Company, the form of contract that company has with each worker is of three months duration. This means that after three months the company will provide another new contract of 3 months duration to each worker to sign to continue their contract. The company totals the duration of all contracts which each worker has with the company to calculate employment seniority.
- Since the company started operations until June 2006, workers have not had written contracts with the company; that is, the workers just start working without a contract which specifies any clear duration. Since June 2006, the company started using written fixed duration contracts of 3 months with all workers whom the company recruited in the latter period.
- In the hearing, the worker party claims that currently there are about 35 to 40 percent of workers with whom the company does not have a written contract. The employer party agrees with the estimated number and agrees that those workers still work under verbal contracts.
- In the hearing, the employer party confirmed that so far there are about 10 to 11 percent of workers who resign each month.
- In the hearing, the worker party demanded to cancel the 3 month fixed duration contracts but requested to continue the contract of more than one year duration because:
 - The duration of three month contracts is too short.
 - Under these three month contracts, workers cannot be full-right workers.
- The company's use of three month contracts started only after the union was established and the use of three month contracts allows the company to easily to terminate any workers who join the union.
- The main reason that many workers resigned from work in the past was that they were not happy with the practice of the three month contract because it is too short and does not ensure the stability of their employment.
- The employer party, on the other hand, provides reasons why the company started using the three months contract as follows:
 - It is the practice in garment sector in Cambodia; almost 90 percent use such short duration contracts.
 - The three months contract, allows the company not to renew the contract with probationary workers who lack capacity and cannot work well.

- Some workers ask to take very long leave, some of them up to 10 days, especially during the rice cultivation season. Workers ask for very long leave to help their family cultivate rice. The very long leave can interrupt the factory's production process because the company cannot hire new workers to replace them. For the three month contract, the company has the right to employ new workers to work when there is an interruption in the production process, and when the workers who take long leave return to work, it is also easy for the company to give back the contract [to be employed again].
- Based on documents the Arbitration Council received from the worker party, there are 124 workers at Quicksew company who printed their thumbprints to demand the company to cancel the fixed duration contract.

Issue 5

- Regarding this demand, the Arbitration Council has made decision and issued an Award in Issue 1 of case 62/06 (the award dated 18 August 2006).
- On 28 August 2006, the worker party filed an objection to the Award 62/06 dated 18 August 2006, Issue No. 1, to the Ministry of Labour and Vocational Training through the Secretariat of the Arbitration Council.

Issue 6

- For this issue, the employer party and the worker party agree to follow the conciliated agreement dated 08 August 2006 (case No. 62/06-Quicksew).

Issue 7

- Based on the receipt of application issued by the Ministry of Labour and Vocational Training, the Local KYFTU at Quicksew Company applied for registration with the Ministry on 22 August 2006. This union received a certificate of registration on 09 October 2006 from the Ministry of Labour and Vocational Training.
- The worker party claims that the Local KYFTU at Quicksew Company prepared some document including: 1) Name list of union members who agree to have the company deduct their wage to pay for the union contribution fee; 2) Consent letter of each worker to have their wage deducted; and 3) Letter from the union to the Director of the company to request the company to deduct union contribution fees. However, the company's security personnel refused to receive the document explaining that it was a directive from the administration not to accept it. The letter includes a note by the union officer, "*does not accept*".

- The company party claims that the company administration has never known about the submission of documents regarding the union contribution fee to the administration as claimed by the union. However, in its responses to the Arbitration Panel during the hearing, the employer asserted that if the union will send the documents in the future, the company will accept the documents for consideration on the request for deduction of the contribution fee.
- The worker party submitted to the Arbitration Council: 1) Letter to the Director of the company to request the company to deduct the union contribution fee; 2) List of names of union members who volunteer to have their wage deducted for the contribution fee (414 workers among 437 total members); and 3) Request to deduct wages for contribution fees. However, these document are signed by the head of KYFTU on 25 August 2006 while the cover letter of the document which the KYFTU officer claimed to have “brought the letter to request the deduction for union contributions to the company but which the company did not receive” is dated 22 August 2006 as the date of document delivery.
- The worker party submitted to the Arbitration Council: 1) Letter to the Director of the company to request the company to deduct union contribution fee, 2) List of names of union members who volunteer to have their wage deducted for the contribution fee (537 workers among 550 total members); and 3) Request to deduct wages for the contribution fee. However, these document are signed by the head of KYFTU on 18 September 2006 while the cover letter of the document which the KYFTU officer claimed of having “brought the letter to request the deduction for union contributions to the company but which the company did not receive” is dated 11 September 2006 as the date of document delivery.
- The employer party mentions that that the company does not agree to deduct the contribution fee from workers' wages because there is no law requiring it to do so.

Issue 8

- The company employs two police officers to be bodyguards of the company owner. The main duty of the police officers are to protect the personal safety of the company owner, drive the car, and provide for order and respect of the Internal Work Rules by workers.
- In the hearing, the employer claims that the company also assigns the two police officers to be Head and Vice-head of security of the whole company.
- The company employs 6 security personnel for the company, 4 men and 2 women. The jobs of these security personnel are, during the day-time, to guard the external

gate(s) and, throughout the whole factory area at night, to observe and protect company's property.

- In the hearing, the worker party claims that so far the police officers who are the Head and the Vice-head always patrol the production line and confiscate worker's cards whenever a worker does not tie the head-wrap properly. Sometimes they carry a firearm and intentionally let workers see it. Sometimes the police officers shout with loud voices at workers and use the antenna of their radios to point and rap workers' waists which are improper acts. The worker party claims that such action causes fear or can be considered an act of threat which causes strong feelings of fear. Most workers in the whole factory cannot accept such attitudes of the police officers.
- Workers mention that that the role in checking and taking cards from workers who do not tie the head wrap properly is the role of the security or administration personnel, not of the 2 police officers, because they are police officer who are of the armed force and should perform only the role of body guards in protecting the personal safety of the company owner. Workers will recognize and respect the role of taking care of order and respect for Internal Work Rules if this role is performed by an administrative officer or security personnel but it should not be the police officers who perform this role. In addition, so far, when a worker does not tie the head wrap during working hours in the production line, the Chief of the company (Chinese and Khmer) always fine them 1,000 riels.
- Workers claim that the police officers just started the patrolling and taking of cards from workers about 3 months ago, i.e., after the union was established but before there was no such patrol and card confiscation.
- There was a quarrel between a worker and a police officer once and at that time the police officer pointed a gun at the worker that led to a complaint to the owner so that that police officer was replaced by the present police officer.
- In the hearing, the workers in their demand completely rejected the presence of the police officers in the production line of the company during working hours even if they are dressed in civilian clothes or hide their guns. Because the presence of the police officers in the factory production line will cause fear to workers when they take cards and use improper words to workers and in order to avoid problems which can lead to serious difficulties to the company, the company should transfer the above mentioned roles to security or the administration.
- The employer party asserts that the company has a main duty to provide good security to the Chief of the company and the company itself because the foreign investor has invested a lot in the country thus they should be well protected. The company has two police officers who have worked for it for a long time, since the

company started operations, and the police officers are the personal security guards to the Chief of the company and they are the head and vice-head of the security of the whole company.

- The employer party mentions that the police officers patrol and take cards from workers because they received the command from the administration; also the confiscation of cards is not any problem because they take cards only from workers who do not follow the company's Internal Work Rules or do not tie the head wrap; this is an act against the order of labour doctor in protecting the safety [of workers] and preventing danger to workers during working hours because the labour doctor of the Ministry came to visit the workplace very often.
- The employer thinks that if workers are worried and afraid of the police officers, the company will consider telling them to conceal the guns to not let workers see it. In case such incident happens again, the company will remove the police officers immediately because the company changed a police officer already when it learned that he had problems with workers.
- The employer party claims that the demand to prohibit the police officers from patrolling and entering the factory where the production line is located is not acceptable because they, the police officers, are responsible for company's security and recently the company found that there has been stealing of some clothes, for example a box of clothes found by the cleaner(s) outside of the factory building. For this case, the company had conducted a body search and found the identity of the wrong doer but because of the kindness of the Chief of the company, the company does not further this problem but let it end at this point.

REASONS FOR DECISION

Issue 1:

Workers demand the company to open toilet door at 7:00 a.m. because workers need to use it. The company cannot do so at 7:00 but can at 7:15 because the company needs time for the cleaner to clean the toilet.

The Arbitration Council finds that most workers arrive Quicksew company at 6:30 a.m. and before the working hours, from 6:30 to 6:45, workers can enter the factory area and they can go to use toilet freely but they need to walk approximately 100 meters around the factory building which takes about 5 to 10 minutes by foot because there is only one factory building for the production line and its door opens at 7:00 to allow workers get to work. When the company signals the first bell at 6:45, workers have to go into the factory area and when they hear the second bell at 7:00 workers have to go to their workplace to start working.

The company needs to close the door of the building which can get to toilet for 15 minutes, from 7:00 to 7:15 a.m. which results in workers being unable to go to use the toilet during this 15 minutes. It is because the company needs the cleaner to clean the toilet and the head of each group needs time to check and divide work to the group members; from 7:15 onward they can go to the toilet as usual.

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

The Arbitration Council considers that the content of the above-mentioned paragraph provides the employer the right in the management of the work and supervision of the production line and management company property, especially in the supervision of the work of its workers and their working hours. Taking the 15 minutes from 7:00 to 7:15 a.m. to lock the building door to the toilet is part of the company's management [decision] to allow time to the heads of groups to divide the work and record the presence and absence of workers and to give time to the cleaners to clean the toilet.

Point 4 of the company's Internal Work Rules states that the working hours, in the morning, start from 7:00 a.m. to 12:00 p.m. and, in the afternoon, from 1:00 p.m. to 4:00 p.m. The Arbitration Council also considers that the company's management of working hours is in accordance with point 4 of the Internal Work Rules and it does not seem to have any problem.

Article 229 states, "All 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."

Article 6 of Prakas 52 regarding toilet arrangement (dated 10 February 2000) mentions, "Water for use at the toilet must be sufficient, clean, and clear. There must be sufficient soap at each toilet. Each toilet must be cleaned at least once a day."

The Arbitration Council considers the locking of the door for 15 minutes from 7:00 to 7:15 a.m. can be considered as the company fulfilling its obligation mentioned in Article 229 and Article 6 above and other related legal provisions.

In the hearing, workers argued that the company's claim was not true regarding the closure of the door to the toilet for 15 minutes to allow the cleaner to clean the toilet, and that it is an incorrect reason because in fact the cleaning group always starts cleaning in the afternoon around 1 p.m. In addition, the toilet is not hygienic enough and is so dirty that workers are even afraid of using it. The Arbitration Council understands the argument about hygiene but the union should raise issues about the failure to respect working times and the lack of hygiene in the toilets to the worker delegates and the Labour Inspector in order to

have the company to resolve this problem because it is the management obligation which the company has to solve it for workers. Therefore, the Arbitration Council considers that this issue is not related directly to the issue in demand.

The Arbitration Council considers that the locking of the building and preventing workers to enter the [toilet] room is only 15 minutes in duration. Furthermore, before coming into the factory building at 7:00 a.m., workers can go to the toilet freely. Moreover, the employer party also mentions in the hearing that if there is an actual case in which a worker needs to go to toilet urgently during the 15 minutes, s/he can go to see the head of group who will help her/him to go to the toilet. Therefore, the withholding of 15 minutes time for the above mentioned reasons described by the company cannot be found to be violate any provision regarding the Labour Law or be too much to accept.

Issue 2:

The Arbitration Council found that the employer has fulfilled its obligation in accordance with Article 5 of Prakas 286 SKBY dated 05 November 2001 by the Ministry of Labour and Vocational Training by providing a meeting space for worker delegates. In addition, the Labour Law and Prakas 286 SKBY do not require the employer to provide a place for union meetings. Therefore, the company does not have an obligation to provide a place for union meetings as demanded by the union.

Regarding the posting of activities and pictures of the leaders of the union, Circular 40 SKA dated 01 October 1998 by the Ministry in charge of Labour requires the employer to provide a proper place for worker delegates and the union to post names, photos, positions, and activities of worker delegates and union leaders.

In the hearing, the employer claims that the employer allows the union to post letters issued by the government and ministries. Therefore, the Arbitration Council considers that this permission is not yet sufficient according to the determination of Circular 40 SKA. The employer must provide proper place for union to post names, photos and positions of the leaders of union and the union activities.

Issue 3:

Article 283 of the Labour Law states, "In every enterprise or establishment where at least eight workers are normally employed, the workers shall elect a worker delegate to be the sole representative of workers who are eligible to vote in the enterprise or establishment."

Article 285 of the Labour Law mentions that the number of worker delegates is set in proportion to the number of workers in the establishment as follows:

- From 8 to 50 workers: one official worker delegate and one assistant worker delegate.

- From 51 to 100 workers: two official worker delegates and two assistant worker delegates.
- More than 100 workers: one extra official worker delegate and one extra assistant worker delegate for each group of one hundred workers.

Article 292 of the Labour Law mentions, "It is the duty of the employer to organise elections. In case that there are no worker delegate, the employer shall set a date for the elections and publicise it within fifteen days upon receipt of the request of a worker, a union, or the Labour Inspector. The election shall be organised within 45 days upon receipt of the request."

Based on the minute of the worker delegate election on 28 November 2005, the employer organised a worker delegate election in which 416 workers participated. As a result of the election, 5 official worker delegates and 5 assistant worker delegates were elected to be representatives of workers at Quicksew company. Thus the employer has fulfilled its obligation mentioned in Article 292 of the Labour Law. The Arbitration Council finds that the number of official worker delegates and assistant worker delegates are proportionate to the number mentioned in Article 285 of the Labour Law.

Article 7 of Prakas 286 SKBY dated 05 November 2005 provides that ["workers can dismiss a worker delegate from his/her position before the end of the mandate in case the latter fails to perform his/her tasks. A decision on dismissal must comply with the same formalities and manner of election as those set for the election of worker delegate. Workers shall officially inform the Labor Inspector within 3 days at the latest after deciding to dismiss the worker delegate. After the dismissal of the worker delegate, the assistant worker delegate shall act as his substitute until the new election of the shop steward.["]

In the hearing, the worker party does not demand the termination of any specific worker delegate but demands the cancellation of the mandate of the worker delegates as a whole before their term comes to an end. The Arbitration Council considers that a worker delegate can only be terminated if s/he does not fulfill her/his works. In addition, the assistant worker delegate will replace the worker delegate until the new election of worker delegate. The Arbitration Council also considers that workers have right to demand the company to arrange for election to terminate a worker delegate who does not fulfill her/his obligation and the company has to follow this demand. But the workers have no right to demand the company to terminate the mandate of the entire worker delegate force before it comes to an end.

In addition, paragraph 2 of Article 292 of the Labour Law mentions that if there is an election to elect all worker delegates, the balloting must take place in the fifteen day period preceding the expiration of the current term. Therefore, according to Article 292 of the Labour Law and Article 7 of Prakas 28[6] [S]KBY, the re-election of worker delegates can be done

only at the expiration of the current mandate of worker delegates. (See Arbitral Award 66/04-Winner Garment, 67/04-Jusca and 76/05-Global Foot Wear)

In the hearing, the union demands that if they cannot re-elect worker delegates, the employer has to elect additional worker delegates to make the number of worker delegates proportional to the increased number of workers in the factory. Labour Law and Prakas 286 SKBY do not mention about election for additional worker delegates. Thus, the Arbitration Council considers that the demand is interest dispute and the Arbitration Council will consider this demand based on the principle of equity.

Article 292 of the Labour Law requires the employer to be responsible for organizing the election of worker delegates. In addition, Article 2 of Prakas 286 SKBY determines that when organising the election, the employer has to be responsible in terms of material, finance and good faith and the election must be held during working hours and in the factory area. Thus, the employer has to spend both time for organisation and money for the election. Moreover, in the election on 28 November 2005, 5 official worker delegates and 5 assistant worker delegates were elected for a two year mandate and this number was proportionate to the number of workers at that time, 416 workers, and conformed to Article 285 of the Labour Law.

If the number of worker delegates and assistant worker delegates has to increase when the number of workers increased, as in this case, if there is additional election then the additional worker delegates and assistant worker delegates will also have 2 years mandate. Therefore, the mandate of the current worker delegates and the additional worker delegates will not be consistent, i.e., the mandate of the current worker delegates will expire while the additional worker delegates' still continues. Further, the employer will have to arrange the election of worker delegates every year. The Arbitration Council considers that the union's demand that the employer arranges the election for additional worker delegates when there is increase in number of workers would force the employer to arrange the election every year. This demand would also require the employer to spend financial resources, material and time for the organisation of the election. Therefore, this demand is not equitable to the employer party. In addition, the Arbitration Council considers that Article 285 of the Labour Law determines the number of official and assistant worker delegates in proportion to the number of workers in the enterprise at the time of the election. And, because the Labour Law strictly determines the mandate of worker delegates for 2 years, thus the demand for election for additional worker delegates whenever there is an increase of number of workers is against the spirit of the Labour Law.

Issue 4:

Regarding the argument of the parties in the hearing, the Arbitration Council reviews the following issues: Is the establishment of the duration of the labour contract for a three month period one of the conditions of the contract (labour contract)? Is there any legal provision that provides a basis for the canceling of the practice of using 3 month contracts or for changing the condition that the duration of the labour contract be more than one year?

The Arbitration Council found that there are about 35 to 40 percent of workers who are working under verbal undetermined duration contracts.

Article 67(7) provides, "A contract of a fixed duration must be in writing. If not, it becomes a labour contract of undetermined duration."

According to the content of Article 67(7), about 35 to 40 percent of workers can be considered working under undetermined duration contracts for Quicksew Company.

The Arbitration Council also notices that from June 2006 the Company started requiring workers who did not have contracts in writing to have them in writing with a fixed duration of three months. From that same time, the company applied the same practice to workers whom the company later recruited.

The worker party claims that many workers have resigned because they are not happy with the practice of the 3 month contract as it is too short and cannot ensure their work stability. To confirm this claim, the worker party has submitted a list of names of 124 workers in Quicksew company who have printed their thumbprints to demand the company to cancel the fixed duration contract. Therefore, the Arbitration Council considers that it is this group of workers who make this demand.

Capacity of the parties to the labour contract:

The Labour Law only states in Article 65 that a labour contract establishes working relations between the worker and the employer. According to the content of this Article, when Quicksew Company and a work sign a three months labour contract, it establishes working relations between Quicksew Company as a party and the worker as another party. Other persons such as the union do not have capacity as a party to the labour contract including regarding the condition with respect to the contract's duration. Therefore, only Quicksew Company and the individual worker are the parties to the labour contract.

Will and freedom of each party in creating conditions or obligations for the labour contract:

The Arbitration Council considers that the general basic contract principle is that a contract is an agreement between the parties to the contract based on the foundation of free will of each party without coercion by another party who is not a party to the contract. This basic principle is stated in Article 1 of Decree 38 Kr.Ch dated 28 October 1998 which provides that:

"A contract is an agreement freely entered into by [two] or more persons to create, amend, or terminate one or more obligations related to themselves." And

Article 3(1) of the same Decree mentions:

"A contract is valid provided that obligations in that contract arise out of a real and free agreement."

In the hearing, the worker party claimed that the use of the three month contract by the company started only after the union was established recently and the use of the three month contract allows the company to easily terminate any workers who becomes a member of the union. The Arbitration Council finds that there is a coincidence (happening at the same time) of time between the establishment of local KYFTU at Quicksew Company and the beginning of the practice of the three month written contract. However, the worker party does not provide enough actual evidence to show that this was the company's means to punish workers for the becoming members of the union.

In the hearing, the workers did not provide any other allegation or evidence which can show coercion or other points of defects which relate to the will or freedom of each worker in signing the three month fixed duration contract. In addition, the Arbitration Council considers that the parties' will and freedom is the exclusive and independent right of the parties to the contract unless there is a legal provision allowing for interference to the rights of exclusivity and independence.

Therefore, the Arbitration Council does not see any irregularity which obstructs the effectiveness of the use of the three month fixed duration contract.

Will and freedom of each party in amending conditions or obligations in the labour contract:

Just as the basic principle which creates obligations or conditions of the labour contract is the will and freedom of each party to the contract, so too must all amendments of any part of the conditions or obligations of the contract stand on the same principle. In the demand of the workers, they demand the company to cancel the three month labour contracts and, if this is not possible, they request the use of labour contracts with more than one year duration.

The Arbitration Council finds that this demand of the worker party is a request for a new condition or a request to change the three month duration of the present labour contract within the meaning of Article 1 of Decree 38 Kr.Ch. As mentioned above, the parties to the contract are Quicksew Company and the individual worker. The 124 workers who printed their thumbprints to demand the company to cancel the three month contract, the local union, as well as the Arbitration Council are not parties to the contract thus have no rights to order or force the company party to accept the demand of the worker party. Moreover, there is no other person can determine the condition of duration, different from three months duration,

instead of each worker. Therefore, the Arbitration Council considers that the demand of the workers does not have a valid legal ground.

Issue 5:

The worker party demands the company to reinstate Mr. Chan Dara and pay back his wage because Mr. Chan Dara is a union leader. The company will not settle Mr. Chan Dara's issue as the Arbitration Council issued an Arbitral Award on this issue and the company agreed to comply with the Arbitral Award.

For this demand, the Arbitration Council has made a decision and issued an Award in Issue 1 of Award 62/06-Quicksew.

In that Award, the Arbitration Council rejected the demand of the worker party which demanded the company to reinstate Mr. Chan Dara but ordered Quicksew Company to pay the compensation for termination of Mr. Chan Dara's contract from the day that Award was enforceable.

In the hearing, the worker party insisted on the hearing of Mr. Chan Dara's issue again. The Arbitration Council considers that there are no legal provisions providing for jurisdiction in such a case. In previous cases, the Arbitration Council has always decided based on the principle of *res judicata* of the Arbitration Council that in the same issue which the Arbitration Council has already decided, the Arbitration Council cannot re-decide it. Such cases are 18/04-Raffle Le Royal Hotel and Raffle Grand d'Angkor, 08/06-Himawary Hotel, 10/06-North Gaiety and 24/06-Fortune.

In addition, the worker party has filed an objection to the Minister of Labour and Vocational Training through the Secretariat of the Arbitration Council on 28 August 2006. The worker party has the right to raise this case to be settled by the court.

Therefore, the Arbitration Council considers that it cannot consider and decide on this issue again as requested by the worker party.

Issue 6:

The worker party demands that, for one day absences without permission and three days with permission, the company maintain the regular attendance bonus. The company party did not agree to the demand.

For this issue, the employer party and the employee party agreed to follow the content of the conciliated agreement dated 08 August 2006 (case No. 62/06-Quicksew Company).

Issue 7:

For this demand, the worker party demands the company to deduct 1,000 riel from the wages of workers who are members of KYFTU because this demand is stated in the law. The employer party mentions that the company does not agree to deduct from the wages of members because there is no law which requires such deduction.

The Arbitration Council notices that the Arbitration Council already heard this demand and issued an Award in Issue 2 [] of case No. 62/06-Quicksew Company []. In that decision, the Arbitration Council decided that the employer has to deduct the wage of workers who are the union members and those workers who volunteer for such deduction to pay for the union contribution fee. However, on the issue of whether the local KYFTU at Quicksew Company had the legal right to require the company to deduct workers' wages, the Arbitration Council decided that during the interim period in which the union was applying for registration and had not received the confirmation letter of registration from the Ministry of Labour and Vocational Training, the union did not have the legal right to ask the company to make a deduction from workers' wages for the union contribution fee. The decision of the Arbitration Council did not mean that the local KYFTU at Quicksew Company has no right to request the company to deduct the contribution fee from workers' wage forever. On the contrary, when the Local KYFTU at Quicksew Company received the confirmation letter for registration from the Ministry of Labour and Vocational Training and submitted documents which showed the agreement to have their wages deducted by each worker, the company had an obligation to deduct the contribution fee for the Local KYFTU at Quicksew Company as mentioned in the Labour Law and described in the Award No. 62/06-Quicksew.

For the demand in Issue 7 of this case, the Arbitration Council finds that the Local KYFTU at Quicksew Company has applied for registration to the Ministry of Labour and Vocational Training on 22 August 2006. The company received the certificate of registration issued by the Ministry on 09 October 2006. Therefore, the Arbitration Council finds that the local KYFTU at Quicksew Company is fully entitled to request to the company to deduct contribution fee from workers' wage from the date of the certificate of registration.

For the matter of preparing documents relevant to the union's request for deduction and the agreement from each worker, the worker party claims that documents were sent to the company but the security personnel of the company refused to bring the documents to the administration of the company because the security personnel received a directive from the administration not to accept them. Documents security rejected include:

1. Letter from the union to the company to request the company to deduct the contribution fee;
2. List of names of union members who volunteer to have their wage deducted for the contribution fee (414 workers among the total members of 437 workers); and

3. Request for deduction of the contribution fee.

Though the company denied that the administration ever knew about the submission of request for deduction of the union contribution fee which the union claims to have submitted, in the hearing the company mentioned that it will agree to accept those documents for consideration.

The Arbitration Council has examined and considered that the above mentioned documents provide sufficient legal ground to allow the company to fulfill its obligation according to the union's request for deduction of the contribution fee for local KYFTU at Quicksew Company as stated in the Labour Law. Based on the above mentioned reasons, the Arbitration Council does not see further obstacles to the deduction from the wage of the contribution fee for local KYFTU at Quicksew Company.

Issue 8:

Workers demand the company to remove the gangster police force from the company because the police take ID cards or head wraps and threaten workers which cause fear among workers. The company cannot take the police away because the police are the bodyguards to the owner.

Labour contract relations between Quicksew company and the two police:

Article 65 of the Labour Law provides, "A labour contract establishes working relations between the worker and the employer....The contract can be written or verbal...." And

Article 1 of the Labour Law states, "... This law shall not apply to ... personnel of the Police, the Army, the Military Police, who are governed by a separate statute."

The Arbitration Council found that the company employs two police officers to work for the company. The police officers have two main duties: 1) to protect the personal safety of the company owner and to drive the car for the company owner and 2) to take care of order and respect for the Internal Work Rules by workers. The company also assigns a police officer to be the head of security for the company and another police officer to be the vice-head of company security and to control over 6 security guards the company employs for the company (4 male security guards and 2 female.)

Based on the content in the provision of Article 65 of the Labour Law, Quicksew company and the two police officers have an employment relationship under the scope of Labour Law. However, according Article 1 of the Labour Law, this employment relationship is not under the framework and competence of the government police force but is a private contract of two royal police officers although they can show they have a Mission Letter from their Division to perform these roles. The Arbitration Council makes such interpretation because if there is any contrary interpretation it will not only lead to the violation of Article 1

but also will also lead to the rejection of the jurisdiction of the Arbitration Council itself regarding this demand because the workers' demand is to request the company to withhold a large portion of rights from the two police officers.

Will and freedom of the parties to the contract in changing the conditions of the labour contract:

Article 1 of Decree 38 Kr.Ch. states,

“A contract is an agreement freely entered into by two or more persons to create, amend, or terminate one or more obligations related to themselves.”

Article 3.1 of Decree 38 Kr.Ch sates,

"A contract is valid provided that obligations in that contract arise out of a real and free agreement."

Article 22 of Decree 38 Kr.Ch. states,

“A contract is considered the law of the parties. The contract can be amended. A contract shall be executed with honesty and according to the will of the parties. A contract binds only the parties to the contract.”

As interpreted above, the Arbitration Council considers that Quicksew company and the two police officers are the parties to the contract. However, because the demand of the worker party can lead to a decision on whether there will be an order to the company to amend the [contractual] conditions of the two police officers, the Arbitration Council will examine if there are any legal grounds or facts for settlement of this disputed issue.

Similar to the interpretation of Issue 4 above, the content of the three articles of Decree 38 Kr.Ch. are determined as rights of the company which is a party to the contract to revoke the work of the two police officers.

In previous cases, the Arbitration Council decided that a worker who is not party to the contract does not have the rights to order or demand the employer to fire any workers; the division of work and assignment of roles to workers are the discretion of the employer (award No. 04/04-Lida, 14/03-Chou Sing, 17/03 and 18/03-Ho Hing, 06/04-Chou Sing, 15/04-Lucky Zone, 16/04-Yada Printing, 32/04-Ecent, 34/04-Full Value, 52/04-Sin Cam, 73/04-Genuine, and 87/04-Nobel).

Even in the case which a worker is found to commit serious misconduct as stated in Article 83 of the Labour Law, in previous cases the Arbitration Council determined that the Labour Law does not establish absolutely that the employer must terminate the worker but only provides the right to the employer that and gives him/her a basis for implementing the right to terminate. (Award No. 14/03-Chou Sing, 17/03 and 18/03-Ho Hing).

Matter regarding security and safety at work place

So far, the jurisprudence of the Arbitration Council states that generally the Arbitration Council does not have any authority to terminate a workers' labour contract. However, the

Arbitration Council considers that the worker party can raise cases related to the safety and security of workers at the workplace, such as this circumstance, which may cause danger to workers (see Awards 14/04, 15/04, 16/04, 32/04, 34/04, and 47/04).

In the hearing, the worker party claims that the police officer who is the vice-head of the security patrols the production line and takes ID cards from those workers who do not tie their head wraps properly. Sometimes, he even carries his gun in plain sight to intimidate workers. Sometimes, this police officer shouts with a loud voice and uses the end of [] the antenna of his talking radio [] to point at the waists of workers which is not a proper action.

The worker party continues that all of these actions create fear or can be considered as a threat which makes them scared. Most of workers in the factory cannot accept this behaviour of the police officer. Therefore, the workers reject completely the presence of the police officer in the production line of the company during working hours even if he is dressed in civilian clothes or hides his gun.

In addition, the Arbitration Council found that there was quarrel between a worker and police officer once and at that time the police officer pointed the gun at the worker; this led to a complaint to the owner and that police officer was replaced by the present police officer. In the hearing, the company explicitly declared to the Arbitration Council its firm stance and policy that it does not support and protect any improper action or attitude of the police officer which threaten or frighten workers or any other improper action against workers. In case there is such action, the company will take immediate measures to remove that police officer because, in the past, the company removed one police officer after learning that he did have a dispute with workers.

Based on the above claim, the Arbitration Council considers that though the worker party provides some considerable reasons regarding the behaviour of the police officers, so far there is no instance of an accident or security problem and there is no specific evidence about injury or damage to any worker yet, except the case where the police officer pointed the gun at the worker but has already been removed by the company. In addition, if there is any threat regarding danger or safety at work place, workers are fully entitled to sue for a solution of such action at any time.

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

DECISION

1. Reject the workers' demand that the company open the toilet door at 7:00 a.m. because they need to use it.

2. Reject the workers' demand that the company arrange a meeting room but order the company to arrange a place for posting [information] about union activities and union leaders.
3. Reject the workers' demand that the company [hold] the re-elections worker delegates.
4. Reject the demand of the workers demanding the company to cancel fixed duration contracts and demanding the company to use fixed duration contracts of more than 1 year [duration].
5. Reject the demand of the workers demanding the company to reinstate Mr. Chan Dara and pay back his wage in the past because Mr. Chan Dara is a union leader.
6. For this issue, the employer party and the worker party agree to follow the conciliated agreement dated 08 August 2006 (case No. 62/06-Quicksew).
7. Order the employer to deduct 1,000 riel for the union contribution fee from the wages of each worker who is member of KYTU within 15 days after receipt of documents requesting deduction of the contribution fee.
8. Reject the workers' demand that the company remove from the company the police force who protect the safety of the employer.

Type of Award: Binding

This Award is immediately binding upon the parties after the notification of the award.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **You Suonty**

Signature:

Arbitrator chosen by the worker party:

Name: **Ven Pov**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Tan Try**

Signature: