



**KINGDOM OF CAMBODIA**  
**NATION RELIGION KING**

**ក្រុមប្រឹក្សាអន្តរាគមន៍**

**THE ARBITRATION COUNCIL**

**Case number and name: 141/08-Bloom Time**

**Date of Award: 11 December 2008**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRATION PANEL**

Arbitrator chosen by the employer party: **Ly Tayseng**

Arbitrator chosen by the worker party: **Tuon Siphann**

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

#### **DISPUTING PARTIES**

##### **Employer party:**

Name: **Bloom Time Embroidery Pte Ltd**

Address: Tropang Thloeung, Street Veng Sreng, Khan Dangkor, Phnom Penh

Telephone: 012 827 755

Fax: N/A

Representative:

- |                    |                         |
|--------------------|-------------------------|
| 1. Mr. Ragine Tan  | Director of the company |
| 2. Mr. Sry Kimyou  | Company's lawyer        |
| 3. Mr. Joseph Ang  | Head of Administration  |
| 4. Mr. Vong Ratha  | Administration staff    |
| 5. Kheng Narin     | Administration staff    |
| 6. Mr. Darren      | Administration staff    |
| 7. Mr. Chea Savuth | Administration staff    |

##### **Worker party:**

Name: **Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC) and the local union of FTUWKC at Bloom Time Factory**

Address: Tropang Thloeung, Street Veng Sreng, Khan Dangkor, Phnom Penh

Telephone: 012 296 297

Fax: N/A

## Representative:

1. Mrs. Sary Both Charya	Workers' lawyer
2. Mrs. Heng Bong	Workers' lawyer
3. Mr. Seng Piset	President of local union and representative of workers
4. Mr. Khiev Phyum	Worker delegate
5. Mr. Phim Sophat	Representative of workers
6. Mr. Prek Chandet	Representative of workers
7. Mr. Nov Ret	Representative of workers
8. Mr. Chien Te	Representative of workers
9. Mr. Neang Sangha	Representative of Cambodian Union
10. Hem Vanny	Assistant supervisor
11. Seng Seyha	Worker
12. Sim Khim	Worker

**ISSUES IN DISPUTE**

(In the Non-Conciliation Report)

- 1- Mr. Seng Pisith and Khiev Phirum state that the workers demand that the company maintain the same working hours. The company states that it cannot maintain the same working hours because the company obtained an agreement in advance from all workers regarding this change of working hours.
- 2- The workers demand that the company keep using undetermined duration contracts. The company states that the change is voluntary and based on the request from each worker. The company does not have a compulsory principle to demand that workers to convert their employment contracts.
- 3- The workers demand that the company maintain the old practice regarding wages and perquisites of night-shift workers. The company states that for workers who work from 10:00 p.m. to 5:00 a.m., it follows the Ministry's Circular No. 185 K.B/S.R dated 14 August 2007. Mr. Seng Pisith and Khiev Phirum still claim that the company discriminates against their union. The company states that it does not discriminate against any union and there are other unions like Worker Development Union, Cambodia Union, as well as worker delegates, all of who are working together in the factory.

**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 was unsuccessful, and the non-conciliation report No. 1225 KB/AK/VK, dated 5 November 2008 was submitted to the Secretariat of the Arbitration Council on 5 November 2008.

### **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:**

- First hearing: 17 November 2008 (at 2:00 p.m.)
- Second hearing: 26 November 2008 (at 2:00 p.m.)

**Procedural issues:**

On 21 October 2008 the Department of Labour Disputes received a complaint letter from the local union of FTUWKC, dated 20 October 2008, regarding the demand for the company to improve working conditions. After receiving the claim, the Department of Labour Disputes assigned an expert officer to resolve this labour dispute and the last conciliation session was held on 28 October 2008 but did not reach a successful conciliation result on 4 issues. The 4 non-conciliation issues were referred to the Secretariat of the Arbitration Council on 5 November 2008.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party to the hearing and conciliation on the 4 non-conciliation issues on 17 November 2008 at 8:30 and on 26 November 2008 at 8:30. Both parties were present as invited by the Arbitration Council.

On the hearing day, the Arbitration Council attempted to further the conciliation on the 4 non-conciliation issues but did not receive a successful conciliation result. Therefore, in this case the Arbitration Council will consider the issues in dispute based on the evidence and arguments as follows:

### **EVIDENCE**

**Witnesses and experts:** N/A

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

**A. Provided by the employer party:**

1. Letter by the director of Bloom Time company regarding request for visa on the amendment of the company's Internal Work Rules, dated 27 October 2008.

2. Internal Work Rules of Bloom Time company, registration No. 163 KB/AK/ATK, dated 25 November 2008.
3. Notification regarding changing of employment contract, dated 18 September 2008.
4. Agreement regarding new working hours.
5. Notification regarding provision of leave for pregnant workers, dated 28 May 2008.
6. Letter by the company to permit 7 women workers to take paid leave for two weeks from 23 October to 5 November 2008.
7. Letter by the company regarding the confirmation that it would extend another two weeks paid leave for Mr. Seng Piseth and Khiev Phyrum from 23 October to 5 November 2008.
8. Letter by the company regarding permission for workers to take paid leave for 2 weeks from 9 October to 22 October 2008.
9. Letter by the company regarding permission for 45 workers to take paid leave for 2 weeks from 9 October to 22 October 2008.
10. Letter regarding agreement on new working hours and the calculation of 10 workers, dated 24 October 2008.
11. 10 sheets of paper of list of names of workers who volunteered to change or terminate their contract.
12. 9 sheets of paper of list of names of workers who agree or disagree to change to new working hours.
13. Announcement and letter to recognize 5 workers.
14. Protest letter by all representatives of unions and worker delegate to all buyers regarding objection to a complaint letter made by Mr. Seng Piseth and Mr. Khiev Phyrum.

B. Provided by the worker party:

1. Authorization letter by Seng Piset and Khiev Phyrum to authorize Lawyer Sary Both Charya and Lawyer Heng Bong to participate in the dispute resolution process at the Arbitration Council, dated 11 October 2008.
2. Summary statement of the labour dispute, dated 20 November 2008.
3. Certificate of union registration of the local union of FTUWKC at Bloom Time Embroidery company, dated 30 May 2008.
4. Statute of the local union of FTUWKC at Bloom Time Embroidery company, dated 16 March 2008.
5. Internal Work Rules of Bloom Time Company, dated 14 February 2007.
6. Notification letter by Rainbow Screen Printing Ptd regarding notification of closure of Rainbow Screen Printing Ptd, dated 19 December 2007.

7. Letter to express consent to transfer of workers in Rainbow Screen Printing company to Bloom Time company, dated 2007.
8. List of names of workers who do not agree to the change of working hours and new working shift in the company.
9. Letter to support the complaint and list of thumbprints, dated 8 November 2008.
10. Agreement regarding new working hours.
11. Notification by the company regarding permission for workers to take paid leave for 2 weeks from 9 October to 22 October 2008.
12. Letter by the company regarding the confirmation that it would extend another two weeks paid leave for Mr. Seng Piseth and Khiev Phyrum from 23 October to 5 November 2008.
13. Letter by Bloom Time company regarding Mr. Seng Piseth and Khiev Phyrum disagreed to the new working hours, dated 6 November 2008.
14. E-mails to Mr. Phyrum and Mr. Piseth.
15. Notification regarding permission for paid leave, dated 19 November 2008.
16. Letter regarding resignation from vice-president of local union of FTUWKC at Bloom Time Embroidery company, dated 2 October 2008.
17. Letter regarding resignation from secretariat of local union of FTUWKC at Bloom Time Embroidery company, dated 25 September 2008.
18. Notification regarding paid leave, dated 20 November 2008.
19. Letter by Mr. Seng Piseth and Khiev Phyrum regarding the letter by the company received on 6 November 2008, dated 6 November 2008.
20. Summary statement of the labour dispute, dated 17 November 2008.
21. Letter to support the complaint and thumbprints.
22. Document by LICADHO under the title Cambodian League for the Promotion and Defense of Human Rights, LICADHO.
23. Quarterly bulletin of Better Factories Cambodia, No. 6 October 2006.
24. Request to submit document by lawyer representing workers of Bloom Time Company, dated 28 November 2008.
25. MEMO (Revised 4), MEMO (Revised 2), TOTAL QUANTITY TO SUB-CON, MEMO, MEMO (Revised 1)
26. 44 sheets of paper of Suntex's document.
27. 1 sheet of paper of list of names of workers who had undetermined duration contract, dated 26 November 2008.
28. 10 sheets of paper of list of names of workers who had undetermined duration contract and employment seniority of more than two years, dated 26 November 2008.

29. Letter to reject the new Internal Work Rules of the company, dated 26 November 2008.
30. Request to submit document by lawyer representing workers of Bloom Time Company, dated 1 December 2008.
31. 4 sheets of paper of list of names of workers who had undetermined duration contract and employment seniority of more than two years, dated 28 November 2008.
32. 99 sheets of paper of document of Bloom Time Embroidery Pte Ltd Delivery Order.

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

1. Report of collective labour dispute resolution at Bloom Time company No. 1225 KB/AK/VK, dated 5 November 2008.
2. Minutes of collective labour dispute conciliation at Bloom Time company, dated 28 October 2008.

D. Provided by the Secretariat of the Arbitration Council:

1. Letter of invitation to invite the worker party to attend the first hearing, No. 697 KB/AK/VK/LKA, dated 7 November 2008.
2. Letter of invitation to invite the employer party to attend the first hearing, No. 696 KB/AK/VK/LKA, dated 7 November 2008.
3. Letter of invitation to invite the worker party to attend the second hearing, No. 712 KB/AK/VK/LKA, dated 20 November 2008.
4. Letter of invitation to invite the employer party to attend the second hearing, No. 711 KB/AK/VK/LKA, dated 20 November 2008.

**FACTS**

- Having reviewed the collective labour dispute conciliation report
- Having listened to the statements by the worker party and the employer party
- Having examined additional documents

**The Arbitration Council finds that:**

Bloom Time company is located in Tropang Thloeung Village, Street Veng Sreng, Sangkat Chom Chao, Khan Dangkor, Phnom Penh. It employs approximately 500 workers.

Local union of FTUWKC is the claimant in this case. According to the claim by the worker party, local union of FTUWKC has approximately 70 workers.

There are three unions in this factory: FTUWKC, Worker Development Union, and Cambodia Union. According to the employer party, Cambodian Union has the most representative status. The worker party does not object to this claim.

**Issue 1: Mr. Seng Piseth and Mr. Khiev Phyrum demand that the company maintain the same working hours**

- Mr. Seng Piseth, the president of local union of FTUWKC at Bloom Time factory and Mr. Khiev Phyrum, a worker delegate in Bloom Time factory, demand that the company maintain the same working hours for the reason that some other workers also raise their objection to the implementation of new working hours by the company.
- The company does not agree to the demand and will implement the new working hours because the company has fewer purchase orders and has less work for the workers to perform. The company does not provide evidence to prove that it has received less purchase orders. However, according to the protest letter dated 16 October 2008 by all representatives of unions, worker delegates and workers in Bloom Time Company submitted to all buyers related to Bloom Time Company, the workers request as follows: *“3. Request: Currently our company does not have sufficient work to perform; thus we request your help by ordering more clothes from our company so that we could have sufficient work to perform to support a decent daily living of our families.”*
- The worker and the employer parties claim that the old working hours include two shifts:
  - o The first shift is from 6:00 a.m. to 2:00 p.m. (7-and-a-half working hours and a 30-minute break from 10:00 a.m. to 10:30 a.m.) The company provides full wages for 8 hours.
  - o The second shift is from 2:00 p.m. to 10:00 p.m. (7-and-a-half working hours and a 30-minute break from 5:00 p.m. to 5:30 p.m.) The company provides full wages for 8 hours.
- The worker and the employer parties claim that the new working hours included two shifts:
  - o The first shift is from 6:00 a.m. to 2:45 p.m. (8 working hours and a 45 minute break from 10:00 a.m. to 10:45 a.m.) The company provides full wages for 8 hours.
  - o The second shift is from 2:45 p.m. to 11:00 p.m. (7-and-a-half working hours and a 45 minute break from 5:00 p.m. to 5:45 p.m.) The company provides full wages for 8 hours.
- The old Internal Work Rules of the company, dated 14 February 2007 provides for working hours as follows:

- The first shift is from 6:00 a.m. to 2:00 p.m. (meal break for 30 minutes from 10:00 a.m. to 10:30 a.m. or 30 minutes from 10:30 a.m. to 11:00 a.m.)
  - [The second] shift is from 2:00 p.m. to 10:00 p.m. (meal break for 30 minutes from 5:00 a.m. to 5:30 p.m. or 30 minutes from 5:30 p.m. to 6:00 p.m.) (Currently the second shift is implemented.).
- The new Internal Work Rules of the company, visaed by the Labour Inspector on 25 November 2008 provides for working hours as follows:
  - First shift starts from 6:00 a.m. to 2:45 p.m. (45 minute meal break).
  - Second shift starts from 2:45 p.m. to 11:00 p.m. (45 minute meal break).
  - Third shift start from 6:00 p.m. to 2:45 p.m. (45 minute meal break).
- According to the findings of fact and claims by the two parties in the hearing, the company started the implementation of the new working hours on 1 October 2008 before the company's new Internal Work Rules were visaed by the Labour Inspector.
- The company claims that it conducted a survey among the company's workers in September 2008 (exact date was not recollected) before it started implementing the new working hours on 1 October 2008. The workers requested that the company provide evidence regarding the survey. The documents submitted by the company show that the company obtained consent from representatives of workers regarding the change of working hours but the exact date of the agreement was not mentioned. The agreement was signed by 11 representatives of workers including two union leaders and 7 representatives of workers.
- The company claims that the reason that it implemented the new working hours was because a majority of workers, except Mr. Seng Piseth and Mr. Khiev Phyrum, agreed to it. The worker party claims that there are approximately 50-60 or more workers who do not agree to this. The Arbitration Council ordered the worker party to provide additional documentation regarding the specific number of workers who do not agree to the new working hours by 1 December 2008. However, up to 1 December 2008 the workers did not provide additional documentation regarding the specific number of workers involved in this issue.
- The company party submitted the letter to request amendment of the new working hours on 27 October 2008. The Ministry of Labour and Vocational Training received a request to amend on the Internal Work Rules on 4 November 2008 and provided a visa to permit the company to implement the new Internal Work Rules with the provision of new working hours on 25 November 2008.
- The worker party claims that the amendment to the Internal Work Rules causes the workers to lose their benefits because according to the old Internal Work Rules workers needed to work only for 7-and-a-half hours while the new Internal Work

Rules require that the workers work for 8 hours (the first shift) and the second shift [in the new Internal Work Rules] affects night shift work. The workers do not explain how this affects night shift work. The worker party claims that the amendment is in violation of Article 390 of the Labour Law because it cause the loss of workers' benefits.

- The employer party claims that Article 390 does not apply in this case but it is applicable only for the transitional period of the implementation of the Labour Law. The worker party does not object to the employer's claim.
- To the second hearing date (26 November 2008), the workers insist that they do not agree with the new working hours although the Internal Work Rules were visaed by the Ministry of Labour and Vocational Training.
- Based on the statement by the worker and the employer parties, the Arbitration Council found that all workers are working according to the new working hours, except Mr. Seng Piseth and Mr. Khiev Phyrum.
- According to the employer, the company provides full wages to Mr. Seng Piseth and Mr. Khiev Phyrum and allows them to stay outside of the factory because they do not agree to work according to the new working hours.
- Mr. Seng Piseth and Mr. Khiev Phyrum acknowledge that they receive their wage every month.

**Issue 2: The workers demand that the company should maintain undetermined duration contracts**

- The workers mention in the hearing that this demand is related to maintaining undetermined duration contracts because some workers whose fixed duration contracts exceeded two years were converted by the company to [undetermined] duration contracts and the workers signed the contract because they did not have an understanding of the law.
- The worker and the employer party agree that currently there are only [two] workers who have undetermined duration contracts, i.e., Mr. Seng Piseth and Mr. Khiev Phyrum. Other workers has signed new employment contract which are 6 month fixed duration contracts (the workers were converted from undetermined duration contracts to fixed duration contracts).
- In the hearing the company states that there are only two workers who have undetermined duration contracts, i.e., Mr. Seng Piset and Mr. Khiev Phyrum and the company does not have an intention to convert their employment contract if they do not volunteer to do so.

- Mr. Seng Piseth and Khiev Phyrum who were present in the hearing state that they have undetermined duration contracts.
- The Arbitration Council found that there was a notification regarding the conversion of employment contracts, dated 18 September 2008, in which the company mentioned converting from undetermined duration contracts to fixed duration contracts on a voluntary basis and the company would pay seniority payments for the workers.
- The workers mentioned in the hearing that approximately 50 - 100 workers who signed the new 6 months fixed duration contracts have requested to change to undetermined duration contracts because they did not understand the law and the total length of all of their employment contracts was longer than 2 years. However, based on the evidence provided by the worker party dated 28 November 2008, the Arbitration Council found that 34 workers are demanding that the company maintain undetermined duration contracts.
- The company party mentions in the hearing that it started the conversion of employment contract in September 2008 by providing a benefit of 15 days of wages to workers who agree to change the type of their employment contract and this was done on a voluntary basis. All workers agreed to change the type of their contract to receive the benefit the company provided except Mr. Seng Piseth and Mr. Khiev Phyrum. The workers do not object to the employer's statement.
- The company mentions in the hearing that up to this hearing date (second hearing on 26 November 2008), only Mr. Seng Piseth and Mr. Khiev Phyrum have undetermined duration contracts while other workers have 6 month fixed duration contract. The workers do not object to the employer's statement.

**Issue 3: The workers demand that the company maintain wages and benefits for night shift workers**

- In the hearing the workers and the employer state that in the past the company had night shift work for only two sections: printing and embroidery sections. The company claims that all night shift work have been dissolved. Currently there is no night shift work.
- The workers add that the company has dissolved night shift work (from 6 p.m. to 5:15 a.m.): on 24 November 2008 printing section was dissolved and on 26 November 2008 embroidery section was dissolved. This means that from 26 November 2008 onward, there have not been any night shift workers.
- The workers insist that the company maintain wages and other benefits for all night shift workers should the company have night shift work again.

**Issue 4: Mr. Seng Piseth and Mr. Khieve Phyrum demand that the company should not engage in union discrimination**

- Mr. Seng Piseth and Mr. Khiev Phyrum demand that the company should not discriminate against the union because the company orders the two workers to stay out of the company with pay, depriving the [union leaders] of their chance to meet their union members. The company objected to this allegation; instead, [the company argued] that the fact that the company paid [the union leaders] to stay out of the factory was because they complained and did not want to work according to the new working hours.
- The company claims that it does not engage in union discrimination. The company always welcomes Mr. Seng Piseth and Mr. Khiev Phyrum if they agree to work according to the new working hours. However, because they do not agree to work according to the new working hours, the company has no other choice but to do what it has.
- The worker party mentioned about 28 workers whom the company intended to pay full wages in order for them to stay out of the factory because they did not agree to work according to the new working hours. However, up to the hearing date, these workers no longer stay outside of the factory but have gone back to work according to the new working hours. The company states that it does not discriminate against any union. If the workers agree to follow the new working hours, the company would allow them to work normally.
- The workers mention about the union's vice-president who resigned from the position of union vice-president to be a normal worker and is currently working normally in the factory. The company does not respond to this as it considered it is an individual's decision to resign from a union.
- The workers do not clearly state a demand. The Arbitration Council considers that the demand does not have a clear subject.

**REASONS FOR DECISION****Issue 1: Mr. Seng Piseth and Mr. Khiev Phyrum demand that the company maintain the same working hours**

In this case, Mr. Seng Piseth and Mr. Khiev Phyrum and some other workers do not agree to the implementation of the new working hours in accordance with the Internal Work Rules visaed by the Ministry of Labour and Vocational Training on 25 November 2008 and insist that the company implement the old working hours. Thus, the Arbitration Council will consider whether this demand has a valid ground.

Regarding the implementation of the new working hours, the workers only demand that the company maintain the same working hours but they do not demand for backpayment of any benefits lost during the period from 1 October 2008 to 25 November 2008 before the Ministry of Labour and Vocational Training granted the visa on the Internal Work Rules. Thus, the Arbitration Council will not consider this point.

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

In the previous awards, the Arbitration Council considered that Article 2(2) of the Labour Law above and interpreted it to mean that the employer had the right to manage and direct the company as long as the right was exercised lawfully and reasonably. (See *Arbitral Awards 62/06 – Quicksew, Issue 5, 108/06 – Trinunggal Komara, Issue 1, 33/07 – Gold Fame, Issue 3 and 106/07-M&V 3, issue 3*)

In previous cases, the Arbitration Council considers that the content of Article 2(2) of the Labour Law above grants full rights to the employer to supervise and direct the production process and management of the company’s properties especially the management of its workers and their working hours. (See *Arbitral Award 106/07-Quick Sew, issue 1*).

In this case, the Arbitration Council agrees with the Arbitration Council in previous cases that Bloom Time company has the right to arrange working hours for its workers as long as the working hours are arranged lawfully and reasonably.

Article 30 of the Labour Law 1997 states *“All modifications to the internal regulation must comply with the provisions governing the enterprise or establishment.”*

Based on Article 30 of the Labour Law, the Arbitration Council considers that in order to modify an Internal Work Rules, the company needs to follow other provisions mentioned in the Chapters regarding the enterprise and establishment including the following relevant Articles.

Article 24 of the Labour Law 1997 states, *“The internal regulation must be established by the manager of enterprise after consultation with workers’ representatives, within three months following the opening of the enterprise, or within three months after the promulgation of this law if the enterprise already exists. Before coming into effect, the internal regulations shall be visaed by the Labour Inspector...”*

According to Article 24 of the Labour Law, the Arbitration Council considers that the procedures that the company needs to follow in order to modify internal work rules of the company include: (1) consultation with workers’ representatives after the employer has

prepared the Internal Work Rules, and (2) obtaining a visa from the Labour Inspector on the Internal Work Rules before implementation.

Based on findings of fact and evidence above, Bloom Time company established Internal Work Rules in accordance with Article 24 of the Labour Law above; the company engaged in consultation with workers' representatives and obtained their consent and their signatures which include, among 11 workers' representatives, 2 union leaders and 7 worker delegates. Moreover, the Labour Inspector visaed the modified Internal Work Rules on 25 November 2008 in which the new Internal Work Rules provides for the new working hours: the first shift starts from 6:00 a.m. to 2:45 p.m. (45 minutes meal break), second shift starts from 2:45 p.m. to 11:00 p.m. (45 minutes meal break).

Article 25 of the Labour Law 1997 states, *"The articles of internal regulations that suppress or limit the rights of workers; set forth in laws and regulations in effect or in conventions or collective agreements applicable to the establishment, are null and void..."*

According to the contents of Article 25 of the Labour Law above, the Arbitration Council considers that this Article provides for nullification of any clause in the Internal Work Rules if it suppress or limits the rights of workers set forth in the laws and regulations in effect or in conventions or collective agreements applicable to the enterprise. However, Article 25 does not discuss benefits provided to the workers that are better than what the law provides. Thus, the old Internal Work Rules cannot have the effect of nullifying provisions in the new Internal Work Rules.

Article 137 of the Labour Law 1997 states, *"In all establishments of any nature, whether they provide vocational training, or they are of a charitable nature or liberal profession, the number of hours worked by workers of either sex cannot exceed eight hours per day, or 48 hours per week."*

According to Article 137 of the Labour Law above, the Arbitration Council considers that determination of working hours for workers should not exceed 8 hours per day or 8 hours per week. In this case, the determination of working hours by the company for the workers in Bloom Time company does not exceed 8 hours per day and the method on how to divide this working hours is at the discretion of the employer under the Labour Law. Therefore, the setting of working hours by the company --where the first shift starts from 6:00 a.m. to 2:45 p.m. (45 minute meal break) and second shift starts from 2:45 p.m. to 11:00 p.m. (45 minute meal break)-- is legally valid. (See Arbitral Award 57/04-Evergreen, issue 2).

Furthermore, according to Article 390 of the Labour Law 1997, *"The provisions of this law are lawfully applicable to current individual labour contracts. However, workers are entitled to continue enjoying benefits granted them by their present contract when these benefits are more favourable than those they would have under this law."*

The Arbitration Council in previous cases interpreted the contents of Article 390 of the Labour Law and noted that this Article is mentioned in the Chapter regarding Transitional Provisions that determined the transition from the Labour Law 1992 to the Labour Law 1997. Article 390 is provided with the intent to maintain benefits for workers whose contracts were under the Labour Law 1992 that were still in effect for 1997. (*See Arbitral Award 114/07-Union Paper, issue 3*).

In this case, the Arbitration Council agrees with the Arbitration Council in previous cases. Thus, Article 390 of the Labour Law above is not applicable in this case although the worker raised that the request for implementation of the old Internal Work Rules, dated 14 February 2007, because they consider that the content of the old Internal Work Rules provide better benefits than what is provided in the Labour Law 1997.

In conclusion, the Arbitration Council decides to reject the demand of Mr. Seng Piseth and Mr. Khiev Phyrum for the company to implement the old working hours.

## **Issue 2: The workers demand that the company should maintain undetermined duration contracts**

The Arbitration Council considers that there is no dispute regarding maintaining the undetermined duration contracts of Mr. Seng Piseth and Mr. Khiev Phyrum because the company does not have an intention to convert their employment contract if they do not volunteer to do so. In the hearing Mr. Seng Piseth and Mr. Khiev Phyrum state that there are some workers who support this demand. The Arbitration Council ordered the union to provide list of names of workers who make the demand to the Arbitration Council by 1 December 2008. By this deadline, the Arbitration Council finds that there are 34 workers who claim that they demand the company to maintain undetermined duration contracts. Thus, the Arbitration Council will consider the demand of the 34 workers as follows:

In the hearing the parties acknowledge that the workers used to have undetermined duration contracts for a period longer than two years. But later the workers agreed to sign new 6 month fixed duration contracts in order to receive a benefit of 15 days of wages from the employer.

Article 65 of the Labour Law states, *“A labour contract establishes working relations between the worker and the employer. It is subject to ordinary law and can be made in a form that is agreed upon by the contracting parties.”*

According to Article 65 of the Labour Law, the Arbitration Council considers that employment contract should be subject to the ordinary law that is related to employment contracts.

Article 1 of Decree 38 states, *“A contract is an agreement between two or more persons to create, change or terminate one or more obligations which bind them.”*

Article 22 of Decree 38 regarding contract and other liabilities states *“A contract is a law between the parties. Amendments or nullification to the contract can only be made with the consent of both contracting party. Contract shall be executed with honesty and according to the will of the parties.”*

Based on the contents of Article 1 and 22 of Decree 38 above, the Arbitration Council considers that an agreement can be made only with consent to the agreement between the worker and the employer parties. The agreement is legally and freely entered into in accordance with the real will of the parties without coercion.

In this case, the employer cannot force the workers to accept the form of an agreement that is not acceptable to the worker party. After listening to the statement by the two parties, the Arbitration Council could not find an evidence to prove that the workers signed the fixed duration contract because they were forced by the employer to do so. For instance, Mr. Seng Piseth and Mr. Khiev Phyrum continue to have undetermined duration contracts and the employer states that they have the right to choose not to sign the fixed duration contract if they do not agree to; up to now the employer has never forced them to sign the new fixed duration contract.

Therefore, the Arbitration Council considers that the fixed duration contracts the 34 workers signed are effective between the workers and the employer. Therefore, the workers cannot force the employer to re-sign undetermined duration contracts.

The Arbitration Council will continue to consider whether the fact that the 34 workers have been working for more than two years could be an obstacles for them to sign fixed duration contracts with the employer.

Article 67(2) of the Labour Law states, *“The labour contract signed with one consent for a specific duration cannot be for a period longer than two years...”*

In previous cases, the Arbitration Council ordered the employer to change from fixed duration contract to undetermined duration contract because the employer had renewed the fixed duration contract for a period longer than two years which is contradictory to the contents of Article 67 of the Labour Law. (See Arbitral Awards 10/03-Jaqsintex, issue 1; 36/06-Mondotex, issue 2).

According to previous cases, the Arbitration Council has determined that the employer and the workers can enter into a fixed duration contract even after the workers have been employed under undetermined duration contracts if there is genuine consent freely given by the workers. (See Arbitral Awards 69/04-Common Way, issue 1 and 03/06-Flying Dragon, issue 1).

In this case, the 34 workers have been working for the employer for a period longer than 2 years which means that they had undetermined duration contracts. However, they consequently agreed to change their employment contracts to fixed duration contracts. The

Arbitration Council considers that employment contract can be changed from undetermined duration contracts to fixed duration contracts if the two parties genuinely agreed to change to the new contract. Moreover, the workers agreed to accept the benefits provided by the employer if they volunteer to change to the new type of contract.

Therefore, the Arbitration Council considers that the workers' demand does not have a legal basis. In conclusion, the Arbitration Council decides to reject the demand of the 34 workers.

### **Issue 3: The workers demand that the company maintain wages and benefits for night shift workers**

In the hearing the employer claims that from 26 November 2008 onward, there are no night shift workers anymore. The worker party acknowledges the employer's claim but demand that should there be night shift work again, the company should maintain wages and benefits for all workers.

In this case, night shift work does not exist anymore. Thus, the Arbitration Council considers that the Arbitration Council cannot go on to consider about wages and benefits for night shift workers because it is a demand for the future.

In relation to the demand for the future, in previous cases the Arbitration Council determined that *"The Arbitration Council was created to in order to resolve existing labour dispute and not in order to resolve disputes which have not yet occurred."* (See *Arbitral Award 10/03-Jacqsintex, Issue 2; 14/06, issue 2; 42/07-South Bay, issue 3; 58/08-8 Stars Sportswear, issue 1; 122/07-Genuine, issue 4; 27/08-Archid, issue 6; 49/08-Flying Dragon, issue 8; 53/08-Yung Wah 1, issue 4 and 136/08-Supertex, issue 2*).

In this case, the Arbitration Council also agrees with previous decision of the Arbitration Council because we cannot predict what will happen in the future: Whether the company will have night shift work again in the future? When exactly will it have this? In which group, section will the complainants work in? And how many workers? (See *Arbitral Awards 36/06-Mondotex, issue 5; 58/07-8 Stars Sportswear, issue 1; 27/08-Archid, issue 6; 49/08-Flying Dragon, issue 8 and 136/08-Supertex, issue 2*).

Therefore, the Arbitration Council decides to decline to consider the demand for the company to maintain wages and benefits for all night shift workers should the company have night shift work again.

### **Issue 4: Mr. Seng Piseth and Mr. Khieve Phyrum demand that the company should not engage in union discrimination**

The Arbitration Council considers that this demand does not have a clear subject. In this case, Mr. Seng Piseth and Mr. Khiev Phyrum demand that the company should not

engage in discrimination against the union as the employer has asked them to stay outside of the factory by providing full wage because they had complained not to work in accordance with the new working hours. The employer party, on the other hand, claims that it does not discriminate against union but the company did this because they did not agree to come to work.

In previous Arbitral Awards, the Arbitration Council has consistently interpreted that “Generally the Arbitration Council determines that the party who makes an accusation has the burden of proof to support the claim to the Arbitration Council.” (See Arbitral Awards 90/06-Evergreen, issue 1; 112/06-River Rich, issue 1; 01/07-Supreme; 123/07-DA, issue 5; 148/07-Pay Her, issue 1).

In relation to the evidence for union discrimination, generally the Arbitration Council considers the clarification in the hearing and considers the evidence related to the case to determine whether there is discrimination against a union. (See Arbitral Awards 17/07-Charm Textile, issue 1 and 148/07-Pay Her, issue 1).

The Arbitration Council in this case agrees with the interpretation of the Arbitration Council in previous cases. Based on the statement by the two parties, the Arbitration Council could not find that the company engages in union discrimination because the evidence provided by the worker party to the Arbitration Council only proves the resignation from union vice-president position for the reason that the vice-president's sister was not happy that her sibling became a union member. The Arbitration Council can not find that this [represents sufficient evidence to meet the burden] in an accusation that the company commits union discrimination.

Generally, the Arbitration Council rejects the workers' demand if there is not sufficient evidence. (See Arbitral Awards 63/04-Shine Well, issue 4; 99/06-South Bay, issue 5; 74/07-Global Apparel, issue 2; 94/07-Fortune Garment, issue 6 and 8; 101/08-GDM, issue 1 and 2 and 108/08-Hugo, issue 4). Thus, the Arbitration Council considers that the Arbitration Council does not have sufficient ground to consider the workers' claim.

In conclusion, the Arbitration Council rejects Mr. Seng Piseth's and Mr. Khiev Phyrum's demand that the company should not discriminate against the union.

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

#### **DECISION AND ORDER**

1. Reject the demand of Mr. Seng Piseth and Mr. Kheav Phyrum for the company to implement the old working hours.
2. Reject the demand that the company maintain their undetermined duration contracts.

- 3. Decline to consider the demand that the company maintain wages and benefits for all night shift workers should the company have night shift work again.
- 4. Reject the demand of Mr. Seng Piseth and Mr. Kheav Phyrum that that the company should not discriminate against the union.

**Type of Award: Non binding award**

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

**SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:**

Arbitrator chosen by the employer party:

Name: **Ly Tayseng**

Signature: .....

Arbitrator chosen by the worker party:

Name: **Tuon Siphann**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: .....