



KINGDOM OF CAMBODIA
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THE ARBITRATION COUNCIL

Case number and name: 17/07- Charm Textile

Date of Award: 9 March 2007

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Chhiv Phyrum**

Arbitrator chosen by the worker party: **Vong Vanna**

Chair Arbitrator (chosen by the two Arbitrators): **Pen Bunchhea**

DISPUTING PARTIES

Employer party:

Name: **Charm Textile Garment**

Address: Bonla Saeth Village, Sangkat Khmuonh, Khann Russey Keo, Phnom Penh

Telephone: 012 988 549

Representative:

- | | |
|-----------------|---|
| - Mr. Ith Sarom | Head of Production Management |
| - Mr. Hel Sen | Head of administration of ACE company (letter of authorization) which is located near Charm Textile Company |

Worker party:

Name: **UFID**

Address: Bonla Saeth Village, Sangkat Khmuonh, Khann Russey Keo, Phnom Penh

Telephone: 012 945 116 or 016 545 972

Representative:

- | | |
|---------------------|----------------------------------|
| - Mr. Phuong Montri | Head of UFID |
| - Mr. Bou Rorn | Head of local UID at the company |

ISSUES IN DISPUTE

(In the non-conciliation report)

1. The workers insist that the company reinstate Mr. Bou Rorn, Mr. Sok Savy, and Mrs. Norng Sarom because they are union leaders at the factory and the misconduct they committed was not serious misconduct. The company argues that they cannot reinstate the three workers because Mr. Bou Rorn and Mr. Soksavy used working hours to do the union's work and Mrs. Norng Sarom did not obey the company's work management.
2. The workers demand the company provide annual leave to workers properly and back pay for workers from the day they started working because the company did not allow them to take leave or compensate them with cash. The company agrees to compensate for annual leave for workers from the date of signature (23 January 2007).
3. The company allows the workers' delegates to make complaints and requests through the company's postal box only. The worker party claims that the company discriminates against the union in the factory because it does not provide the right and freedom of discussion to settle problems for workers.
4. The workers demand the company to allow pregnant women to have one day leave per month for medical check and to retain their daily wage and attendance bonus. The company party mentions that it agrees to allow pregnant women to take leave for medical checks but will not provide [the daily] wage and attendance bonus.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labour Law (1997); the Prakas on the Arbitration Council No. 099 dated 21 April 2004; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of Arbitrators No. 099 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 was unsuccessful, and the non-conciliation report No. 129 K.K.B.V/AK/VK, dated 12 February 2007 was submitted to the Secretariat of the Arbitration Council on 14 February 2007.

HEARING AND SUMMARY OF PROCEDURE

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

Date of hearing: 22 February 2007 (From 8:00 to 12:00 p.m.)

Procedural issues:

After receiving a complaint on 22 January 2007, by the Union Federation of Independence and Democracy, about the workers' strike to demand the company to improve working conditions on 14 issues, the Department of Labour Disputes assigned officers to handle and conciliate this dispute. The last conciliation was on 23 January 2007 with the result that 10 of 14 issues were successfully conciliated. The four non-conciliation reports were referred to the Arbitration Council on 14 February 2007.

Upon receipt of the case, all parties to the dispute were summoned by the Arbitration Council to attend a hearing on 22 February 2007 at 8:00 a.m.

Both parties were present at the arbitral hearing. The Arbitration Council provided an opportunity to both parties to further the conciliation and tried to coordinate and provide various options for the conciliation but did not have any [success at conciliating the issues]. Therefore, the Arbitration Council will consider these non-conciliated issues based on the evidence and finding of facts as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

- Letter by the company regarding a request for the representative of the enterprise and establishment to attend the hearing on 22 February 2007
- Letter by the company to authorize Mr. Hel Sen, head of the administration office and Mr. Ith Sarom, head of Production Management, to resolve the labour dispute with the Arbitration Council, dated 21 February 2007

Provided by the worker party:

- Letter by the union federation regarding a request for the representative of the union federation and union to attend the hearing, dated 22 February 2007.
- Notification letter to the Director of the company regarding the establishment of the Union of Independence and Democracy, dated 16 January 2007
- Slip of union registration, dated 16 January 2007
- List of names of members of the first term directing committee, dated 14 January 2007

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

- Report No. 129 KKBV/AK/VK, regarding collective labour dispute resolution at Charm Textile company, dated 12 February 2007

- Minutes of the collective labour dispute conciliation of Charm Textile Company, dated 23 January 2007

Provided by the Secretariat of the Arbitration Council:

- Invitation letter No. 069 K.K.B.V/AK/VK/LKA dated 19 February 2007 to invite the employer party to attend the hearing.
- Invitation letter No. 068 K.K.B.V/AK/VK/LKA dated 19 February 2007 to invite the worker party to attend the hearing.

FACTS

Charm Textile Garment company is located in Sangkat Khmuonh, Khann Russey Keo, Phnom Penh and employs approximately 800 workers.

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

The Arbitration Council finds that:

Issue 1:

- According to the non-conciliation report, the worker party demands the company to accept Mr. Bou Rorn, Mr. So Savy and Mrs. Norng Sarom to come back to work as normal because the company discriminated against the union by dismissing the leaders of a union at the factory.

- In the hearing, both parties agreed regarding Mr. So Savy, Mrs. Norng Sarom and Mr. Bou Rorn as follows:

+ For the case of Mr. Sok Savy: The employer party argued in the hearing that Mr. Sok Savy is currently working in the company, which means that the company has not terminated him. The worker party agrees with the company. Thus, the company agrees to take Mr. So Savy out of this issue.

+ For the case of Mrs. Norng Sarom: The workers mentioned in the hearing that Mrs. Norng Sarom has given up her job, as it has been almost one month since the company asked her to come back to work but she has not returned and she has not provided any information to the union. Thus the worker party agrees to take Mrs. Norng Sarom out of this dispute.

+ For the case of Mr. Bou Rorn: The workers demand the company to reinstate Mr. Bou Rorn. **Thus in this issue, the only demand concerns Mr. Bou Rorn's case.**

- Mr. Bou Rorn started working for the company on 11 August 2004 in a role as a packer (It has been almost 4 years since Mr. Bou Rorn started working).

- On 13 January 2007, the workers conducted a strike to demand the company to improve working conditions on 14 points.

- On 14 January 2007, workers held an election to choose leaders of UFID and Mr. Bou Rorn was elected President of the union; Mr. Sok Savy, Vice-president; and Mrs. Norng Sarom, Secretary.

- On 16 January 2007, Mr. Phuong Montri, head of UFID sent a notification letter regarding the election of union leaders to the company through Mr. Sok Leng and Mr. Tiev Srunpieng because he knew that the two men are employed as assistants to the administration. The company, on the other hand, denies that it has received the notification letter regarding the election of union leaders, as Mr. Sok Leng has quit working for the company and the company does not know if the two men received the notification letter.

- Also, on 16 January 2007, the union received the registration slip from the Ministry of Labour and Vocational Training.

- Mr. Bou Rorn was dismissed on 20 January 2007.

- Mr. Bou Rorn raises in the hearing that since he commenced work, he has never been advised or warned by the company. The employer party mentioned that it has issued a letter to warn Mr. Bou Rorn once but since Mr. Ith Sarom started working as Head of Production Management, Mr. Bou Rorn has not been warned again. The Arbitration Council asked the employer party to provide the warning letter by 27 February 2007 but the employer party did not provide the document to the Arbitration Council by this deadline.

- The company party claims that the reason that it terminated Mr. Bou Roen is because he used working hours to work for the union, that he was collecting workers' photos, size 3 x 4, in front of the toilet during working hours. Thus, this evidence shows that the employer is aware of the existence of the union. After the company checked Mr. Bou Rorn's body, it found many photos in his pockets. The employer party considers that Mr. Bou Rorn spent a long time during working hours to do the union work but Mr. Bou Rorn claims that he spends only about 3 or 4 minutes to go to toilet. At his workplace, there are always security guards who record the entry and exit of workers, so if he spent a long time in the toilet, the security would have informed the company. In addition, he did not have an intention to collect photos from workers during working hours but workers took the opportunity when he was walking to the toilet and when he was in the toilet to hand their photos to him. There were only about five or six photos that he collected at that time, the rest of the photos he collected the previous night and were still in his pockets.

Issue 2:

- The workers demand the company to arrange for annual leave properly and to pay back the workers from the day they started working when the company did not arrange the annual leave or pay compensation.

- The company stated that it will start the practice of providing annual leave to workers properly from 23 January 2007 onward.

- The company acknowledged that for about four years, since the company started operation, it has never arranged to provide annual leave for the workers.

- The workers demand the company to review and pay back their annual leave but the company mentions that it cannot review its past documents (hundreds of workers) because many managers have been replaced and they have never made a table or list of workers' annual leave.

- The Arbitration Council requests the company to provide the payroll list for the past three years but the company says that it cannot promise that it can provide the document.

- The company held its own stance that from 23 January 2007 onward it will arrange to provide proper annual leave for workers.

Issue 3:

- The workers demand the company to give the right and freedom of discussion to solve problems by allowing workers' delegates, unions and workers to submit demand letters to the company's administration directly so that it will be easier to cooperate, conciliate, negotiate, and resolve disputes on time. But the company does not agree to the demand. The company stated that it allows worker delegates, unions, and workers to make requests or demands through the company's postal box. The company promises, in the hearing, that once every seven days it will check the workers' request letters. After that, the company will call the Head of group in each section to tell them that the company has received the requests from workers and one day after that the company will take action to settle the issue according to actual cases.

- The workers mentioned in the hearing that putting request letters through the company's postal box does not have anyone [confirm that they received the letters, which gives the company a way to deny] that it received the demand letters. In addition, [the process of] submitting letters through the company's postal box takes a long time, and before the company finds a solution, unpredicted things may happen.

Issue 4:

- The workers demand the company to give one day permission per month to pregnant women to have their pregnancy checked and still retain their daily wages and the US\$ 5 attendance bonus

- In the hearing, the workers raise that pregnant workers need regular health care from doctors to ensure the mother's health as well as the baby's.

- The workers' reasons are as follows: 1: Many other companies allow pregnant women to go to have pregnancy checks once per month and do not deduct daily wages and the US\$ 5 regular attendance bonus. 2: The Labour Law allows the employer to provide workers benefits better than that provided by the law.

- The company raises in the hearing that it will allow workers to go to have pregnancy checks but will not retain daily wages and the US\$ 5 regular attendance bonus.

REASONS FOR DECISION

Issue 1:

The workers demand the company to reinstate Mr. Bou Rorn because the company discriminated against the union as Mr. Bou Rorn is a union leader at the company. The company claims that the reason it terminated Mr. Bou Rorn was not because of union discrimination but because Mr. Bou Rorn used working hours to do the union's work. Therefore, the Arbitration Council will consider if the termination of Mr. Bou Rorn is [in fact] union discrimination.

Was the termination of Mr. Bou Rorn done according to the Labour Law?

Article 65, paragraph 3, of the Labour Law states, "The verbal contract is considered to be a tacit agreement between the employer and the worker"

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

In the hearing, Mr. Bou Rorn claims that he was recruited to work for the company through a verbal agreement, meaning that he worked pursuant to an employment contract which was not in writing and did not mention a specific duration. The employer party did not object to his claim.

Article 65, paragraph 3 of the Labour Law states, "*The verbal contract is considered to be a tacit agreement between the employer and the worker under the conditions laid down by the labour regulations, even if it is not expressly defined.*" Thus, the Arbitration Council considers that Mr. Bou Rorn's employment contract is a contract of undetermined duration contract.

Did the employer terminate Mr. Bou Rorn for good reason?

Article 74 of the Labour Law states, "*The labour contract of unspecified duration can be terminated at will by one of the contracting parties. This termination shall be subject to the prior notice made in writing by the party who intends to terminate the contract to the other party.*"

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

Based on Article 74 mentioned above, the Labour Law does allow the employer to terminate its workers but the termination can only be done when there is a proper reason (see case 64/05 - Chian Hwey).

In this case, the Arbitration Council considers that the duration of three or four minutes is enough for him to go to the toilet, as he claimed. Collecting of hundreds of photos cannot be done within such a short time. In addition, the employer does not deny the presence of the security guards who guard and record workers' entry and exit in that section. Thus, if he was collecting hundreds of photos, it would have taken a longer time and there would have been a report from the security guards regarding this case.

In addition, based on Mr. Bou Rorn's working background, he has never received a warning letter within the duration of the four years of his employment.

Therefore, the Arbitration Council determines that the company terminated Mr. Bou Rorn on 20 January 2007 without providing enough evidence of a valid reason [for his termination]. According to Article 74 and 75, a valid reason for termination must regard a worker's aptitude or behavior for example, reasons regarding his aptitude or behaviour of Mr. Bou Rorn or relating to the requirements of the operation of the enterprise, establishment or company, in order to be in accordance with Article 74 and 75 of the Labour Law.

Was the termination of Mr. Bou Rorn [in fact] discrimination against a union member?

Article 266 of the Labour Law states, “Workers and employers have, without distinction whatsoever and prior authorization, the right to form professional organizations of their own choice...”

Article 12 of the Labour Law states, *“Except for the provisions fully expressed under this law, any other legislative text or regulation protecting women and children, as well as any provision relating to the entry and stay of foreigners, no employer shall use race, color, sex, creed, religion, political opinion, birth, social origin, membership of workers' union or the exercise of union activities in making decisions on: hiring, defining and assigning work, vocational training, advancement, promotion, remuneration, granting of social benefits, discipline or termination of an employment contract.”*

Article 279 of the Labour Law states, “Employers are forbidden to take into consideration union affiliation or participation in union activities when making decisions concerning recruitment, management and assignment of work, promotion, remuneration and granting of benefits, disciplinary measures and dismissal.”

Based on Article 266 of the Labour Law, workers have the right to form unions. In addition, based on Article 12 and Article 279 of the Labour Law, the termination of employment contracts or the dismissal of workers based solely upon membership in a union, constitutes union discrimination (see arbitral award 68/06-Hong Mei, issue 1).

The Arbitration Council finds that Mr. Bou Rorn had been working for the company for four years and he has never been summoned by the company to be advised or received a warning letter. However, after Mr. Bou Rorn joined as a candidate in the union election held on 14 January 2007 to elect union leaders of UFID at the company, Mr. Bou Rorn was terminated on 20 January 2007 because he used working hours to do union work.

Moreover, the Arbitration Council finds that the Charm Textile Company has not [fully respected the] rights of the union to cooperate in solving collective labour disputes. For example, the company allows worker delegates and unions to make requests or demands through the company's postal box but does not allow the union to cooperate in negotiation directly with the company's administration or with the company's management.

Furthermore, the Arbitration Council finds that both in the stage of conciliation and the stage of resolution through arbitration, the company has not cooperated closely and effectively in negotiating to settle the dispute successfully.

Because union discrimination is illegal, (Article 12 and 279 of the Labour Law) based on clause 34 of Prakas 099/04 regarding the Arbitration Council, the Arbitration Council has the authority to order Charm Textile Company to stop at once the discrimination against leaders, members and legal activities of the union.

In conclusion, the Arbitration Council orders the company to reinstate Mr. Bou Rorn (see arbitral award 10/03-Jaqsintex, issue 4 and 41/04-Micasa, issue 1)

Does Mr. Bou Rorn receive special protection against termination?

Article 293 of the Labour Law states, "The dismissal of a worker delegate or a candidate for worker delegate can take place only after authorization from the Labour Inspector."

Paragraph 3 of clause 3 of Prakas 305/[01] states, "*All workers and employees who are candidates for selection of union leaders shall also receive the protection from work dismissal like personnel delegates. This protection lasts 45 days prior to the election and ends 45 days after the election if these candidates are not selected. The union shall inform the employers about this candidature through every means deemed official.*"

As in the content of clause 3 of Prakas 305 mentioned above, all candidates for union leader election are protected from dismissal within 45 days before the election and they cannot be dismissed within 45 days after the election, if the candidates were not elected. In this case, UFID held an election for leaders of UFID at the company on 14 January 2007. As a result, Mr.

Bou Rorn was elected head of the union; Mr. Sok Savy, Vice-president; and Mrs. Norng Sarom, Secretary. After that, on 16 January 2007, Mr. Phuong Montri, head of UFID sent a notification letter regarding the election of union leaders to the company through Mr. Sok Leng and Mr. Tiev Srunpieng because he knew that the two men are assistants in the administration department. The company, on the other hand, denied that it had received the notification letter but it [could not prove whether or not] Mr. Sok Leng received the notification letter. Therefore, the Arbitration Council considers that UFID sent the notification letter to the company.

In previous cases, the Arbitration Council decided that clause 3 of Prakas 305, mentioned above, means that workers can receive special protection if: (1) a worker is the type of worker who receives special protection, (2) the dismissal took place within the period of special protection, and (3) the worker has notified the employer of the name of the protected person through any acceptable means of communication (see award 07/06-Dai Young, Reason for Decision, issue 1; and 09/06-Grand Diamond City).

In this case, the union has fulfilled the first condition as Mr. Bou Rorn was a candidate for the union election. Condition 2 is also fulfilled as the employer terminated him during the time when he was under special protection as he was a candidate on 14 January 2007 and the termination was on 20 January 2007. The third condition is also fulfilled because the union informed the company about the election and that Mr. Bou Rorn was an elected candidate for the head of the union. Therefore, the Arbitration Council considers that Mr. Bou Rorn should receive special protection from termination. This means that the employer is required by law to have permission from the Labour Inspector to terminate Mr. Bou Rorn.

In previous cases, the Arbitration Council found that without permission from the Labour Inspector, the termination of protected workers is considered null and void and the workers are entitled to be reinstated. See award 02/04 Cambodiana Hotel, issue 1; 17/04 -Cheer View, issue 1; and 19/04 -Kbal Koh II, issue 1.

In this case, the employer failed to follow the legal procedure with respect to seeking permission from the Labour Inspector to terminate Mr. Bou Rorn. Therefore, the Arbitration Council finds that the company's termination of Mr. Bou Rorn is not in accordance with the law and Mr. Bou Rorn is entitled to be reinstated.

Issue 2:

The workers demand the company to pay back annual leave in accordance with the Labour Law because so far, for four years since the company started operation, it has never provided annual leave for workers. The company admits that it did not provide annual leave to workers in the past, but from 23 January 2007 onward, the company [states that it] will provide annual leave to workers properly according to the Labour Law.

Thus, the Arbitration Council will consider if the failure to provide annual leave to workers releases the employer from its legal obligations. How should the workers' annual leave be arranged in order to be in accordance with the Labour Law from 2007 onward?

Article 166 of the Labour Law states, "Unless there are more favourable provisions in collective agreements or individual labour contracts, all workers are entitled to paid annual leave to be given by the employer at the rate of one and a half work days of paid leave per month of continuous service..." Paragraph 4 of Article 166 states, "The length of paid leave as stated above is increased according to the seniority of workers at the rate of one day per three years of service..." The content of this Article means that workers are entitled to 18 days of annual leave per year provided by the employer and for those workers who have been working for the company for three years, the employer has to provide one more additional day to the workers, totaling 19 days. The Arbitration Council interprets Article 166 of the Labour Law to require the employer to arrange annual leave for its workers. In this case, the company has not provided annual leave for workers for the past four years. The Arbitration Council finds that the failure to provide annual leave to workers violates the Labour Law. Thus, the Arbitration Council determines that this failure to provide annual leave for workers does not entitle the employer to avoid its obligation under the Labour Law because this is a right each worker is entitled to receive.

Article 170 of the Labour Law states, *"In principle, annual leave is normally given for the Khmer New Year unless there is a different agreement between the employer and the worker. In this case, the employer must inform the Labour Inspector of this arrangement. In every case of the paid annual leave exceeding fifteen days, employers have the right to grant the remaining days off at another time of the year, except for the leave for children and apprentices less than eighteen years of age."*

The Arbitration Council agrees with the interpretation of Article 170 of the Labour Law in case No. 21/05- Sinomax, issue 1, which states,

"According to the purpose of this article, the Arbitration Council finds that workers are allowed to use their annual leave on the occasion of Khmer New Year. However, Article 170 does not prohibit workers from using their annual leave on other occasions; that is, workers may use their annual leave anytime depending on agreements made between workers and the employer and the employer is obligated to give notice about such an agreement to the Labour Inspector. Accordingly, the employer does not have an absolute right to determine the time for workers to take their annual leave, but the employer does have some ability to determine when workers can take their annual leave. The employer (1) has the right to limit an employee's leave to 15 days at a time, granting the remaining days at another time (see Art 170 (2) of the Labour Law)..."

As for workers, they do not possess an absolute right to take annual leave at any time. Taking annual leave at times other than on the occasion of Khmer New Year must be agreed to between workers and the employer. This means that both parties have equal rights to bargain about the time for taking annual leave.”

In this case, the Arbitration Council considers the provision of annual leave to workers both for the year 2007 onward and for the past years, entitles the workers [to be able to] negotiate with the employer over the use of annual leave. The Arbitration Council also finds that the employer has to negotiate with the workers about the proper time for workers to take annual leave.

Therefore, in conclusion, the Arbitration Council finds that the employer must arrange the annual leave by negotiating with the workers in order to reach an agreement on the time of the annual leave, and that this should be used properly according to the agreement between the two parties.

Issue 3:

The workers demand the company to give the right and freedom of discussion [to the workers] and to resolve problems by allowing worker delegates, unions, and workers to submit request letters to the company’s administration in order to ease [the process of] cooperating, conciliating, negotiating and resolving problems in a timely way according to the workers’ request. The company allows workers’ delegates and unions to make requests through the company’s postal box but does not allow the union to cooperate in negotiation directly with the company’s administration or management.

Article 2 of the Labour Law states, “All natural persons or legal entities, public or private, are considered to be employers who constitute an enterprise, in the sense of this law, ... such as in factory, workshop... etc.”

Article 138 of the Labour Law states, “The work schedule is set by each enterprise for different jobs based on the nature of their activities and organization of work.”

In previous cases, the Arbitration Council interpreted Article 2 to mean that the employer has the right to arrange and manage the company if the arrangement and management are reasonable and in accordance with the law. (See award 28/04-Raffle Grand D’Angkor Hotel, issue 1; 18/08-GHG; 20/06-New Star, issue 5; 108/06-Trinunggal Komara, issue 1).

In this case, the Arbitration Council finds that the management and arrangement to meet, discuss, negotiate and resolve disputes directly with the company’s administration or management is an exclusive right of the employer if that arrangement is reasonable and is within the scope of the Labour Law. However, this issue of the dispute is related to a union and the Law forbids union discrimination.

Article 266(1) of the Labour Law states, “Workers and employers have, without distinction whatsoever... the right to form professional organizations... of the persons covered by the organization's statutes.”

Article 279 of the Labour Law states, “Employers are forbidden to take into consideration union affiliation or participation in union activities when making decisions concerning... dismissal.”

Based on Article 266 of the Labour Law, the law states that unions can promote benefits and protect both individual and private rights of the union members. This means that unions have the right to represent their members.

The Arbitration Council determines that the intention of Article 12 and Article 279 is to prevent discrimination and to protect social benefits by requiring the company and worker delegates, unions, and workers to effectively cooperate to resolve disputes on time and to avoid unpredicted problems from happening.

The Arbitration Council finds that the policy that forbids the union from making direct requests to the company’s administration is not reasonable.

In conclusion, the Arbitration Council decides to order the employer to receive workers’ request letters through the company administration directly.

Issue 4:

The workers demand the company give permission to pregnant women to get monthly pregnancy checks and retain daily wages and the regular attendance bonus of US\$ 5. [Currently] the company will give permission to pregnant women to get pregnancy checks, but it will deduct the daily wage and the regular attendance bonus of US\$ 5.

The Arbitration Council finds that, besides weekly leave, annual leave, special leave, and sick leave, the Labour Law as well as other legal provisions do not state [whether or not] the employer has an obligation to provide additional leave to pregnant women to have pregnancy checks. Thus, the Arbitration Council considers the workers’ demand to be beyond what is provided by the Law, which means that it is an interests dispute. (See arbitral award 08/07-Siu Quinh, issue 5)

In an interests dispute, the Arbitration Council always considers whether the union who brings the case to the Arbitration Council has most representative status because only unions with most representative status have the legal ability to negotiate with a company to make a CBA and a legal right to bring a dispute to the Arbitration Council for resolution. (See award 57/06-Evergreen, 81/04-Evergreen and 98/04-Great Union).

In order to receive most representative status, Article 277 of the Labour Law 1997 states that the union has to be registered and fulfill the other requirements stated in this Article.

In this case, the Arbitration Council finds that UFID is within the interval period of registration at the Ministry of Labour and Vocational Training, based on a registration slip dated 16 January 2007. Therefore, the Arbitration Council finds that this union does not have the requisite legal qualification to represent the workers in order to resolve a dispute regarding the collective interests of all the workers in the company.

Thus the Arbitration Council declines to consider this demand by the workers that the company should allow pregnant women to check their pregnancy once per month and retain daily wages and the regular attendance bonus of US\$ 5.

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

DECISION AND ORDER

Issue 1:

- Order the company to reinstate Mr. Bou Rorn, at his former pay rate and level of benefits, upon the day this award enters into effect.

Issue 2:

- Order the company to arrange the workers' annual leave through negotiation [with the workers] within one month from the day this award enters into effect.

Issue 3:

- Order the company to receive workers' request letters through the company administration directly.

Issue 4:

- Decline to consider the workers' demand that the company permit pregnant women one day per month to have pregnancy checks but retain daily wages and the attendance bonus of US\$ 5.

Type of Award: Non binding award

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

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Chhiv Pryrum**

Signature:

Arbitrator chosen by the worker party:

Name: **Vong Vanna**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Pen Bunchhea**

Signature: