

**KINGDOM OF CAMBODIA  
NATION KING RELIGION**

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**THE ARBITRATION COUNCIL**

**Case number and name: 19/06-Xing Hong**

**Date of Award: 10 April 2006**

**ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

**ARBITRATION PANEL**

Arbitrator chosen by the employer party:                    Mr. Ouk Ry  
Arbitrator chosen by the worker party:                    Mr. Liv Sovanna  
Chair Arbitrator (chosen by the two Arbitrators):        Mr. Pen Bunchhea

**DISPUTING PARTIES**

**Employer party:**

Name: Xing Hong Company  
Address: Street 369, Sangkat Prek Prar, Khan Meanchey, Phnom Penh  
Telephone: 016 368 118  
Fax: N/A  
Representative:

1. Mr. Ly Kimyin,                    Administrator of Company

**Worker party:**

Name: Khmer Youth Federation Trade Union (KYFTU) and Local Union of KYFTU at Xing Hong Company  
Address: Ou Andoung Village, Sangkat Prek Prar, Khan Meanchey, Phnom Penh  
Telephone: 011 622 963 / 011 753 847  
Representative:

1. Mr. Sea San,                    Coordinating Officer of KYFTU
2. Mr. Sar Chheng,                Coordinating Officer of KYFTU
3. Mr. Touch Leap,                Coordinating Officer of KYFTU
4. Mr. Poeun Pov,                 Coordinating Officer of KYFTU
5. Mr. Soeun Than,                Vice President of Local Union of KYFTU at Xing Hong Company
6. Mr. Hem Samrith,              Worker at Xing Hong Company

### **ISSUES IN DISPUTE**

According to the non-conciliation report, the following non-conciliated issues are the demands raised by the worker party in this case:

1. The workers demanded that the company reimburse the initial medical check fee of 10,100 riel to each of the workers who had undertaken the medical check by themselves; and that the employer pay for the medical check when recruiting new workers.
2. The workers demanded that the company build a nursing room and day-care center for women with children, or the company provide three cans of milk formula each month, two kilograms for each can, and an amount of US\$20 per month for the cost of an external baby-sitter.
3. The workers demanded that, for the purpose of convenience [to workers], the company grant leave to the workers who have actual emergencies.
4. The workers demanded that the company deduct 1,000 riel from the wages of the workers for contribution fees to the local union of KYFTU.
5. The workers demanded that the company not deduct their wages on holidays when the workers do not come to work.

### **JURISDICTION OF THE ARBITRATION COUNCIL**

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labour Law (1997); the Prakas on the Arbitration Council 99/04; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of Arbitrators 513/05 (Third 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. 333 KKBV/VK, dated 6 March 2006 was submitted to the Secretariat of the Arbitration Council on 9 March 2006.

### **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:** 24 March 2006, 2:00 p.m. – 5:00 p.m.

#### **Procedural issues:**

On 12 January 2006, the Department of Labour Disputes received a petition with seven issues from the workers demanding that the company improve working conditions as

mandated by the Labour Law. Following the receipt of the case, the Department designated a labour dispute settlement officer to conduct a series of conciliations. The last conciliation took place on 14 February 2006, with two issues being successfully conciliated out of seven issues. The remaining non-conciliated issues were referred to the Arbitration Council on 9 March 2006. After receiving the non-conciliation report, the Arbitration Council summoned both parties to attend a hearing on 24 March 2006 at 2:00 p.m.

At the hearing, the Arbitration Council conducted further inquiries into the issues and following this, allowed both parties to further negotiate. Both parties then agreed on the point related to a nursing room in Issue 2 (as stated in their agreement dated 24 March 2006); both parties also agreed to withdraw Issue 3 and Issue 5 because the company had implemented the substance of the issues. Therefore, the Arbitration Council will consider only Issue 1, Issue 2 with respect to a day-care centre and Issue 4 on the basis of evidence and fact finding as follows:

#### **EVIDENCE**

**Witnesses and experts:** N/A

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

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

1. Internal Work Rules of Xing Hong Company, registration No. 148 K.KB.V/AK/ATK, dated 27 December 2005

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

1. Certificate of registration of Local Union of KYFTU at Xing Hong Company, No. 876 K.K.B.V/VK, dated 30 December 2005
2. Minute of the collective labour dispute conciliation at Xing Hong Company dated 14 February 2006
3. Minute of the collective labour dispute conciliation at Xing Hong Company dated 7 December 2005

##### **Provided by the Ministry of Labour and Vocational Training:**

1. Letter No. 262 K.K.B.V, dated 17 March 2006, of His Excellency Nhep Bunchin, Minister of Labour and Vocational Training, regarding the request for settlement of the collective labour dispute at Xing Hong Company

2. Report on the settlement of the collective labour dispute at Xing Hong Company No. 333 K.K.B.V/AK/VK of Mr. Koy Tepdaravuth, Head of Department of Labour Disputes, dated 6 March 2006
3. Minute of the collective labour dispute settlement, dated 14 February 2006

Provided by the Secretariat of the Arbitration Council:

1. Letter of invitation to the worker party to attend a hearing, No. 121 LKA., dated 17 March 2006
2. Letter of invitation to the employer party to attend a hearing, No. 120 LKA., dated 17 March 2006
3. Letter of invitation to the Director of Xing Hong Company to select an Arbitrator, No. 100 LKA., dated 9 March 2006

**FACTS**

Xing Hong Garment Factory is located on National Road 369, Sangkat Prek Prar, Khan Meanchey, Phnom Penh. The company employs approximately 300 workers.

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

**The Arbitration Council finds that:**

**Issue 1:**

- Xing Hong Company commenced its operation in April 2004. So far, the company has not paid for the medical expense for the workers.
- As part of the job application, the company requires the workers to bring their photos, birth certificate, identity card, family book, letter of residence confirmation, and certificate of medical exam. However, the practice of the company is that any workers who are accepted by the company are allowed to work for two to three months of probation and the company requires them to undertake a medical check subsequently because the employer thinks that at the start of their employment workers cannot afford the medical check fees.
- The company does not pay for this medical expense for the workers because the employer thinks that it is a precondition for recruitment.

**Issue 2:**

- Xing Hong Garment employs approximately 70 to 80 percent female workers out of its total number of 300 workers.
- The company does not have a nursing room or day-care centre inside or nearby the factory.
- The workers mentioned that no women have children over the age of eighteen months to place in a factory day-care centre; however, there are five female workers who have children less than 18 months old because they recently delivered babies.
- The workers demanded that the company organise a nursing room and a day-care centre. If the company could not afford it, they demanded that the company provide the women with three two-kilogram cans of milk formula and an amount of US\$20 per month for the cost of a baby-sitter.
- The company agreed to build the nursing room according to an agreement dated 24 March 2006; however, the company did not agree to build the day-care centre.

**Issue 4:**

- There is only one union at Xing Hong Company; that is the local union of KYFTU.
- Out of approximately 300 workers, 200 workers or so are the members of the local union of KYFTU.
- The workers demanded that the company deduct 1,000 riel from wages of the worker union member as the contribution fees for KYFTU. The union asserted that it will devise a list of members and send to the company for union fee deduction. Any worker who quits his/her union membership can inform the company not to deduct the union contribution fee.
- The company asserted that after all, the company would not deduct 1,000 riel from the wage of the workers for union contributions because the union can inform its members to contribute the union dues during after-work hours.

**REASONS FOR DECISION****Issue 1:**

In the present case, the company did not pay for the medical check fee because it asserted that it is the prerequisite of the company when recruiting workers. The workers demanded that the company reimburse the medical check fees of 10,100 riel to each worker who had undertaken the medical check because the law requires the company to pay for it.

Article 247 of the Labour Law provides sufficient basis for concluding that the employer is obligated to cover the medical check fee for the workers. (See 60/04-United Art, 63/04-Shine Well, 64/04-Mercury, 98/04-Great Union, 106/04-Suit Way, 05/05-GHG, 05/06-W&D, and 23/06-Max Pearl.)

Article 247(a) specifies that “The Ministry in charge of Labour shall issue a Prakas to determine the conditions under which pre-employment, re-employment, periodical, and special physical exams are given.” Apart from Joint Prakas 09/94 regarding Medical Check for Khmer Nationals and Foreigners Working in Cambodia, a new Prakas has not been devised by the Ministry in charge of Labour. Ultimately, the Arbitration Council finds that Article 247 of the Labour Law of 1997 provides a sufficient basis to conclude that the employer is under an obligation to cover the expense of the medical check for the workers, including the medical expense for recruiting new staff. (See 60/04-United Art, 63/04-Shine Well, 64/04-Mercury, 98/04-Great Union, 106/04-Suit Way, 05/05-GHG, 05/06-W&D, and 23/06-Max Pearl.)

In this case, workers who were recruited by the company since its operation on April 2004 had to pay the medical expense by themselves, and the company had never paid the fee. That the company required the workers to pay for the medical check fee before hand or on their own after starting work will not release it from the obligation pursuant to Article 247(c) of the Labour Law of 1997. In other words, the employer is obliged to cover the medical check fees for the workers. Furthermore, Article 377 of the Labour Law states that “Those guilty of violating Articles..., and 247 or violating their implementing Prakas of labour health are liable to a fine of one hundred twenty days to three hundred sixty days of the base daily wage and to imprisonment of one to five years, or to only one of the both penalties.” This Article confirms that if the employer fails to comply with Article 247, he or she will be liable to a fine or imprisonment according to the law. (See 60/04-United Art, 63/04-Shine Well, 64/04-Mercury, 98/04-Great Union, 106/04-Suit Way, 05/05-GHG, 05/06-W&D, and 23/06-Max Pearl.)

Therefore, the Arbitration Council decides that the employer must reimburse the medical check fee of 10,100 riel to each of the workers who undertook the medical check and paid for it by themselves, and must cover the medical check fee for the workers who have not undertaken the medical check as yet.

## Issue 2

The workers demanded that the company organise a nursing room and a day-care center. If the company could not afford this, the workers demanded that the company provide the women with three two-kilogram cans of milk formula and an amount of US\$20 per month for the cost of a baby-sitter. The company agreed to build the nursing room according to an agreement dated 24 March 2006; however, the company did not agree to build the day-care center.

Because the company agreed to construct the nursing room for the female workers, the Arbitration Council will consider only the remaining disputing point with respect to a day-care center and the demand by the workers asking the company to provide milk formula and a certain amount of money instead of a day-care center.

Article 186 of the Labour Law provides that:

*“Managers of enterprises employing a minimum of one hundred women or girls shall set up, within their establishment or nearby, a nursing room and a day-care center.*

*If the company is not able to set up a day-care center on its premises for children over eighteen months of age, female workers can place their children in any day-care center and the charges shall be paid by the employer.”*

Pursuant to the spirit of Article 186 of the Labour Law, the employer has an obligation to organise a nursing room and a day care center to accommodate children more than 18 months of age in or nearby the factory.

At the hearing, the company stated that the company employs approximately 70 to 80 percent female workers out of the total number of 300 workers, a percentage which reflects more than one hundred female workers. Consequently, on the basis of paragraph 1 of Article 186, the employer is obliged to erect a day-care center within its enterprise or nearby as long as the enterprise employs a minimum of one hundred women or girls, regardless of whether or not there are children of more than 18 months of age to stay at the center. However, as far as the issue of the day-care center is concerned, the Arbitration Council finds that paragraph 2 of Article 186 of the Labour Law provides that an employer employing a minimum number of 100 women and girls has another option rather than building the center. The alternative is that the employer has to pay the fee for placing the children at an external day-care center in

the event the employer is not able to build an internal center. All in all, the Labour Law provides the employer with an alternative to pay the fee for an external day-care center to the women instead of setting up an internal center.

At the hearing, the worker parties mentioned that no women have children of more than 18 months of age requiring placement in a day-care center. The Arbitration Council finds that the demand for a day-care center is made for the future when there are children of more than 18 months of age to be baby-sat in the center. As a consequence, the Arbitration Council determines that the demand is not an existing issue but is a future one. As a general principle, the Arbitration Council declines to consider a demand without an existing dispute. (See 10/03-Jaqsintex.) In the present case, therefore, the Arbitration Council declines to entertain the petition of the workers with respect to a day-care center.

Likewise, the demand raised by the workers asking the company to furnish three two-kilogram cans of milk formula and an amount of US\$20 per month for an external day-care service instead of an internal day-care center is a demand made for the future, because there are no existing disputes involved. The Arbitration Council finds that no women would benefit from this demand at this time. Therefore, the Arbitration Council refuses to contemplate this demand. (See reasoning above.)

### **Issue 3**

Regarding the demand raised by the local union of KYFTU asking the company to deduct 1,000 riel from the wages of its member workers for union dues, the employer party did not agree to make the deduction even though the union will submit list of names of its members with the written requests to do so by its individual members. The company believes that the union can collect the dues from its members after working hours.

Article 129 of the Labour Law provides that *“The worker can authorize deductions of his wage for dues to the trade union to which he belongs. This authorization must be made in writing and can be revoked at any time.”* According to the Article, every worker who is a member of a union can make a written request to the company to deduct the contribution fee from his or her wage for the union of which he or she is a member, and can revoke the authorization at any time.

Article 5 of Prakas 305 dated 22 November 2001 of the Ministry of Labour, Vocational Training and Youth Rehabilitation states that *“When a worker decides to invoke his right*

*under Article 129 of the Labour Law, the employer is obligated to deduct the wage for union contribution fee.”*

Therefore, according to Article 129 of the Labour Law and Prakas No. 305, the Arbitration Council finds that the deduction of wages for union contribution fees is an obligation that the employer must comply with when paying wages, at the request of the workers, after receiving the letters of request to do so from the union member workers. (See 03/03-Tonga Garment, 03/05-Top One, 16/05-New Point, and 70/05-Gold Fame.) In this case, the company must deduct the wage for union dues for the union every month.

Therefore, the Arbitration Council decides that the company has an obligation to deduct 1,000 riel for union dues when receiving a letter of request from the local union of KYFTU, with the list of names of its members and the written request of each individual member workers to do so.

Based on the evidence, facts, laws, and reasoning as shown above, the Arbitration Council decides as follows:

#### **DECISION**

1. Order the company to pay for medical checks. Within one month after this award becomes effective, the employer must reimburse the fee of 10,100 riel to each of the workers who had undertaken the medical check and paid for it themselves. The employer must pay the workers who did not take the medical check so that they can undertake it.
2. Decline to consider the workers' demand for a day-care center, milk formula, or an amount of money instead of a day-care center.
3. Order the company to deduct, upon receiving consent from the workers, on each pay day 1,000 riel from the wages of workers who are members of the local union of KYFTU for union dues.

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

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

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

**Arbitrator chosen by the employer party:**

Name: Mr. Ouk Ry

Signature: .....

**Arbitrator chosen by the worker party:**

Name: Mr. Liv Sovanna

Signature: .....

**Chair of Arbitration Panel:**

Name: Mr. Pen Bunchhea

Signature: .....