

**KINGDOM OF CAMBODIA**

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**ARBITRATION COUNCIL**

**Case number: 24/03**

**Date of award: January 31, 2004**

**ARBITRAL AWARD**

Based on Article 313 of the Labor Law

**Top One Garment Factory**

(Employer party)

**AND**

**Workers who are members of Solidarity Labor Union of Top One**

(Employee Party)

**Detailed information of employer:**

Address: #26B, Street 5, Svay Pak Quarter, Reusey Keo District, Phnom Penh.

Tel : (023) 396 008

Representatives: David Chanawa, Mrs. Kim You and Mrs. You Sindy

Address: #116, Norodom BLVD, Phnom Penh

Tel : (023) 212 318          Fax: (023) 212 319

**Detailed information of employee:**

Address: #339, Street 5, Svay Pak Quarter, Reusey Keo District, Phnom Penh

Tel: (012) 377 024

Representative: Meas Morkot

**Issues in dispute**

This case involves 52 issues and some consequential conflicts. The demands and conflicts listed by the union that the Arbitration Council has to resolve are as follows:

- 1- The leader of the union has the right to accompany employees during the conflict resolution process.
- 2- Members of the union who attend hearings should keep their wages and bonus.
- 3- The leader of the union has two hours per week to work for the union and to attend seminars.
- 4- The employer shall allow an attorney or organizational representative to visit the factory if they have permission from the union.
- 5- The employer shall provide a library, including one table, six chairs, and one whiteboard for members of the union when they are free or have a day off.
- 6- The union has the right to invite other institutions to teach their members without obtaining permission from the employer.
- 7- The medical room shall be 20 square meters, clean, well-ventilated, and free of rubbish, smoke, dust and noise. It shall have adequate beds and equipment.
- 8- There shall be two nurses who work every hour and there shall be one medical doctor who works at least three hours per day with sufficient medical supplies.
- 9- There shall be water coolers, glasses, one desk, four arm-chairs, a cabinet for documents, a medical cabinet, and sterilizing machine, and other equipment as mentioned in Prakas number 330.
- 10- There shall be medical equipment including mattresses, sheets, pillows, and all kinds of medicine as mentioned in the Prakas number 330.
- 11- The Employer shall pay for ambulance transportation or travel allowance for work-related illnesses and work accidents and allow employees to freely choose the hospital, medical doctor or Khmer herbal doctor.
- 12- There shall be signatures from both parties to execute collective agreements and rules that contradict the collective agreements shall be derogated.
- 13- Current labor contracts of unspecified duration must be kept and conform to the collective bargaining agreement (CBA).
- 14- All new employment agreements shall be checked by the union; if the agreement does not conform to the CBA, they shall be renegotiated with the employer.

- 15-Casual workers [floating workers] shall be employed for at least one month; and the workers shall become employees after that period. The casual workers shall receive the same benefits as permanent employees.
- 16-Training for apprentices shall last two to four weeks. After that they shall be in a probationary period for one month and then they shall be regular employees.
- 17-All changes in work production shall be negotiated at least three days in advance with the union.
- 18-All transferring of materials to another factory can proceed if job and wage payments are to be kept for employees.
- 19-The employer shall negotiate with the union at least seven days before varying employee jobs and must get approval from the workers and their work groups.
- 20-The employees shall receive training with wages until they are capable of working before transferring them from one department to another. When they are offered a new job their wages shall be increased 5 percent.
- 21-In the case of chain production, changing models shall be negotiated with five days prior notice to the union. The amount of production must be comparable to the number of employees capable of meeting the amount of production.
- 22-On Saturdays, work hours shall only be for seven hours.
- 23-Overtime work must be negotiated with the union three days in advance.
- 24-[The rate of pay for] overtime work on holidays, at nighttime and on celebration days shall be multiplied by three and all employees working overtime after six o'clock must receive a meal allowance of 1000 Riels.
- 25-One day of extra annual leave can be used freely by employees.
- 26-Missing work due to illness when accompanied by a letter from a medical doctor or a Khmer herb doctor shall not be limited to a specified period and the employees shall keep their wages and seniority bonus for this [time].
- 27-The employer cannot reduce annual leave [when workers take] special leave.
- 28-A hundred days of maternity leave with full wages shall be granted, and seniority and position shall be maintained.
- 29-The CBA shall be implemented after the signature date, and then any rules that contradict the CBA shall be directly derogated.

- 30-The employees who fail to execute the rule in Clause 10 of Part 2 shall be considered guilty.
- 31-Oral and written warnings can be issued three times. Before issuing a written warning, the employer shall negotiate with at least three union leaders upon three days prior notice.
- 32-The company can immediately warn employees if the union recognizes the employee is at fault.
- 33-The union shall have one week to inquire [about] workers who have been accused of committing serious misconduct. If the union recognizes the employee is at fault, the union shall agree to the dismissal, but with payment according to the Labor Law. The employee and the union can check all relevant documentation relating to conflicting points with the company. All dismissals of workers because of disputes or conflicts must be in compliance with the grievance procedures.
- 34- A representative of the union can join a meeting to resolve grievance complaints.
- 35- The procedure for grievance complaints is as follows:
- 35-1 The union must try to resolve conflicts with the supervisor within one day of receiving a complaint from the employee.
  - 35-2 If the conflict cannot be resolved, the employee or the union shall file a complaint with the administration management team who must respond in writing within two days.
  - 35-3 If the conflict still is not resolved, the employee(s) or the union can complain to the highest manager or the factory's owner. If the conflict is still not resolved, a complaint may be made to the MOSALVY for conciliation, and then the case shall be sent to the Arbitration Council.
- 36- If the employer does not allow the union to complain to the MOSALVY or to the Arbitration Council, the union can give prior notice to conduct a strike.
- 37-The Arbitration Council or any arbitrator who receives a complaint from both parties about sexual harassment must go directly to visit the female victim.

- 38-At least two union leaders have the right to accompany employees after failing to conciliate with the supervisor. Neither party can violate the grievance complaint procedures.
- 39-There must be a cassette player, radio in all buildings and floors while employees are working. The employer shall hold one party each year to celebrate womens' rights day.
- 40-The employer must contribute 40,000 Riels per month to the well-being fund box.
- 41-The union must also contribute US\$100 per month.
- 42-This well-being fund will be offered to any employee whose family member dies, in the case of a house fire, or will be used for another social work purpose.
- 43-All funds provided to any employee must be communicated to other employees in writing.
- 44-The expenditure of US\$100 shall be passed a 2/3 majority vote of the union members and the employer.
- 45-Piece-rate contracts must be negotiated with the union at least 30 days before piece-rate workers begin working at the factory.
- 46-Bonuses and other benefits for employees must be maintained for all piece-rate workers.
- 47-The employer shall pay a bonus based on seniority. Employees who work for one year shall get a bonus of US\$2 a year. In the second and fourth year the employee shall receive US\$2, and 5 percent per year thereafter.
- 48-Wages shall be adjusted for inflation every year according to the government report.
- 49-Wages and money for inflation must be offered to employees after signing the collective bargaining agreement. This increase will follow every year on the anniversary of the CBA.
- 50-Employees, who work in dangerous positions where their bodies and health may be affected, such as electric power and laundering, must receive a bonus of US\$5 per month.
- 51-Pay slips from Top One Factory must be written in Khmer.

52-All bonuses can be re-negotiated every year.

53-Employees, who ask for only one day off, shall have their bonus reduced by US\$2; for two days off, a reduction of US\$3; and if the employees take three days off, then no bonus will be given. (This point wasn't included in the conciliation report that was sent by MOSALVY but it was raised at the hearing of the Arbitration Council.)

### **Jurisdiction<sup>1</sup> of the Arbitration Council:**

The Arbitration Council derives its power to make this Award from Section II B of chapter 12 of the Labor Law (1997); the Prakas on the Arbitration Council (no. 338, of 11 December 2002); and the Arbitration Council Procedural Rules which form an Annex to the same Prakas.

An attempt to conciliate the collective dispute which is the subject of this Award was made as required by Chapter XII Section 2A of the Labor Law. That conciliation hearing was unsuccessful and a non-conciliation report No.1213 dated November 26, 2003 was submitted to the Secretariat of the Arbitration Council on December 1, 2004.

### **Composition of Arbitration Council:**

Arbitrator who was selected by employer: **Ms. You Suonty**

Arbitrator who was selected by employee: **Mr. Liv Sovanna**

Chair Arbitrator selected by both Arbitrators: **Dr. Sok Mathoeung**

### **Hearing:**

Date and place of hearing: December 11, 17, 19, 22, 24, 2003 and January 8, 10, 15, 2004 from 8am to 12pm at the Secretariat of the Arbitration Council, Phnom Penh Center, Building "A", Sothearos Street, Tonlebasak, Phnom Penh.

### **Evidence:**

- 1- Written response of employer dated on December 23, 2003
- 2- The employment agreement, payroll and objection letter sent by the employer.

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<sup>1</sup> Jurisdiction (in Khmer) means the judicial power

- 3- Draft of collective bargaining agreement between employees and employer.
- 4- Non-conciliation report of labor inspector.
- 5- Internal Work Rule of the Factory
- 6- Arguments at the hearing made by the union and employer representative.
- 7- Payroll of September, October and November.

**Case summary:**

The employer employs 765 employees. The employees have established a union called Solidarity Labor Union of Top One Factory, which has most representative status at the factory. The union began negotiation with the employer to prepare a collective bargaining agreement for the factory. However, the negotiations failed and led to a strike. In November 2003, there were conflicts related to the collective bargaining agreement and the conflict was reported to the MOSALVY on November 13, 2003. The MOSALVY's representative mediated certain conflicts on November 17, 2003. The rest of the conflicts (53 as mentioned above) were sent to the Arbitration Council. The Arbitration Council, with the agreement of both parties, assigned the Chair Arbitrator, Dr. Sok Mathoeung, as a mediator for one month. However later the employer decided not to join in the procedure of mediation and sent an objection to the Secretariat of the Arbitration Council. This objection was then forwarded to the Arbitration Council. The Arbitration Council then decided to eliminate the mediation process and convene a hearing to resolve the conflicts.

**Findings of fact:**

The Arbitration Council has compiled the facts as below:

- 1- Some of the workers at the factory are "permanent employees" but some of them are "casual workers." Casual workers do not receive additional pay for working overtime, nor do they receive additional pay for working Sundays or public holidays like permanent employees do. Casual workers also do not have annual leave or other days off that are stipulated in the Labor Law. Moreover, the names of casual workers are not included in the payroll like permanent employees. This fact is derived from the verbal answer of the union and the payroll of casual workers. No objection was raised by the employer.

- 2- In the past, the employer would cut wages from union members who accompanied employees to resolve conflicts. This fact is derived from the verbal answer of the union without objection from the employer.
- 3- When there are work accidents, the employer provides funds for only one to two days. This problem is inconsistent with the internal work rule of Top One. This fact is derived from the [written] statement of Mrs. Thorn Sovan, an employee of Top One.
- 4- In the past, there was no clear length of time to train apprentices at Top One. This fact is derived from a verbal response of the union representative without objection from the employer representative.

**Reason for decision:**

The Arbitration Council has jurisdiction to decide on all the collective disputes sent by MOSALVY. Because all the disputes in the current matter originated in a draft of a Collective Bargaining Agreement (CBA) the Arbitration Council has jurisdiction to resolve conflicts in regard to the formulation of the CBA as appears below:

**1<sup>st</sup> conflict:** The representative of the union claims the right to accompany employees to resolve conflicts after consultation with employees. The Arbitration Council finds that the objective of establishing a union is to protect rights and benefits of their members and employees. In chapter 12 of the Settlement of Labor Disputes, Prakas No. 317 of the MOSALVY, dated on November 29, 2001 on the procedure of Collective Labor Disputes, and the Prakas on the Procedure of Individual Disputes, dated on November 29, 2001, also allows employees to have their representative to help them in conflict resolutions. Thus, the Arbitration Council determines that this claim was founded.

**2<sup>nd</sup> conflict:** The union claims that, when participating in the conflict resolution process, the employer should maintain wages and bonus as for the union's representative as well as the employees. The practice of the employer was never to reduce wages or bonuses; in addition, during the process of settling labor conflicts, the employment contract must not be suspended or terminated. Therefore, wages and bonuses should be maintained for employees and the union representative should have the right to accompany employees to

protect their rights and benefits. Thus, the Arbitration Council finds that the employer cannot cut wages and bonuses.

**3<sup>rd</sup> conflict:** The union claims for two hours per week to be provided in order to perform union-related work. The Arbitration Council finds that the Labor Law provides worker delegates two hours a week to help employees. The union also works for the employees. If the union has [most] representative status, it should also receive two hours for performing union work. The union also claims for time to participate in seminars while maintaining their wages and bonuses if the employer agrees to do so. The Arbitration Council determines that if the union representative would like to join seminars by the invitation of organizations and institutes, the union should first obtain permission from employer. When the union representatives return, they must show the invitation to the employer and prove their presence at the seminars. If the employer does not permit the union to attend a seminar, the employer should give appropriate reasons for not accepting the seminar date. The employer must not reduce the wages and bonuses of the union representatives who were allowed to attend seminars.

**4<sup>th</sup> conflict:** The union claims that the employer allow representatives from organizations, union federations and lawyers to attend the factory if they have been invited by the union. The Arbitration Council finds that only the employer has the right to allow a person to visit his/her factory. However, in attempting to settle labor conflicts in the factory, consistent with past practice, at the request of the party seeking assistance, the union representative or lawyers may visit the factory to help resolve the labor conflict.

**5<sup>th</sup> conflict:** The union representative claim a library and related equipment for their use. The Arbitration Council finds that the installation of a library is not required by law. The Arbitration Council received information that the factory does not have enough space to build a library. Also, it would be difficult for anyone to use a library because when employees are at work they cannot go; nor could they go at night or on public holidays when the factory is closed for security reasons. Regarding the demand for a whiteboard, the Arbitration Council determines there should be whiteboard for the union to provide

information to the employees. This can also help facilitate the employer's dissemination of information as well. Moreover the expenditure on the whiteboard is not too expensive and does not require any special location.

**6<sup>th</sup> conflict:** The Arbitration Council determines that the union has the right to invite any institution to train their members and employees at a location outside the factory so as to avoid an interruption of the production chain. If the union would like the training to be operated inside the factory, the union must first receive permission from the employer who owns the factory premises.

**7<sup>th</sup> conflict:** The employer has an obligation to organize primary medical treatment for his/her employees according to the Labor Law. A permanent infirmary, medical doctors, nurse, pills [or tablets], and other medical equipment such as beds, sheets, and pillows are required. The Arbitration Council agrees with the union's demand for a medical room of at least 20 square meters which is clean, free of smoke, and has fresh air, as well as a sufficient number of properly equipped beds. This demand is consistent with clause 2 of the Prakas No. 330 of the MOSALVY.

**8<sup>th</sup> conflict:** Top One factory has 765 employees. Under clause 3 of the Prakas No. 330 of the MOSALVY, the Arbitration Council determines that the employer must employ two standby nurses, and one medical doctor for three hours a day in the infirmary. Moreover, the employer must ensure that there is sufficient medicine as stipulated in annex of the Prakas No. 330.

**9<sup>th</sup> conflict:** The Arbitration Council determines that the union's demand for equipment that exceeds what is stipulated in Prakas 330 is not appropriate; but the demand for four armchairs and a water cooler to be used in the infirmary is appropriate. This is because employees who go for medical checks are concerned about their health and may not be able to stand for a long time in the infirmary. They may need to sit down in armchairs and have water to drink.

**10<sup>th</sup> conflicts:** The Arbitration Council determines that the employer must have medical equipment, mattresses, sheets, pillows and sufficient medicine as stipulated in Prakas 330.

**11<sup>th</sup> conflict:** The union claims for the recruitment of a medical doctor in case there is a work accident. The Arbitration Council finds that the recruitment of a medical doctor should be under the authority of the employer because the employer is the one who pays for this. However, the employer should make a list of at least 10 medical doctors and Khmer herbal doctors to be selected by the employees and in case of a traffic accident related to work, the employees can go to any hospital that is excluded from the list as it is a case of emergency. The workers should inform the employer the day after an accident. The employer must be responsible for the payment of the treatment, travel allowance, and ambulance costs.

**12<sup>th</sup> conflict:** The union claims for the implementation of a CBA after the date of execution as well as the annulment of all derogating rules. The Arbitration Council finds the conflicting parties do not yet have a CBA, so the Arbitration Council cannot decide on this issue.

**13<sup>th</sup> conflict:** The union demands that labor contracts of unspecified duration which are in effect should not be changed. The Arbitration Council finds that this demand is in conformity with article 74 of the Labor Law that provides that a labor contract of unspecified duration cannot be terminated by a labor contract of specific duration.

**14<sup>th</sup> conflict:** The union claims for the right to review employment contracts of new employees before they sign. However, after conciliation, the union representative withdrew this issue.

**15<sup>th</sup> conflict:** In the hearing, the employees dropped their demand regarding the hiring of casual workers and the right of casual workers to become permanent employees. The union reached an agreement during the mediation process with the Labor Inspector. The union, however, raised an issue again about wages for casual workers. The union argued

that their monthly salary must include wages, bonuses and paid holidays. The employer's representative, however, objected, arguing that the salary of casual workers should only include wages. The Arbitration Council finds that this issue is in relation to dispute about wages. Therefore, the Arbitration Council has jurisdiction to consider this matter under article 33 of the Prakas No. 338/MOSALVY dated December 11, 2002. The Labor Law and Notification No. 017 of MOSALVY cover employees in the garment and shoe industries. So, casual workers and permanent employees come under the regulations and arbitral awards. The Arbitration Council finds that casual workers must receive wages, bonuses and other benefits as permanent employees do. For casual workers who come regularly to work according to a number of days determined by the employer and the number of those days are at least less than the working days of one month (26 days) as provided by law, those casual workers must receive an attendance bonus in proportion to the number of working days determined by the employer.

**16<sup>th</sup> conflict:** The Arbitration Council cannot determine the time period for apprenticeship contracts because the time period for training apprentices must be determined according to the relevant skill area. Chapter 3 of the Labor Law stipulates that "the time period for training apprentices cannot exceed two years." Therefore, the employer must respect this time limit and other conditions determined by the Labor Law; but in the event the employer does not respect the Labor Law and Prakas No. 004/MOSALVY, the contract must be considered an unspecified duration contract.

**17<sup>th</sup> conflict:** The union demands that when there is a change in the scope of work or quantity of products the company must negotiate at least 3-days with the union. The Arbitration Council understands employers can change work size or production targets to increase the productive capacity of the factory and to push employees to work more actively when they are compensated. This incentive is a general policy for business management principles. Under technical management, the employer can change the work size and the production target that each employee is required to complete. The employer can also change the incentive policy to push individual employees to do their best to achieve higher production. Changing work size, production targets, and an incentive policy however, must be done in an appropriate way as set out below:

- 1- The employer must have a clear policy to determine or change work size and an incentive policy.
- 2- Varying the scope of work must not be harmful to employees' health.
- 3- Varying the scope of work and the incentive policy must be not discriminatory.
- 4- Such changes as determined by the employer, may not serve as a foundation for the blaming, disciplining or dismissal of employees, except those employees who are lazy, do not come to work, or prevent others from achieving the production targets.

**18<sup>th</sup> conflict:** The union demands that the transfer of materials to another factory [does not occur] unless the [workers'] job is secured and wage payments are maintained for employees. The Arbitration Council will not decide on this issue because the union's representative has withdrawn it.

**19<sup>th</sup> conflict:** The union demands that if there is a variation of an employees' job; it must be done with both the employer's agreement and the agreement of their group. The Arbitration Council finds that within the production process, the employer may need to change employee jobs to ensure proper operation productivity and to meet production targets. Therefore, the employer does not need agreement from the employees or the workers' group, but the employer must negotiate with the employees' group, and must take into consideration their opinion.

**20<sup>th</sup> conflict:** The union demands that when there is a change of an employee's job, the employee must first be trained and his/her wage must also be increased. The Arbitration Council finds that the employer must train employees first before transferring them to a new job. The employer also must at least maintain the employees' wage and compensation, but may increase their salary for ordering them to start a new job. The union also demands that an employee's job may not be changed on the basis of union discrimination or as a sanction in contravention of the Labor Law. The Arbitration Council determines that the employer must not change an employee's job on the basis of

union discrimination or as a sanction against the employee. Changing jobs to sanction an employee is prohibited by the Labor Law.

**21<sup>st</sup> conflict:** The union withdrew this issue at conciliation.

**22<sup>nd</sup> conflict:** The union demands that employees be allowed to work eight hours per day from Monday to Friday. The Arbitration Council agrees with this point because this demand is consistent with the Labor Law and daily work hours in the factory. Regarding their demand to work only seven hours on Saturday, the Arbitration Council finds that this demand reduces the working week from 48 hours to 47 hours. The result [of this reduction] means that the employer loses 52 hours labor from each employee every year. In total, the employer loses about US\$8,606 per year. Furthermore, the employer expects that employees will complete their jobs within the hours determined by law in exchange for wages and compensation. If employees want to work only seven hours on Saturday in order to travel to see their parents and relatives in their homeland, they must work one additional hour anytime from Monday to Friday to replace the Saturday hour. The Arbitration Council understands the importance of family gatherings but the Arbitration Council cannot ask the employer to contribute one hour on Saturday for employees at Top One because such a request contradicts principles of equity.

**23<sup>rd</sup> conflict:** The union withdrew this issue at conciliation.

**24<sup>th</sup> Conflict:** The union demands that work during overtime hours must be on a voluntary basis, as must work during weekly time off, and on public holidays which must be paid triple. The Arbitration Council finds that overtime hours can assist the process of production to meet deadlines. The employer, however, cannot force employees to work overtime. Employees should cooperate with the employer for overtime hours to show they wish to help increase production on time. The Arbitration Council determines that the employer must pay overtime work at the rate of 200% of regular wages for Sunday work and 100% for work on holidays as stipulated in the Prakas of the MOSALVY. Under the notification No.017/00, dated on July 18, 2000, the employer must give 1000 Riels to each employee who works overtime even if the overtime ends by 6:00 p.m.

**25<sup>th</sup> conflict:** The union demands 19 days of annual leave and 1 additional day for employees who have worked for three years. The Arbitration Council finds that annual leave determined by law is in conformity with the current Cambodian economic situation. Therefore, the Arbitration Council denies this demand.

**26<sup>th</sup> conflict:** The union demands that the employer maintain wages and the seniority bonus of employees who take sick leave which is certified by medical doctor or Khmer herbal doctor. The Arbitration Council finds the employer should assist employees who are sick. This assistance includes improving the health of employees who work in the factory. The Labor Law, however, does not allow the employer to include sick leave in paid annual leave.

Under Article 71, paragraph 1 and Article 72, paragraph 1 of the Labor Law, the employer can suspend employment contracts without payment of wages to employees. Clause 4 of Top One's internal work rules, however, requires the employer to pay wages during medical treatment of employees as below:

- 1- For illnesses certified by a medical certificate other than work accidents, the factory must pay full wages to employees for the first month.
- 2- During the second and third month, the factory must pay 60 percent of wages.
- 3- From the fourth to sixth month, the factory will not pay wages, but must keep the employee's position at work.
- 4- If longer than six months, the factory may consider dismissing employees in accordance with the Labor Law.

The Arbitration Council determines that the employer must pay wages during an employees' treatment for illness under Clause 4 of the internal work rules.

**27<sup>th</sup> conflict:** The union demands that the employer provide special leave according to the Prakas No. 267 and not deduct special leave from annual leave. The Arbitration Council finds that special leave which is provided by Article 171 of the Labor Law and Prakas No. 267 has facilitated employees joining some events involving the employees. Article 171 of the Labor Law and Prakas No. 267 allows employers to deduct special

leave from the employee's annual leave. Moreover, the Arbitration Council finds employees can use annual leave to join any event. Deducting special leave from annual leave is allowed in the labor market in Cambodia. Therefore, the Arbitration Council allows the employer to deduct special leave from the annual leave of employees.

**28<sup>th</sup> conflict:** The union demands that the employer provide maternity leave of 100 days with full wages, and to maintain the employee's seniority and position upon her return. The Arbitration Council finds maternity leave can help establish appropriate human resources standards in Cambodia. The Labor Law requires the employer to pay 50 percent of their wage to employees who take three months maternity. The Arbitration Council finds that maternity leave is part of housework, which has equal value to outside work as stipulated in the Constitution of the Kingdom of Cambodia. Employees testified that each year there are 10 employees who take maternity leave. The employer did not object to this testimony. So, the Arbitration Council finds that the employer should pay full salary and seniority bonus during three months' maternity leave and keep the seniority and position for when they come back. The duration of maternity leave should be 90 days.

**30<sup>th</sup> conflict:** The union representative asked to withdraw this issue during the conciliation process.

**31<sup>st</sup> conflict:** Both parties have agreed on this point during the hearing in accordance with the formula of the following decision.

**32<sup>nd</sup> conflict:** The union agreed to withdraw this demand during conciliation.

**33<sup>rd</sup> conflict:** The union demands one week to conduct an investigation before the dismissal of any employee on the grounds of serious misconduct. The Arbitration Council finds that in cases of serious misconduct, the employer has the right to immediately dismiss any employee. But if an employee is accused indirectly of serious misconduct, the employer can suspend the employee first and then conduct a one-week investigation based on the principles of justice.

**34<sup>th</sup> conflict:** As per first issue.

**35<sup>th</sup> conflict:** This complaint was quickly resolved to reduce obstacles to production and to organize work, as well as to build more confidence between the employees and the employer. The Arbitration Council finds that the union was willing to prepare grievance procedures to resolve labor conflict and to prevent negative situations from arising. The Arbitration Council, therefore, decides to include the grievance procedures received from the ILO in this award in order for the employer and employee to resolve conflicts.

**36<sup>th</sup> conflict:** The Arbitration Council finds that both parties should demonstrate their desire to resolve conflicts in the factory under the procedures determined by the Arbitration Council. If one party does not utilize this procedure, the other party can complain to the Labor Inspection department as stipulated in chapter 12 of the Labor Law on settlement of labor disputes, and Prakas No. 317 on Procedure of Collective Disputes Settlement, dated November 29, 2001, and Prakas No. 318 on Procedure of Individual Disputes Settlement, dated on November 29, 2001 of MOSALVY.

In cases where both parties cannot resolve the above disputes, the parties must be informed if there is to be a strike or lockout in accordance with the procedures determined by chapter 13 of the Labor Law on strikes and lockout, and Circulation No. 005 of MOSALVY on the right to strike.

**37<sup>th</sup> conflict:** The Arbitration Council finds that all sexual harassment must be prohibited. Sexual harassment as a part of labor disputes should be included in the internal work rules or employment contracts. Victims (both men and women) can use the grievance procedures to resolve problems. The Arbitration Council finds that arbitrators can use their discretionary powers to visit women victims; however, the Arbitration Council is responsible only for resolving collective disputes that exist in non-conciliation reports sent by a Labor Inspector under the procedure of Prakas No. 330/MOSALVY.

**38<sup>th</sup> conflict:** The Arbitration Council finds that this demand is important as it benefits both parties and can facilitate the disputes timely resolution in the factory in accordance with the grievance procedures. This avoids non-serious disputes escalating into serious

disputes. As per the reasons provided in regard to regarding the first issue, the Arbitration Council finds that union leaders can accompany employees during the [process] of the grievance complaint.

**39<sup>th</sup> conflict:** The union demands a cassette player or a radio to listen to while at work and for one party per year. The Arbitration Council finds that most employees do not take annual leave, so listening to a cassette player or radio can reduce fatigue and also can improve mental health. There are many factories that have already executed this policy. The Arbitration Council finds that this demand is appropriate. Regarding the demand for one party per year, the Arbitration Council finds that the party may be held according to the generosity of the employer. The employer has discretionary power over this matter.

**40<sup>th</sup> conflict:** The union demands that the employer offer a contribution of 400,000 riels per month for the well-being fund. The Arbitration Council finds the aim of this fund is to help support employees injured in all manner of circumstances. This contribution, however, is determined by the law on social security, which covers any person under the Labor Law. This law requires employers and employees to contribute an amount that shall be determined by sub-decree. The government has not yet adopted a sub-decree. Thus, contributing to help employees who are in danger, is at the discretion and generosity of the employer. The Arbitration Council cannot demand that the employer make this contribution.

**41<sup>st</sup> conflict:** The union has accepted to pay US\$100 per month to a well-being foundation. The Arbitration Council understands this is the unilateral will of the union, in relation to the foundation, which is not related to the employer. So, the union must negotiate with its members and negotiate with the employer to put this in the internal work rule, if the union decides to establish the foundation.

**42<sup>nd</sup>, 43<sup>rd</sup>, and 44<sup>th</sup> conflict:** The union is determined to use the well-being foundation because this is its will. The Arbitration Council finds as per the forty-first conflict.

**45<sup>th</sup> conflict:** The Arbitration Council finds the employer can sign a subcontract of piecework with other factories according to its production requirements. In the production process, the employer needs productivity and cooperation between the union and employees. So, the employer must consult with the union to ensure that employees have enough jobs. The Arbitration Council finds that the union's suggestion of 30 days to negotiate service contracts is not appropriate. The Arbitration Council determines that this negotiation requires only seven days.

**46<sup>th</sup> conflict:** The Arbitration Council finds that doing piecework is not a basis to reduce wages or benefits of employees. The Arbitration Council also finds that using the piecework method may be used as a way to reduce wages or benefits, and also may be used to wrongly punish employees in the factory. The employer is prohibited from acting in this way.

**47<sup>th</sup> 48<sup>th</sup> and 49<sup>th</sup> conflict:** The Arbitration Council finds all these three points are related, so the Arbitration Council decides to handle them all together. Through the union representative, the Arbitration Council requested the director of the factory interpret his/her financial situation and evaluate his/her employer's capability for increasing wages to employees. The factory's owner did not respond to the Arbitration Council or send his/her representative as suggested. The union representative raised the issue of the difficulty of the financial situation. The union representative suggested that the Arbitration Council make a judgment under the principles of law and equity.

To verify the employer's argument and to judge the issues under equity principles, the Arbitration Council also suggested to the director of the factory that he/she deliver documentation and financial reports certified by an auditor. The employer, however, did not deliver such documents to the Arbitration Council.

The Arbitration Council has also studied a report and other documents related to wages to make a decision on this issue.

## **1- Wage**

Law (Article 102-119, and Notification No. 017/00 and 006/97): The term "wage" means remuneration for work or service that is convertible in cash or set by agreement or by national legislation, and that shall be given to a worker by an

employer, under the terms of a written or verbal contract of employment or service, either of work already done or to be done or for services already rendered or to be rendered. The wage includes in particular: actual wage or remuneration, overtime payment, commission, holiday pay and maternity leave payment. Any agreement either written or verbal, which requires payment for a wage to employees less than the guaranteed minimum wage, must be null and void.

For piecework wages, the employer must make sure that employees with average skills working normally earn, for the same amount of time worked, a wage at least equal to the guaranteed minimum wage. The minimum wage that is set by law must be paid at the workplace or in the office in cash.

The minimum wage that is set by law for garment factories is US\$45 per month for permanent employees; US\$40 per month for casual workers and apprentices receive US\$30 per month. If employees whose wages are calculated according to their piecework is less than US\$45, the employer must [provide the guaranteed minimum wage of] US\$45 per month. Employees who come to work regularly for a number of days each month must receive a bonus of US\$5 per month. Employees who work for more than one year should receive a seniority bonus of US\$2 per month. The rate for daily overtime work is 1.5 times the normal wage. Payment for working on Sunday and public holidays days must be 2 times the normal wage. The MOSALVY establishes wage payment equal to two times the normal wage for nighttime work from 10:00 p.m. to 5:00 a.m. Employees who work for two hours overtime must receive a meal allowance of 1000 Riels per day or a free meal.

The employer's position to increase wages at the Labor Advisory Committee on June 20, 2000 is to request the following solutions (see notice number 15/MoSALVY dated June 22, 2000):

- Increase the basic wage by 5 percent for employees who have seniority of two years, 6 percent for seniority of more than four years, and 7 percent for seniority of more than six years. This suggestion was not approved by the Labor Advisory Committee (6 of 18 votes). The union's suggestion that the Kingdom of Cambodia be petitioned to increase wages up to US\$60 per month also was not approved (one of 18 votes).

- The Labor Advisory Committee (LAC) held a meeting on June 20, 2000 where it was stated "It has been approved by 11 of 18 votes [that there be] an extension of a meeting requested by three union's representatives in order to leave time for all unions to re-negotiate this issue and to well prepare enough documents and clear evidence".

- The provision of Notification No. 017 dated on July 18, 2000 specifies minimum basic wage to be US\$45 per month and the seniority bonus from August 1, 2000 and so on. Table IV shows different scenarios for the seniority allowance in garment factories simulation on minimum wage (of all workers): US\$45 per month is to be practiced in garment factories (from year 2000 to 2019) (20 years).

- Employees with the union accompanying requested raising wages, bonuses, and seniority bonus up to US\$2 for employees who have worked a full year, an additional US\$2 for the second, third and fourth year of work, then an increase of 5 percent each year thereafter. Employees also asked for compensation in case of inflation.

- As for including a seniority bonus increase in the CBA, the employer asks the Arbitration Council to make its decision based on law and equity. The Arbitration Council understands the substance of this issue is an interests dispute. So the Arbitration Council undertakes a strict review of equitable principles with respect to Top One in order to appropriately resolve this dispute that is one of economic benefit, resulting from activities of the employer and employee in the textile, garment and shoe industries.

The reasoning and decision of the Arbitration Council are based on references from national and international resources directly related to the textile industry in Cambodia nationwide and especially to the Top One enterprise.

### **References:**

- 1- Economic and Social Vision of Cambodia, Figures from Coordination Office Cooperation Program of European Union, March 2001.
- 2- National Case Study on Environmental Requirements in Key Markets for the Footwear Industry-UNTAD, August 2003.
- 3- Asia Trade Initiative: Country Study on Trade in Textiles and Clothing, Cambodia, August 2003, UNDP.

- 4- Reports on Cambodian Economy for 2001, CDRI, December 2001.
- 5- Cambodian National Accounting from 1993-2002, July 2003, Ministry of Planning.
- 6- Survey Statistic on Family Budget and Income of Ministry of Planning-CSES 99, 2002.

## **2- Labor force and productivity in one hour of working time**

According to tariff 1 and 2 in the 2002 survey, employees who worked one hour contributed US\$0.686 to the national economy based on Gross Domestic Production (GDP) equal to US\$0.686. The workers receive a wage of US\$0.216 per hour (US\$45/26 days divided by 8 hours is equal to US\$0.216). The remaining amount of US\$0.47 (US\$0.686 - US\$0.216) goes to the factory.

### **Therefore:**

- a. There are approximately 253,389 employees in Cambodia who worked 55.57 hours each or a total of 14,086 717 hours (table 3 A) per week, which is equal to 732.509.285 hours per year. The employees receive US\$0.216 for one-hour of work divided by 0.686 means that 31.5 percent of resources are contributed to economic growth. The employer receives the remaining 68.5 percent of the resources.
- b. Elsewhere, in newly developed countries, employees can receive approximately 50 percent of the resources which include the extra cost of the labor force and their productivity, including material, production equipment, and capital of the employer. In developed countries such as France, there are proportionally divided values of one-third for the employer and two-thirds for employees.

In the year 2001, GDP for the textile, garment and shoe industries are equal to US\$413 (See table 1). This cost comes from a labor force that carried out 728 million hours of textile work. Hourly productivity is equal to US\$0.567 (100%), but it is offered to employees at US\$0.216 per hour (38%). The remainder of US\$0.34 is kept for the employer and factory owner. As for the remaining 62%, the employer uses the amount as the company's income, interest loans for investment, and other taxes and expenses.

In the year 2001, exports increased to 5,503,000 riels (US\$1400 million) according to national accounting 1993-2002, (see table 2).

Wages that were received by employees were approximately 728,000,000 multiplied by US\$0.216, which is equal to US\$157.248.00 or 11% of the textile export value.

### 3- Equity, increasing basic wage and seniority bonus on textile field.

The fast growth of textile exports in the past few years is due to GSP goods such as clothing, shoes and other textile products that increased to US\$1380 million [\$1.38 billion] in year 2001 and US\$1403 million [\$1.4 billion] in year 2002 (75% and 80% of total export goods). The first table shows that while there has been a growth of exports, basic wages of the labor force per hour have remained the same since 2000 (US\$0.216 an hour). In principles of private accounting (enterprise accounting), wages are determined by the employer. But in the national accounting system, wages are a part of the labor force, [with an] extra value of 6.193.642 activist laborers who also offered GDP.

Division by equity of extra value to the four types of economic agents caused serious problems in the society.

- First type: Labor force employees Wage
- Second type: Enterprise employer Bonus
- Third type: State Public Administration Tax
- Fourth type: Financial Institute National and International Interest from investment

In relation to the division of extra value in the textile field for the years 2000-2003, the Arbitration Council came up with the following, based on equity:

US\$ Million	Year 2000	Year 2001	Year 2002
Export of textile		1140	1404
GDP (textile)	339	413	499
Value of one hour	0.566(100%)	0.567(100%)	0.685(100%)
Wage for one hour	0.216(46%)	0.216(38%)	0.216(32%)
Remaining for ER	0.256(54%)	0.351(62%)	0.469(68%)

The above table shows that income gains from textile exports are growing. Extra value also grows. The percentage for employees' wage per hour is reduced permanently from 46% (2000) down to 32% (2002). The percentage of the remaining extra value for the employer grows from 54% (2000) to 68% (2002). This has led the Arbitration Council to find that the division of the extra value per hour is not equitable.

The Arbitration Council finds that increasing the basic wage by 5% in the textile labor force will not cause serious affects to the rate of wage in export (11,2%) and to the division of extra value (38%). Increasing the basic wage by 5% from now will lead to a growth in salary twice within 20 years (See table No. 4 on seniority bonus in the factory based on each case). In figure 12, if wages are increased 5% this year, monthly wages which are now US\$45 will grow 5%. Therefore basic wages will grow from US\$45 to US\$47.25. The rate of wage of export grows from 11.2% to 12% and the percentage of extra value for employees will also grow from 38% to 40%. Thus the value of the benefit for the worker is less than 2% of extra value. This means that increasing the basic wage by 5% does not have much effect on exports and causes little change to the division of extra value between employee and employer.

#### **4- Equity and number of working hours in the factory.**

The survey from the Ministry of Planning shows that the textile industry in Cambodia has a labor force of 253,489 employees who work for 14 millions hours a week equal to 728 million hours a year (See table 3A and 3B). Each employee works for 55 hours and 57 minute (approximately 56 hours) per week exceeding by 8 hours a week normal working hours (48 hours a week). The law allows overtime work not exceeding two hours per day in the factory. But, in reality, there is always overtime work that is not in conformity with the law. Report No. 7 from the ILO on "Labor Conditions in the Garment Field in Cambodia," October, 2003, states that "[Overtime work appeared to occur often and lasts many weeks or even months in 55 factories. Overtime work sometimes lasted until midnight in 11 factories]."

This report added, "[Employees reported that overtime work was not by mutual agreement in 49 factories. Also, when factories transfer annual leave to replace

wages, with the agreement of the employees and support from the unions, then the MOSALVY did not object to this practice in 23 factories using the wage system to replace the 18 days of annual leave."

In fact the practice of the Top One factory appears to be consistent with the above points. In the payroll for October, November and December 2003 that was sent to the Arbitration Council regarding daily overtime and overtime work on public holidays, overtime always exceeded two hours per day or 52 hours per month (except in December). Some employees had worked for more than 70 hours per week thereby increasing their wages from US\$45 (December, page 26) to US\$60 or US\$75(November, Page 3, 7, and 15). The Department of Labor and the Office of American International Labor Affairs has published a salary table on textiles in Cambodia compared to other countries in the same region (see table 5). This table shows that salaries for the year 2000 - basic wage plus compensation and seniority bonus for each employee - are approximately US\$61 or each hour equal to US\$0.29. If we think about how an employee attains US\$61, an employee must work overtime two hours per day (25 days per month) or wait for bonus growth and seniority bonus in year 2010 (Table 4, row 12). So, based on equitable principles, the Arbitration Council finds that it should provide a system that permits a gradual increase of the basic wage at a rate of 5%. This offers flexibility to employees to receive the extra value that was contributed by them in the textile field without overtime work or waiting for 10 years for their seniority bonus. The Arbitration Council finds that increasing the basic wage by 5% can permit workers to improve their salary and also check inflation.

## **5- Equity, inflation and rate exchange**

### **5-1. Inflation and Data Serving.**

According to the estimates in the National Accounting Bulletin Number 7, over the past few years, the rate of inflation of the GDP in Cambodia is shown as below:

<u>Deflator of GDP</u>	<u>Data Serving (CPI)</u>
- Year 1999/98 consists of 2.1%	4.0%
- Year 2000/99 consists of -1.7%	-0.8%
- Year 2001/00 consists of -0.3%	-0.6%
- Year 2002/01 consists of 2.1%	3.3%

The purchasing power of the nominal wage comes from the current wage minus inflation; for example, if inflation grows 3%, an employee's salary should also grow 3% in order to maintain the purchasing power of his/her salary. The above figure shows inflation in the year 2002 at a rate of approximately 3%. So, an employee's salary should increase more than the inflation rate. The Arbitration Council finds that based on principles of equity, there should be an increase in the basic wage by 5% (See row number 12 of table 4) to prevent [the effects of] inflation and to offer incentives to employees who did not receive an increase in basic wages in year 2000 before the issuance of Notification No. 017/MOSALVY. Due to the instability of the inflation rate, the Arbitration Council finds the employees' demand for inflation adjustment is appropriate for the year 2002. In years 2000 and 2001, however, the Arbitration Council finds this issue should be kept for the union and employer to negotiate based on the facts.

#### **5-2 Exchange rate in Riels/ Dollars**

Cambodia has a variable exchange rate which varies from day to day and dollars are used up to 75% [in Cambodia] while Riels are only circulated in 25% of Cambodian national economic operations. This has a small effect on the wage of employees in the field of textile, garment and shoes, whose salary is paid in dollars.

**50<sup>th</sup> conflict:** Employees who work in dangerous places that may harm their body or health, such as electric power or laundering, often face many more dangers than other lines of work. The Arbitration Council finds that the employer should offer compensation over the basic wage in order to make employees happy and compensate them for their risk as well as any detriment to their health that might happen in such lines of work.

**51<sup>st</sup> conflict:** So far, employees' pay slips from Top One are never written in Khmer. This results in employees misunderstanding information on the slip. This can also lead to conflict. Moreover, all employees have the right to know about their wages for overtime work and other benefits related to their own job. The Arbitration Council finds that the company should produce pay slips in Khmer and include all information to assist the employees understand [what payment they are receiving].

**52<sup>nd</sup> conflict:** The Arbitration Council finds that this point is a plan for negotiation in the future. This is a right of both parties.

**53<sup>rd</sup> conflict:** The Arbitration Council finds that this conflict was not included in the non-conciliation report sent by the Labor Inspector, but it has been raised and can affect the dispute related to direct wage. The Arbitration Council understands one employee who asked for one day off has already lost her/his wage. The fact that the employer cut bonuses of US\$5 as alleged by the union is not appropriate. The Arbitration Council finds that the employee's demand regarding this issue is acceptable.

**Last note:**

In all the above issues, some were already resolved by agreement between the employer and the union at the conciliation stage with the Labor Inspector, some were resolved by agreement at the hearing of the Arbitration Council, and in regard to the remaining points, both parties have left them for the Arbitration Council to decide. The Arbitration Council finds that if it does not include all of the conflicts (both the agreement and decision of the Arbitration Council) or does not put them in sequence, then the agreements and decisions cannot be executed smoothly. So the Arbitration Council finds that it should include all issues in the one text of a collective bargaining agreement in sequence and keep it as a condition for establishing a collective bargaining agreement which conforms with clause 34/G of the Prakas No. 338/MOSALVY, dated December 11, 2002.

Based on the facts, the law, principles of equity, the evidence and the above given reasons, the Arbitration Council releases its decision and award which may become a collective bargaining agreement for both parties in annex "A" of this Award.

**Decisions & Orders**

Both parties must comply with all conditions of the collective bargaining agreement that is attached in annex "A" of this Award.

**Signatures of Members of the arbitration panel:**

Arbitrator chosen by the employer party:

Name:       **Ms. You Suonty**

Signature:   .....

Arbitrator chosen by the worker party:

Name:       **Mr. Liv Sovanna**

Signature:   .....

Chair of arbitration panel:

Name:       **Mr. Sok Mathoeung**

Signature:   .....

*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.*

*If one party file a complaint against the award, one of both parties can file a suit to municipal and provincial court or conduct a strike or lockout.*

*This Award is immediately binding upon the parties if parties have agreed as such in writing before the notification of the Award, or if parties are bound to comply with a collective bargaining agreement stipulating that no opposition to the Award may be lodged.*