



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអន្តរាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 25/08-ASD

Date of Award: 14 March 2008

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **Ing Sothy**

Arbitrator chosen by the worker party: **An Nan**

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

DISPUTING PARTIES

Employer party:

Name: **ASD Cambodia Co., Ltd**

Address: Kantok Khang Cheung Village, Kantok Commune, Ang Snuol District, Kandal Province

Telephone: 012 928 966

Fax: N/A

Representative:

- | | |
|----------------------|-------------------------|
| 1. Mr. Heang Chanthy | General manager |
| 2. Mr. Pov Arun | Chief of administration |

Worker party:

Name: **Cambodian Industrial Union Federation (CIUF) and local union of Cambodian Industrial Union (CIU)**

Address: Kantok Khang Cheung Village, Kantok Commune, Ang Snuol District, Kandal Province

Telephone: 012 699 395

Fax: N/A

Representative:

- | | |
|------------------------|--------------------------------------|
| 1. Mr. Hem Sok Ponlork | President of CIUF |
| 2. Ms. Sok Sokhon | President of CIU at ASD factory |
| 3. Mr. Nguon Daro | Vice-president of CIU at ASD factory |

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers demand that the company maintain wages and bonus for members of CIU whose employment the company suspended from 11 August 2007 to 18 August 2007. The company does not agree to the demand.
- 2- The workers demand that the company calculate paid annual leave pro rata according to Article 168 of the Labour Law. The company states that it follows its old practice which is in accordance with Article 166 of the Labour Law.
- 3- The workers demand that the company allow female workers to take a 90 working-days of maternity leave during which they are entitled to half of their wages and perquisites paid by the employer; this payment should be paid before the leave starts and it is the average of 12 months of wages and perquisites. The company states that it already follows Article 182 and 183 of the Labour Law.
- 4- The company does not agree to provide an increase of US\$ 5 every year to the wage of the workers who have been working for one year or more.
- 5- The workers demand that the company provide 1,000 riel again as an incentive bonus to each sewing group that can achieve the determined target number and this should be paid every weekend. The company does not agree to this but it follows the old practice, paying US\$ 3 at the end of the month to those sewing workers who meet the target.
- 6- The company does not agree to provide medical checks to workers once per year but it promises to have the medical check conducted within 6 months of 18 January 2008.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labor Law (1997); the Prakas on the Arbitration Council No. 099 dated 21 April 2004; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of Arbitrators No. 076 dated 10 May 2007 (Fifth Term).

An attempt was made to conciliate the collective dispute that is the subject of this Award, as required by Chapter XII, Section 2A of the Labour Law. The conciliation was unsuccessful, and the non-conciliation report No. 059/08 KB/KN, dated 4 February 2008 was submitted to the Secretariat of the Arbitration Council on 13 February 2008.

HEARING AND SUMMARY OF PROCEDURE

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

Date of hearing: 25 February 2008 (from 2:00 p.m. to 5:30 p.m.)

Procedural issues:

On 18 January 2008 the Department of Labour and Vocational Training in Kandal Province conducted a conciliation of the labour dispute with 10 issues, and four of the 10 issues were conciliated. The six non-conciliation issues were referred to the Secretariat of the Arbitration Council on 13 February 2008.

After receiving the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party to the hearing and conciliation on the six non-conciliation issues on 25 February 2008 at 2:00 p.m. Both parties were present as invited by the Arbitration Council.

In the hearing the Arbitration Council attempted to further the conciliation on the six non-conciliation issues and issue 6 was conciliated. Therefore, in this case the Arbitration Council will consider only on issues 1, 2, 3, 4 and 5 based on the evidence and clarification of the parties in the hearing as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

1. Authorization letter by ASD company, dated 23 February 2008.
2. Minutes of collective labour dispute conciliation at ASD Company, dated 17 August 2007.
3. Minutes of collective labour dispute conciliation as ASD Company, dated 18 January 2008.
4. Minutes of collective labour dispute conciliation at ASD Company, dated 24 January 2008.
5. Internal Work Rules of ASD Cambodia Co., Ltd, dated 22 August 1998.
6. Statute No. 359/03 PN.NTK.BP, dated 2 April 2003 by Douson Cambodia Co., Ltd.
7. Certificate of commercial registration of ASD Company.

Provided by the worker party:

1. Additional evidence submitted by CIUF in case 25/08 of the Arbitration Council, dated 3 March 2008.
2. Certificate of union registration of Cambodian Garment Worker Union at ASD Company No. 898 KKBV/VK, dated 20 February 2006.
3. Letter No. 631 KB/AK/VK regarding recognition of new union leadership at ASD factory, dated 4 July 2007.

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

1. Report of collective labour dispute conciliation at ASD Company No. 059/08 KB/KN, dated 4 February 2008;
2. Minutes of collective labour dispute conciliation at ASD Company, dated 18 January 2008.

Provided by the Secretariat of the Arbitration Council:

1. Letter of invitation to the company party to attend the hearing, No. 121 KB/AK/VK/LKA, dated 18 February 2008;
2. Letter of invitation to the worker party to attend the hearing, No. 122 KB/AK/VK/LKA, dated 18 February 2008;

FACTS

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

The Arbitration Council finds that:

- ASD factory employs approximately 800 workers.
- Local union of CIU is the claimant in this case and this union does not have the most representative status. According to the workers' claim, CIU has approximately 160 members.

Issue 1: The workers demand that the company maintain wages and bonus for members of CIU whose employment the company suspended from 11 August 2007 to 18 August 2007

- The workers demand that the company maintain wages and bonus for members of CIU whose employment the company suspended from 11 August 2007 to 18 August 2007 because they did not join the strike. The workers states that the strike was led by the National Industrial Trade Union of Cambodia (NITUC). Workers who joined the strike were members of NITUC. Members of CIU attempted to go to work but the company turned the lights off and asked them to go home. The workers did not provide any evidence as to how many people were on strike or how many of them tried to go back to work.
- The company states that it did not suspend the employment of workers who are members of CIU. The company had work for all workers to perform but they did not work and went on strike. During the strike the company could not identify who were members of CIU and who were member of NITUC. The company knew only that a majority of workers went on strike that interrupted the operations and production

activities. The company states that in order for the production line to operate, it needs at least 700 workers.

- The company claims that during the strike, it called leaders of the two unions for discussions in order to invite all the workers back to work, but the workers did not agree to come back to work. The company did not know the reason why they did not agree to come back to work because leaders of the unions did not talk to the company about this.
- The workers claim that they tried to contact a former administrator, Sok Sokhon, in order to go back to work on 13 August 2007, but the administrator did not allow them to work because a majority of workers were still on strike. The company did not call the representatives of CIU to attend the discussion.
- The representatives of the company who were in the hearing did not respond. However, they claim that they were new staff and do not know about what really happened on those days.

Issue 2: The workers demand that the company calculate paid annual leave pro rata according to Article 168 of the Labour Law

- The workers demand that the company calculate paid annual leave pro rata according to Article 168 of the Labour Law by taking 12 months of wages divided by 12 and divided by 26 in order to find the average annual leave payment per day.
- The company does not agree, but wanted to follow the current calculation by taking the minimum wage of US\$50 divided by 26 days. The company states that it would have agreed with the demand should this be the interpretation by the Constitutional Council but the current interpretation raised by workers is not an official interpretation.

Issue 3: The workers demand that the company allow female workers to take 90 working days of maternity leave during which they are entitled to half of their wages and perquisites and this should be paid before the leave starts

- The workers and employer agree that the company should provide 90 days of maternity leave. The workers demand that the company provide 90 working days of maternity leave excluding holidays and Sundays because what is stated in the Labour Law is 90 days.
- The workers and the employer agree that currently the company provide 50 percent of wages and perquisites which include wage, seniority bonus, skill bonus and attendance bonus.
- The worker request that the company calculate maternity leave payments by taking the average of 12 months of wages divided by 12 then divided by 26, after that multiplied by 90 working days according to Article 182 and 183 of the Labour Law. The company does not agree to the demand because the Labour Law is not clear.

- The worker party and the employer party agree that the company pays the 50 percent of wages and perquisites one time per month. The workers demand that the company pay this before the maternity leave starts based on Article 115 of the Labor Law. An additional reason for this is that the workers need money when they deliver their baby. The company does not agree but will pay one time per month.
- The company party states that there are around 10 to 15 women workers who take maternity leave each month. They can ask their husbands or relatives to get the payment for them if they cannot come by themselves.

Issue 4: The workers demand that the company provide an increase US\$ 5 to wages annually for those workers who have been working for one year or more

- The workers demand that the company increase wages by US\$ 5 annually for those workers who have been working for one year or more because the company has never increased their wages while prices of everything have gone up. The workers do not provide any specific evidence to support their demand.
- The company claims that it cannot increase the workers' wage because their productivity has not improved while, since year 2000, the company has accepted buying order in lower price. Moreover, the company increased workers' wages to US\$ 50 according to the Notification by the Ministry of Labour recently but it does not remember in what year.
- Clause 5-c of the company's Internal Work Rules state, *"One time each year the company will reconsider the wage, bonus, incentives and perquisites based on promotion; good compliance with the Internal Work Rules will result in provision of incentive bonus or wage increase by the company based on individual merit."*

Issue 5: The workers demand that the company again provide 1,000 riel as an incentive bonus to each sewing group that can achieve the determined target number and this should be paid every weekend.

- The workers demand that the company provide a US\$ 3 per month for incentive bonus to any worker who can sew to meet the target determined and the company should pay this amount to them by the end of each month. However, they do not know from when the company started providing this, they only remember that the company had provided this for a long time already.
- The workers demand that this should be changed to daily incentive bonus for any sewing group that can reach the determined target then each worker should receive 1,000 riel per day and this should be paid by the end of each week because workers need to sew different style. The workers do not elaborate on this issue.
- The company party states that it cannot change this as the provision of the incentive bonus is from the current director's own pockets, it is not the company's money.

REASONS FOR DECISION

Issue 1: The workers demand that the company maintain wages and bonus for members of CIU whose employment the company suspended from 11 August 2007 to 18 August 2007

The Arbitration Council will consider whether the workers are entitled to wages and attendance bonus during the work suspension from 11 August 2007 to 18 August 2007.

Article 332 of the Labour Law states, *“A strike suspends the labour contract. During strike, the allowance for work is not provided and the salary is not paid.”*

Based on this Article, in previous cases the Arbitration Council has always rejected the workers' demand for the company to maintain workers' wages [during a strike] (see Arbitral Awards 04/03-Lida, issue 1; 25/04-Standard Garment, issue 1; 47/04-Dai Young, issue 4; 58/06-Wilson, issue 2 and 63/07-Phnom Penh Garment, issue 1)

In this case, the Arbitration Council agrees with the decision because the Labour Law does not require the employer to pay workers' wages during a strike. Moreover, the Labour Law does not encourage the workers to go on strike and during strike the workers do not perform any work beneficial to the employer but only create a loss of benefits to the employer. Thus, both parties lose which means that the workers do not receive their wage while the employer does not receive any product produced by the workers.

In this case, from 11 August 2007 to 18 August 2007 a majority of workers went on strike and the company was required to halt the whole operation. However, CIU claims that its members did not participate in the strike and tried to go to work but the company turned off the lights and told them to go back home. But in the hearing the worker party did not provide any evidence to prove that they attempted to go to work and were prohibited by the company. The company party, on the other hand, states that during the strike the company could not recognize which workers were members of CIU and which ones were members of NITUC. In addition, the employer party states that the company did not suspend the employment of workers who were members of CIU, the company had work for all workers to perform but the workers did not agree to go to work and went on strike. Generally, employer seeks for a way to make striking workers come back to work because strike can interrupt production process of the company and there is no reason that the employer would prohibit the workers from coming to work.

Based on the arguments made by the two parties as mentioned above, the Arbitration Council considers that it was possible that some workers might participated in the strike while some other might not. However, the Arbitration Council does not find sufficient evidence to prove that workers who were members of CIU who did not participated in the strike had tried their best to come back to work. Furthermore, CIU does not have any documents or list of

names of specific workers who did not participate in the strike and attempted to go back to work.

Based on the above findings of fact, the Arbitration Council rejects the workers' demand for the company to maintain bonus and wages of workers who are members of CIU for the duration of employment suspension from 11 August 2007 to 18 August 2007.

Issue 2: The workers demand that the company calculate paid annual leave by pro rata according to Article 168 of the Labour Law

Regarding paid annual leave, Article 168 of the Labour states that *“Before the workers departs on leave, the employer must pay him an allowance that is at least equal to the average wage, bonuses, benefits, and indemnities, including the value of benefits in kind, but excluding reimbursement for expenses, that the worker earned during the twelve months preceding the date of departure on leave. This allowance shall in no case be less than the allowance that the worker would have received had he actually worked.”*

According to Article 168 of the Labour Law above, the employer should use average wage, bonuses, benefits, and indemnities, including the value of benefits in kind provided to workers within the last twelve months before the date of departure for leave as the basis [for calculation of the payment].

In case 23/08-M & V 1, the Arbitration Council ordered the employer to calculate wages during annual leave by taking the total wages earned within the last twelve months the workers worked, divided by twelve to find the average wages per month. Then take the average wage per month and divide it by 26 to find the average wage per day to be used as a basis to pay for workers during their paid annual leave. (See Arbitral Award 23/08-M & V 1, issue 7).

In this case, the Arbitration Council agrees with the decision of the Arbitration Panel in the above case. Therefore, in order to be consistent with the above decision, the Arbitration Council decides to order the employer to use the above formula in calculating workers' wage on the day they take annual leave.

Issue 3: The workers demand that the company allow female workers to take 90 working days of maternity leave during which they are entitled to half of their wages and perquisites and this should be paid before the leave starts

a. Demand for the company to pay 90 days of maternity leave excluding holidays and Sundays

Article 182 of the Labour Law states, *“In all enterprises covered by Article 1 of this law, women shall be entitled to a maternity leave of ninety days.”*

In this case, the workers claim that the 90 days mentioned in Article 182 of the Labour Law above refers to the number of working days, not calendar days, because the Labour Law does not state that it refers to calendar day. The workers do not provide any other argument to support their claim.

The Arbitration Council considers that the purpose of the Labour Law in providing 90 days maternity leave is in order to provide sufficient time for the women to take care of both their own health and the newborn baby. Based on the contents of this Article, the Arbitration Council considers that the Article does not state whether the 90 days are working days or normal calendar days which include holidays and Sundays. Moreover, the Arbitration Council found that there is not any Prakas or regulation by the Ministry of Labour and Vocational Training which gives a definition or clarifies this point.

However, generally if the law does not specify whether to apply working days or normal calendar days --which include holidays and Sundays-- the normal presumption is that it is the number of working days. Such practice exists not only in Cambodia but all over the world for a long time that every legal person, Cambodian or international, agree to such practice (*opinio juris*). Thus, this issue can be considered a national and international custom. This means that if the law does not specifically mention it is the number of working days or number of normal calendar day, it is the number of normal calendar days.

In case 23/08-M & V 1, the Arbitration Council considers that the contents of Article 182 of the Labour Law which allows 90 days for women workers to take maternity leave, the 90 days are working days which means it is not inclusive of Sundays and holidays. (See Arbitral Award 23/08-M & V 1, issue 4 and 10).

In this case, the Arbitration Council agrees with the decision of the Arbitration Panel in the above case. Therefore, in order to be consistent with the above decision, the Arbitration Council decides to reject the workers' demand in this issue.

b. The workers demand that the company provide half of their wage including perquisite and this should be paid to them before the maternity leave starts.

Article 183(1) states, "... *During the maternity leave as stipulated in the preceding article, women are entitled to half of their wage, including their perquisites, paid by the employer.*"

In the findings of facts, the Arbitration Council found that the Company provided half of their wage by taking the average of wages in each month for the last twelve months, divided by two to find the 'half of the wage.'

In relation to the method of calculation of wages during maternity leave, in previous arbitral awards the Arbitration Council decided that wage during maternity leave is the wages within the last twelve months before the women take leave to be divided by twelve to find the

average of monthly wage. Then the average of the monthly wage is divided by two in order to find the 'half of wages;' then multiplied by three for the period of 90 days which is the duration of maternity leave. (See Arbitral Awards 68/04-City New, issue 4; 18/06-GHG, issue 3; 33/07-Goldfame, issue 7 and 06/08-Kingsland, issue 1).

However, in this case, both parties acknowledge that in the past the company calculated the average of wages based on the last twelve months of wages including the months of work suspension when the workers received only US\$ 10 per month. The workers demand that the company should not include the months when there is a work suspension into the 12 months calculated for the average of annual wages. However, the company party does not agree claiming that during the period of a work suspension, the company also pays US\$ 10 per month to the workers.

The Arbitration Council considers that the average of wage within the last twelve months refers to the wages workers received within each month. If there was a work suspension in some months within the last twelve months, in principle the workers do not receive their wage. In this case, the employer provides US\$ 10 per month to workers during this suspension period. The Arbitration Council considers that this amount is not workers' wage when they are working normally because according to the Law when a worker worked for a month, the employer is required to pay their wage in an amount at least equal to the minimum wage of US\$ 50 as stated in Notification 745 KKBV, dated 23 October 2006. Therefore, the Arbitration Council considers that the calculation of the average of wage based on the last twelve months of wage including the payment during work suspension when workers did not work in order to find the average of wages to pay for women's maternity leave payment is not valid.

In order to find an appropriate formula to calculate for wages for women workers during their maternity when the last twelve months before the leave had work suspension, the Arbitration Council will consider as follows:

Article 72 of the Labour Law states, *"3- Unless otherwise specified, periods of suspension are taken into account when calculating the employment seniority."*

Based on this Article, the Arbitration Council considers that although there is a work suspension within the last twelve months before maternity leave, the period of the work suspension is included in workers' employment seniority. This means that this calculation of wages should be based on wages within the last twelve months of wages even though there is suspension of employment contract within this period.

The Arbitration Council considers that in previous cases, the Arbitration Council determined that workers' average wages per month should be used as a basis of calculation of wages during maternity leave. (See Arbitral Awards 57/06-Evergreen, issue 6; 97/06-New Max, issue 1 and 91/07-JK, issue 3).

In this case, the Arbitration Council also considers that the average of wages the workers received within the last twelve months should be taken as a basis for calculation. However, because in this case there is a suspension of employment within the last twelve months, the Arbitration Council considers that the calculation of the average of wage per month should be based on the wage the workers received when they worked for the last twelve months to divide by the number of months the workers [actually] worked.

For example, a female worker worked through 2007 and started her maternity leave in January 2008. In 2007 there was a work suspension for two months during which the company did not have an obligation to pay her wage. Thus, she [actually] worked for only ten months in 2007 and during those ten months she received a total wages of US\$ 1,000. Thus, her average wages per month is US\$ 1,000 divided by 10 months which equals to US\$ 100 per month. So the average wages per month is determined by dividing the amount by two to find half of the wages per month, thus the woman worker is entitled to an amount equal to US\$ 50.

Therefore, the company should adjust its method of calculation of annual average of wage of the last twelve months by taking only the total amount of wages workers received monthly within the last twelve months when they worked to divide by the number of months the workers actually worked.

In the findings of fact the Arbitration Council found that the company paid maternity payment to the workers at every normal pay day and if the workers could not come in person, they can authorize their relatives or friends to get the payment for them. However, the workers demand that the company pay women workers who take maternity leave before they take leave.

In the hearing the Arbitration Council found that the worker party made their demand for maternity payments in advance because they have to spend more than usual on medical fees and health care and so on. The employer party claims that it cannot pay this in advance but this payment for maternity leave can be paid to workers at every normal pay day and in case they cannot come by themselves they can authorize their relatives or friends to receive the payment on behalf of them.

Paragraph 3 of Article 115 of the Labour Law states, *“Payment shall not be made on a day-off. If payday falls on such a day-off, the payment of wage shall made a day earlier.”*

In previous case, the Arbitration Council provided detailed reasoning in interpreting the meaning of Article 115 of the Labour Law and decided that payment during maternity leave should be paid out to women workers before they take the leave because payment of wages should not be made on the days workers are entitled to maternity leave but should be paid one day before the leave. (See Arbitral Awards 57/06-Evergreen, issue 6; 97/06-New Max, issue 1 and 91/07-JK, issue 3).

In this case, the Arbitration Council agrees with the interpretation of the Arbitration Council in previous cases.

Therefore, the Arbitration Council decides that the company should pay the full amount of payments for maternity leave before the women workers start taking the leave.

Issue 4: The workers demand that the company increase wages by US\$ 5 annually to those workers who have been working for one year or more

The workers demand that the company provide an increase of US\$ 5 to their wages annually to those workers who have been working for one year or more because the company has never provided a wage increase while the price of everything has gone up. The Arbitration Council will consider *whether the workers are entitled to a US\$ 5 increase in wages annually for those who have been working for one year or more.*

Notification 745 KKBV, dated 23 October 2006, point 1, states, *“The minimum wage for garment, textile workers and shoe making workers is set at US\$45.00 per month for probationary period of 01 month to 03 months. At the end of probationary period, a full-right worker receives the minimum wage of US\$ 50 per month.”*

Based on the findings of fact, the Arbitration Council found that recently the company had just increased workers' wage to US\$ 50 according to Notification 745 KKBV, dated 23 October 2006 by the Ministry of Labour. Thus, the Arbitration Council considers that the employer has implemented its obligation according to Notification 745.

The Arbitration Council finds that other than Notification 745 as mentioned above, there is not any other regulation or article in the Labour Law which mentions an increase of an additional US\$ 5 for workers who have been working for one year.

However, the Arbitration Council found that the company has Internal Work Rules in which Clause 5-c states, *“One time each year the company will reconsider the wage, bonus, incentives and perquisites based on promotion; good compliance with the Internal Work Rules will result in provision of incentive bonus or wage increase by the company based on individual merit*

Thus, according to Clause 5-c of the Internal Work Rules, the company has an obligation to evaluate workers' position, merits, and good compliance with the Internal Work Rules, in order to consider whether the workers are entitled to a wage increase.

Therefore, the Arbitration Council considers that the employer needs to follow the Rules and evaluate the workers' position and merits on an annual basis to consider whether the workers are entitled to a wage increase. However, the company's Internal Work Rules does not grant a right to all workers who have been working for longer than one year to receive an additional US\$ 5 automatically.

Because there is no article in the Labour Law which mentions an increase of an additional US\$ 5 on the wage of workers and there is no agreement mentioning an increase of an additional US\$ 5, the Arbitration Council considers that the demand is an interests dispute.

So far, in relation to interests disputes, the Arbitration Council always consider whether the union has the most representative status because the most representative status of the union provides legal qualifications to negotiate and establish a collective bargaining agreement in a company (see Article 96, paragraph 2B of the Labour Law and Prakas 305, clause 9, paragraph 1) and a legal right to bring an interests dispute to the Arbitration Council for resolution.

In order to receive the most representative status, Article 277 of the Labour Law 1997 and Clause 6 of Prakas 305 dated 22 November 2001 requires that the union needs to have members at least equal to more than half of the total number of workers in the factory and it needs to be registered at the Ministry of Labour and Vocational Training and fulfill other conditions as stated in this Article.

Generally, the Arbitration Council would decline to consider an interests dispute if the union who bring the labour dispute does not have the most representative status in the factory. (See Arbitral Awards *81/04-Evergreen, issue 4; 09/05-Kin Tai, issue 2; 84/07-Yung Wah II, issue 1; 108/07-8 Stars Sportswear, issue 3; 135/07-Wilson, issue 1 and 14/08-Quick Sew, issue 3*).

Based on the above findings of fact, the Arbitration Council found that CIU does not have the most representative status in ASD company. Thus, the union does not have a legal right to enter into a collective bargaining agreement on behalf of all workers in the company. (See *Prakas 305, clause 9, paragraph 1*).

In addition, Clause 43 of Prakas 099, dated 21 April 2004 states, *“An arbitral award which settles an interest dispute takes the place of a collective bargaining agreement and shall remain in effect for one year from the date on which it becomes final unless the parties agree to make a new collective bargaining agreement replacing the award.”*

Based on Article 43 above, the Arbitration Council found that if the Arbitration Council issue an Arbitral Award which settles an interests dispute it will become a collective bargaining agreement for one year. Generally, a collective bargaining agreement is applied for all workers in the factory and workers' right to strike cannot be exercised to revise the collective bargaining agreement during the period the agreement has not expired. (See *Article 96 and 321, paragraph 2 of the Labour Law*).

Therefore, in order to be consistent with the interpretation of the Arbitration Council in previous cases, the Arbitration Council decides to decline to consider the demand for the

company to provide an increase of an additional US\$ 5 annually on the wage of workers who have been working for one year or more.

Issue 5: The workers demand that the company change its practice to provide 1,000 riel per day as an incentive bonus to each sewing group that can achieve the determined target number and this should be paid every weekend.

The company provides US\$ 3 as an incentive bonus to any worker whose sewing reaches a certain target and the company pays this amount of money to the worker at the end of each month. However, the workers demand the company change this practice and instead provide a daily incentive bonus in an amount of 1,000 riel, to be paid at the end of each week, for each worker in the sewing group who can reach the determined target.

The Arbitration Council considers that the Labour Law does not require that the employer should provide an incentive bonus to workers. However, the employer [in this case] has a policy to provide the incentive bonus in order to increase productivity which is not required in the Labour Law.

Therefore, the workers' demand for the employer to provide 1,000 riels as incentive bonus to be paid at the end of the week is a demand related to interests. Thus, this is an interests dispute.

Generally, the Arbitration Council will reject the interests dispute if the union who brings the labour dispute does not have the most representative status in the factory. (See the decision regarding interests dispute in issue 4 above).

Therefore, the Arbitration Council decides to decline to consider the demand for the company to provide a daily incentive bonus to those groups which could sew to reach the determined target in an amount of 1,000 riel for each worker to be paid at the end of the week.

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

DECISION AND ORDER

Issue 1: Reject the demand for the company to maintain wages and bonuses for workers who are members of CIU for the period of the work suspension from 11 August 2007 to 18 August 2007.

Issue 2: Order the employer to calculate annual leave payments based on the average of 12 months of wages.

Issue 3:

- Reject the demand for the company to provide 90 working days for maternity leave.
- Order the employer to provide 50 percent of wages and perquisites based on the average of wages within 12 months to be paid before maternity leave start.

Issue 4: Decline to consider the demand for the company to increase wages by US\$ 5 annually to those workers who have been working for one year or more.

Issue 5: Decline to consider the demand for the company to provide a daily incentive bonus in an amount of 1,000 riel, to be paid at the end of each week, for each worker in the sewing group who can reach the determined target.

Type of Award: Non-binding award

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

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: