



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល

THE ARBITRATION COUNCIL

Case number and name: 53/07-E Garment

Date of Award: 13 July 2007

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: **SIN KIM SEAN**

Chair Arbitrator (chosen by the two Arbitrators): **KONG PHALLACK**

DISPUTING PARTIES

Employer party:

Name: **E Garment Co., Ltd.**

Address: Street 21, Svay Rolom Commune, Saang District, Kandal Province

Telephone: 012 864 088 Fax: 024 399 003

Representative:

- | | |
|--------------------|---|
| 1. Mr. Siv Chiseng | Head of administration of E Garment Company |
| 2. Mr. Chorn Thun | Head of Repairers of Otofin Company |

Worker party:

Name: **Local C.CAWDU at E Garment Factory**

Address: Street 21, Svay Rolom Commune, Saang District, Kandal Province

Telephone: 023 210 481 Fax: N/A

Representative:

- | | |
|----------------------|--|
| 1. Mr. Ek Sopheakdey | General Secretary of C.CAWDU |
| 2. Mr. Em Rattanak | President of local C.CAWDU at E Garment Factory |
| 3. Mr. Svay Sambath | Vice-president of local C.CAWDU at E Garment Factory |
| 4. Mr. Chann Meas | Advisor of local C.CAWDU at E Garment Factory |
| 5. Mr. Om Sros | Advisor of local C.CAWDU at E Garment Factory |

6. Mr. Prak Sopheap	Advisor of local C.CAWDU at E Garment Factory
7. Mr. Mot Pheareak	Advisor of local C.CAWDU at E Garment Factory
8. Mr. Chea Phany	Advisor of local C.CAWDU at E Garment Factory
9. Mr. Chan Rithy	Advisor of local C.CAWDU at E Garment Factory
10. Mr. Mao San	Advisor of local C.CAWDU at E Garment Factory
11. Mr. Sok San	Advisor of local C.CAWDU at E Garment Factory
12. Mr. To Monh	Advisor of local C.CAWDU at E Garment Factory
13. Mr. Bien Norn	Advisor of local C.CAWDU at E Garment Factory

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The workers demand the company to reinstate 23 workers to work as normal. The company does not agree because they are not the company's workers.
- 2- The workers demand the company to give the workers identification cards to wear. The company does not agree because those workers are not the company's workers.
- 3- The workers demand the company to prepare to increase the wage 30 percent to all work sections. The company does not agree.
- 4- The workers demand the company to pay the 50 percent of wage to women who take maternity leave [before taking such leave]. The company does not agree.
- 5- The workers demand the company to provide 1,000 riels for meal allowance for 2 hours of overtime work and 2,000 riels for 4 hours of overtime work. The company representative will take this issue to discuss with the company's director.
- 6- The workers demand the company to make all workers piece rate workers and to issue the piece rate in advance. The company does not agree because the buyer does not allow for piece work.

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 hearing was unsuccessful, and the non-conciliation report No.102 K.B.V/KN, dated 31 May 2007 was submitted to the Secretariat of the Arbitration Council on 22 June 2007.

HEARING AND SUMMARY OF PROCEDURE

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

Date of hearing: 02 July 2007 (From 02:00 p.m. to 5:30 p.m.)

Procedural issues:

On 9 May 2007 the Department of Labour and Vocational Training of Kandal Province received a complaint letter No. 26/07 SBKK, dated 08 May 2007, by C.CAWDU regarding the demand for the company to improve work conditions in accordance with the Labour Law. After receiving the complaint, the Department assigned an officer to conciliate this dispute and the last conciliation was held on 30 May 2007, as a result of which 12 of 18 issues were conciliated. The remaining 6 non-conciliated issues were referred to the Secretariat of the Arbitration Council on 22 June 2007.

After receiving the case, the Secretariat of the Arbitration Council invited the employer party and the worker party at the factory to the hearing and conciliation on the six non-conciliation issues on 02 July 2007 at 2:00 p.m. Both parties were present as invited by the Arbitration Council.

On the hearing day, the Arbitration Council attempted to further the conciliation on the six non-conciliation issues mentioned in the non-conciliation report by the Department of Labour Disputes but did not receive a conciliated result on any issue. Thus, in this case the Arbitration Council will consider on the non-conciliation issues 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. Employment contract between workers and Otofin Company
2. Patent of Otofin Company
3. Pay slip receipt for repairing workers of Otofin Company
4. Workers' resignation letter(s)
5. Contract between E Garment Company and Otofin Company on supplying of repairing workers.

Provided by the worker party:

1. Statement by the head of C.CAWDU to the Arbitration Council under the subject of summary statement about activities of local C.CAWDU at E Garment Factory.

2. List of names of union leaders whom the company terminated after the notification and election.
3. List of names of workers in E Garment Factory who make request on all the six issues in dispute.

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

1. Report of collective labour dispute resolution at Gold Fame Company, No. 120 KBV/KN, dated 31 May 2007.
2. Minute of collective labour dispute conciliation, dated 30 May 2007.

Provided by the Secretariat of the Arbitration Council:

1. Invitation letter No. 231 K.B/AK/VK/LKA dated 25 June 2007 to invite the worker party to attend the hearing.
2. Invitation letter No. 230 K.B/AK/VK/LKA dated 25 June 2007 to invite the employer party to attend the hearing.

FACTS

- Having reviewed the minute of the collective labour dispute conciliation
- Having listened to the statements by the worker and the employer parties
- Having reviewed additional documents.

The Arbitration Council finds that:

- E Garment company is located along Street 21, Svay Rolom Commune, Saang District, Kandal Province and employs approximately 1,200 workers. The company started operation in early 2006.

- There are two unions in this company: local C.CAWDU and local KYTU. Between the two unions, neither of them have the most representative status.

- According to the workers, local C.CAWDU which is the claimant in this case has approximately 500 members. This union had a union election on 2 May 2007 and notified the company about the union establishment on 3 May 2007; the union is preparing the application for registration to the Ministry of Labour.

- There are employer representatives from two companies who attended the hearing: Siv Chiseng, head of administration who represents E Garment Company and Mr. Chorn Thun, head of repairers at Otofin Company.

- There are twelve workers in the hearing and a representative from C.CAWDU. The workers clarify their demand that there are only twelve workers in issue 1 (reinstatement), issue 2 (demand for ID card) and issue 3 (demand for increase of wage). The twelve workers are:

1. Mr. Em Rattanak, electrician

2. Mr. Svay Sambath, carpenter
- 3 Mr. Prak Sopheap, steam kiln repairer
4. Mr. Chea Phany, metal welder
5. Mr. Mot Pheareak, carpenter
6. Mr. To Monh, carpenter
7. Mr. Om Sros, carpenter
8. Mr. Mao San, steam kiln repairer
9. Mr. Sok San, carpenter
10. Mr. Chan Rithy, steam kiln repairer
11. Mr. Chann Meas, electrician
12. Mr. Bien Norn, carpenter

- The employer representative of from E Garment refuses to discuss the demand in issues 1, 2 and 3 because this is Otofin Company's problem and these workers are Otofin's.

- The employer representative from Otofin company mentions that these workers are Otofin's, not E Garment's. He adds that issue 1, 2 and 3 involve Otofin company.

- The workers mention that they are workers of E Garment, not of Otofin because they have been working for E Garment for a long time.

Issue 1: The workers demand the company to reinstate the 12 workers

- The workers demand the company to reinstate 12 workers because they are workers of E Garment Factory and their dismissal occurred after the creation of the union.

- The employer of E Garment Factory does not agree to reinstate these workers because they are not workers of E Garment Factory.

- The workers do not agree and state that they are workers of E Garment because they started working in E Garment since the time when the company had not yet constructed its building(s) and were under the supervision of Mr. Si Laeng, a supervisor at E Garment Company; they ask for permission for leave from Mr. Si Laeng, receive wage from Mr. Si Laeng and the one who terminated them on 03 May 2007 was Mr. Si Laeng as well. It was only on that day that Mr. Chorn Thun came out to announce that they were workers of Otofin Company.

- Mr. Chorn Thun who is the head of repairer at the company mentions that they are all workers of Otofin Company, not E Garment's workers. He explains that his company made a one-year contract to provide repair services with E Garment Company on 02 May 2006.

- All workers recognize their signatures to the employment contracts of which the letter head was Otofin Company.

- The workers show identification cards which have Otofin's logo and recognize that the t-shirt they wear is the red t-shirt with Otofin's logo.

- Mr. Chorn Thon adds that his company recruited some repair workers who were former workers of E Garment and some other workers are new workers. His company employs staff who work regularly with E Garment Company, but in the hearing the employer representative from Otofin company does not mention the name and position of such staff. These workers get their wage at E Garment factory because Otofin factory transfers money to pay there every month.

- The Arbitration Council also found that there is receipt of payment for repair services from E Garment Company to Otofin Company.

Issue 2: The workers demand the company to provide ID cards to the 12 workers

- The workers demand E Garment company to provide identification cards to the 12 workers. The representative of E Garment does not agree because the workers are not his workers but the workers of Otofin.

- The workers show their present cards which are the card of Otofin Company.

- The representative of Otofin Company mentions that the company provides red t-shirt with Otofin's logo, ID cards and shoes for workers to wear to work. The workers agree that they really wear the t-shirts and ID cards but they do not acknowledge that they are workers of Otofin.

- The Arbitration Council ordered Otofin company to provide the t-shirt to the Arbitration Council as evidence by Friday, 06 July 2007. The company provided this by the deadline. The Arbitration Council asked the Secretariat of the Arbitration Council to invite the worker party to come to see that t-shirt. The workers came to see it and verified that it was the t-shirt they wear.

Issue 3: The workers demand the company to increase 30 percent of wage for the 12 workers

- The workers demand E Garment company to increase 30 percent of wage to repairers in all sections because in the past they used to have their wage increased by E Garment company, they are specialized workers and the work [they do] can affect their health.

- The representative of E Garment does not agree because the workers are not his workers but the workers of Otofin.

- Representative of Otofin company mentions that in the past the company used to increase workers' wage when E Garment make an evaluation on the workers and sent [the result] to Otofin.

Issue 4: The workers demand the company to pay the 50 percent of wage to women before they take maternity leave

- The workers clarify their demand in the hearing that they are making this demand for the 500 workers who are their members. The workers demand the company to pay the 50 percent of wage for maternity leave before the women take the leave.

- The workers make this demand because the women workers have poor living standards and their houses are faraway.

- The company does not agree but pays once per month because it is afraid that after getting the money the workers will not come back to work.

- The workers promise to give the list of names of the 500 workers who are making this demand to the Arbitration Council by 06 July 2007. The workers provided this list by the deadline. However, the list the Arbitration Council received contains only 244 workers and the list does not mention how many workers are taking maternity leave.

Issue 5: The workers demand the company to provide 1,000 riels as meal allowance for 2 hours of overtime work and 2,000 riels for 4 hours of overtime work

- The workers demand the company to provide 1,000 riels for meal allowance for 2 hours of overtime work and 2,000 riels for 4 hours of overtime work. To support their claim, the workers say that there are other companies which provide 500 riel per hour as meal allowance to their workers.

- The workers promise to provide list of names of the 500 workers who are making this demand to the Arbitration Council by 06 July 2007. The workers provided this list by the deadline. However, the list the Arbitration Council received contains only 244 workers.

- The company party does not agree because it already follows the Law. The employer mentions that for overtime work the company provides 1,000 riel as meal allowance regardless of the number of hours worked.

- The workers and the employer mention that there is no coercion in doing this overtime work.

Issue 6: The workers demand the company to make all workers piece rate workers and to issue the piece rate in advance

- The workers demand the company to change from monthly based wages to a piece rate system and the company should issue the piece rate in advance. The workers demand this because the company asks the workers to work according to a piece [work] but pays according to a monthly rate.

- The workers promise to provide list of names of the 500 workers who are making this demand but the list the Arbitration Council received contains only 244 workers.

- The workers and the employer mention that there is no worker whose main wage is less than US\$ 50.

- The company mentions that for the present practice, the company determines [the Lots] for workers to sew per day and if the workers can sew more than the planned lots the company provides a bonus for the exceeding the lot. This means that if the company determines a Lot to be one dozen pieces per day (based on each model) and the workers can sew one and a half dozen, the workers receive a bonus in cash for the excess half a dozen by taking 50 divided by 26 which equals to US\$ 1.92 per dozen and the cash for the half a dozen [is calculated by] taking US\$ 1.92 divided by 2 which equals to 0.96. This means that the total money for the workers on that day is US\$ 1.92 plus 0.96 which equals to US\$ 2.88. The company mentions that this is only one example; the company follows this method based on each model.

- The company does not agree to the demand because the buyer does not allow the company to use the piece rate.

- The workers do not object to this assertion but they still demand the company to change from monthly based wages to piece rates and the company should issue the piece rate in advance. The workers do not provide any other evidence to support their demand.

REASONS FOR DECISION

Issue 1: The workers demand the company to reinstate 12 workers

In this case, the workers demand E Garment Company to resolve this problem but E Garment Company does not agree as these are not their workers.

The employer from Otofin company recognizes that these workers as their workers but the workers do not agree and insist that they are workers of E Garment Company because they have been working for E Garment Company for a long time.

In order to determine which is the real employer of the twelve workers, the Arbitration Council considers certain Articles in the Labour Law which relate to this dispute as follows:

Based on Article 1 of the Labour Law, *“This law governs relations between employers and workers resulting from employment contracts...”* This Law provides for the governance of all employment relationships resulting from employment contracts between workers and employer.

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

Article 2 of the Labour Law states, *“All natural persons or legal entities, public or private, are considered to be employers who constitute an enterprise, in the sense of this law, provided that they employ one or more workers, even discontinuously.*

Every enterprise may consist of several establishments, each employing a group of people working together in a defined place such as in factory, workshop, work site, etc., under the supervision and direction of the employer.” This Article provides the definition of the term employer and emphasizes that employer has the rights to supervise and direct workers.

Article 3 of the Labour Law states, *“Workers”, in the meaning of this law, are every person of all sex and nationality, who have signed an employment contract in return for remuneration, under the direction and management of another person, whether that person is a natural person or legal entity, public or private.”* According to this Article, “workers” are people under supervision and direction of employer.

In this case the Arbitration Council found that there is a contract in writing between Otofin Company and the twelve workers but there is no written contract between E Garment Company and the twelve workers. Therefore, we can see that based on the Articles mentioned above, the Arbitration Council finds that there is an employment relationship between Otofin Company and the twelve workers.

Based on Arbitral Award 04/05-Eternity Garment, reason for decision, issue 1, in order to find out whether the relationship between workers and employer existed, the Arbitration Council had to find out whether the workers were under supervision and direction of the employer.

The Arbitration Council will consider [the issue of] supervision and direction [according to the following]:

- Recruitment
- Determination of wage
- Determination of time
- Determination of leave
- Determination of misconduct
- Determination of termination, etc. (See Arbitral Award 04/05-Eternity Garment, reasons for decision, issue 1).

Based on the facts and the evidence of the contract between Otofin Company and E Garment Company, the Arbitration Council finds that: Otofin Company made a [] contract with E Garment Company to provide repair services and included certain employment conditions for the repair workers.

The Arbitration Council will consider the employment relationships in this case to determine whether Otofin Company or E Garment Company is the one who supervises and directs the twelve workers.

There were 11 workers who worked for E Garment Company before E Garment Company made a contract with Otofin Company, but when Otofin made a contract with E Garment Company, Otofin Company recruited the 11 workers and added one new worker to provide service to E Garment Company.

Point (12) of the employment contract does not mention about the amount of wage, but based on the facts, Otofin transfers wages to E Garment Company to pay for workers' wages; and there are other points which mention about regular attendance bonus and wage for overtime work and so on. Thus, Otofin Company is the one who determines wage for the twelve workers.

Similarly, the contract between Otofin and the workers provides for the determination of leave: Otofin supervises and directs the workers. However, based on what is practiced and claimed by the workers, E Garment is the one who gives permission and commands about works to workers. The Arbitration Council considers that Otofin has a contract to provide repair services to E Garment Company but the workers work in E Garment, thus E Garment can have rights to supervise and direct the workers more directly than Otofin Company. Yet, the permission for leave by E Garment Company is based on the agreement with Otofin Company and the employment contract between Otofin Company and the workers but the main permission is from Otofin Company.

In addition, that employment contract also determines the duration of workers' daily work and the termination of workers and so on.

Therefore, the Arbitration Council finds that Otofin supervises and directs the twelve workers.

In addition, Article 45 of the Labour Law states, *"The labor contractor is a sub-contractor who contracts with an entrepreneur and who himself recruits the necessary work force or workmen for the execution of certain work or the provision of certain services for an all-inclusive price. Such a contract must be in writing."*

In this case, the Arbitration Council finds that Otofin Company can be interpreted as *labour contractor who provides repair services to E Garment Company by providing and charging for repair services and is the real employer of the twelve workers.*

Article 47 of the Labour Law states, *"The labor contractor is required to observe the provisions of this law in the same manner as an ordinary employer and assumes the same responsibilities as the latter."*

Therefore, the Arbitration Council considers that Otofin Company is the one who has the obligation to resolve this issues with the workers; it is not the obligation of E Garment

Company. However, in this case, the workers demand E Garment to be responsible for this issue. The Arbitration Council considers that this is not a correct claim because the employer of E Garment is not the workers' employer. The real employer of the workers is the employer Otofin Company.

Thus, the Arbitration Council considers that the workers should resolve this problem with the employer Otofin Company in accordance with the contents of the Labour Law as mentioned above.

In conclusion, the Arbitration Council rejects this demand.

Issue 2: The workers demand the company to provide identification cards to the 12 workers

In this case the workers demand E Garment Company to resolve this issue but E Garment Company does not agree because they are not its workers.

In this case the Arbitration Council finds that Otofin company is a *labour contractor who provides repairing service to E Garment Company* and workers who are making this demand are not workers of E Garment Company because there is additional evidence to prove that they are workers of Otofin as they recognize the signature on employment contract with the letter-head of Otofin Company, they have ID card of Otofin Company and they wear t-shirts of Otofin Company. It is not reasonable that the workers claim that they do not know that they are workers of Otofin because each of them has been working for almost one year or over one year already. (See Reasoning in issue 1).

Thus, the Arbitration Council considers that the workers should resolve this problem with the employer of Otofin Company in accordance with the contents of the Labour Law as mentioned above.

In conclusion, the Arbitration Council rejects this demand.

Issue 3: The workers demand the company to increase 30 percent of wage for the 12 workers

The workers demand E Garment Company to resolve this issue but E Garment Company does not agree because they are not its workers.

In this case the Arbitration Council finds that Otofin company is the *labour contractor who provides repairing service to E Garment Company* and workers who are making this demand are not workers of E Garment Company because there is additional evidence to prove that they are workers of Otofin as they recognize the signature on employment contract with the letter-head of Otofin Company, they have ID card of Otofin Company and they wear t-shirts of Otofin Company. It is not reasonable that the workers claim that they do

not know that they are workers of Otofin because each of them has been working for almost one year or over one year already. (See reasoning in issue 1).

Thus, the Arbitration Council considers that the workers should resolve this problem with the employer of Otofin Company in accordance with the contents of the Labour Law as mentioned above.

In conclusion, the Arbitration Council rejects this demand.

Issue 4: The workers demand the company to pay the 50 percent of wage to women who take maternity leave

The workers demand the company to pay three months of wage in advance for maternity leave.

Article 183 of the Labour Law 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. Women fully reserve their rights to other benefits in kind, if any. Any collective agreement to the contrary shall be null and void. However, the wage benefits specified in the first paragraph of this article shall be granted only to women having a minimum of one year of uninterrupted service in the enterprise.”*

The Arbitration Council considers that this Article does not provide any advice regarding the time the wage should be paid to workers.

However, the Arbitration Council notices that Article 115, paragraph 3, states, *“Payment shall not be made on a day-off. If payday falls on such a day-off, the payment of wages shall made a day earlier.”*

Regarding this Article, the Arbitration Council finds that in previous awards the Arbitration Council found that the wage during maternity leave should be paid to relevant workers before the maternity leave commences. (See Arbitral Awards 57/06-Evergreen, reasons for decision, issue 6; 97/06-New Max, reasons for decision, issue 1).

In this case, the Arbitration Council agrees with the above interpretation because this is the right of the workers who are entitled to this wage based on Article 115, paragraph 3. Therefore, in order to be consistent with previous awards, the Arbitration Council decides that the employer should pay this wage to relevant workers before the maternity leave commences.

Issue 5: The workers demand the company to provide 1,000 riels as meal allowance for 2 hours overtime work and 2,000 riels for 4 hours overtime work

As currently practiced, the employer provides 1,000 riel as meal allowance for 2 hours of overtime work and it provides this same amount of 1,000 riel if the overtime is for 4

hours. In this case, the union party demands the company to provide 1,000 riel as meal allowance for 2 hours of overtime work and 2,000 riel for 4 hours of overtime work.

Based on the above mentioned facts, the Arbitration Council considers that in this issue there is only one dispute related to the demand which is for the company to provide 2,000 riel as meal allowance for 4 hours of overtime work because the company already provides 1,000 riel for 2 hours of overtime work.

Point 3 of Notification 745 KKBV, dated 23 October 2006 states, *“Benefits workers used to receive from Notification No. 017 SKBY dated 18 July 2000 on points 3, 4, 5 and 6 shall be retained.”*

Based on Clause 4 of Notification 017 SKBY, dated 18 July 2000, *“Workers who voluntarily work overtime as requested by the employer shall receive a meal allowance of 1,000 riels per day or receive one free meal.”*

The wording in this Notification mentions clearly that the meal allowance is 1,000 riel per day and it does not differentiate the duration of overtime other than this. (See Arbitral Awards 03/05-Flying Dragon, reason for decision, issue 1; 53/05-Finegis, reason for decision, issue 3). In this case, the worker party demands 2,000 riel as meal allowance for four hours of overtime work but Notification 017 provides only 1,000 riel for meal allowance for overtime work regardless of the number of hours worked. Therefore, the Arbitration Council considers that this demand is related to interests.

However, regarding interests dispute, the Arbitration Council generally declines the demand if the union does not have the most representative status. (See Arbitral Awards 60/04-United Art, reason for decision, issue 3; 98/04-Great Union, reason for decision, issue 3; 109/04-Great Fortune, reason for decision, issue 1 and 2.)

In this case, C.CAWDU does not have the most representative status. Therefore, in order to be consistent with previous awards, the Arbitration Council decides to reject the demand in this issue.

Issue 6: The workers demand the company to make all workers piece rate workers and to issue piece rate in advance

The employer and the union agree that all workers who are working on monthly based wages receive a main wage of at least US\$ 50 per month in accordance with the Labour Law.

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

In previous cases, the Arbitration Council considers that this Article 2 means that the employer party has the right to manage and supervise human resources in the company as

long as the rights is practiced in accordance with the Law and is reasonable. (See Arbitral Awards 06/06-M&V 3, issue 1; 18/06-GHG, issue 2; and 108/06-Trinunggal Komara). In addition, in case 39/07-San San, reasons for decision, issue 2, the Arbitration Council considers that the employer's right to manage includes "the rights to determine which workers in which sections should work on piece rate and which section should work on monthly based wages as long as the practice is in accordance with the Law and reasonable.

In this case, the workers demand the company to change from providing monthly based wages to [providing wages according to a] piece rate. The Arbitration Council considers that the determination for workers to be piece rate workers or monthly based wage workers is the employer's rights to manage as stated in Article 2 mentioned above.

In addition, the Labour Law recognizes that paying a monthly wage is an acceptable method of wage payment. As in case 14/03-Chou Hsing, reason for decision, issue 2, the Arbitration Council considers that the employer can determine a reasonable target of production which workers with ordinary talent can do within eight hours per day with proper rest. In the hearing, both parties also agree that the employer provides at least US\$ 50 per month according to the Law. Thus, the workers' demand does not raise about any legal issue which related to production target that it is too high or about any insufficiency of the wage.

Therefore, the Arbitration Council decides to reject the workers' demand.

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

DECISION

Issue 1: Reject the workers' demand for E-Garment Company to reinstate the twelve workers.

Issue 2: Reject the workers' demand for E-Garment Company to provide identification cards to the 12 workers in the repair section.

Issue 3: Reject the workers' demand for E-Garment Company to increase the wage by 30 percent to the 12 workers in the repair section.

Issue 4: Order the employer to pay the 50 percent of three months of wage to 244 women workers, whose names are mentioned in the list as taking maternity leave, before the leave commences.

Issue 5: Reject the workers' demand for the company to provide 2,000 riel as a meal allowance for 4 hours of overtime work.

Issue 6: Reject the workers demand for the company to direct all workers to work on a piece rate and issue the piece rate in advance.

Type of Award: Non binding

This Award will become binding after 8 days of the date of its notification unless one of the parties lodges a written opposition 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: **SIN KIM SEAN**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **KONG PHALLACK**

Signature: