



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាធរកម្ពុជា

THE ARBITRATION COUNCIL

Case number and name: 60/07-Suit Way

Date of Award: 3 August 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: **An Nan**

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

DISPUTING PARTIES

Employer party:

Name: **Suit Way Garment**

Address: Sangkat Tuol Sang Ke, Khann Russey Keo, Phnom Penh

Telephone: 012 666 729

Representative:

1. Mr. Seak Leng Company Administrator

Employee party:

Name: **Federation Union of Development Workers Right at Suit Way Garment**

Address Sangkat Tuol Sang Ke, Khann Russey Keo, Phnom Penh

Telephone: 016 202 056 Fax: N/A

Representative:

1. Mr. Cheng Nen President of FUDWR
2. Mr. Suy Samnang Officer of FUDWR
3. Mr. Yong Sophea President of UDWR of Suit Way Garment
4. Mr. Yu Vuthy Vice-president of UDWR at Suit Way Garment
5. Mr. Yun Rith Secretary of UDWR at Suit Way Garment

6. Mr. Vann Chan Thea Union Committee of Development Workers Right at Suit Way
7. Mr. Phon Sarum Union Committee of Workers Right at Suit Way

ISSUES IN DISPUTE

(In the non-conciliation report)

1. The workers demand the company to retain annual leave for 3 days before and after Khmer New Year. However, the company does not agree to the employees' request.
2. The workers demand the company to comply with agreement dated July 5, 2007. However, the company does not agree to the employees' demand because the company will have new modifications.
3. The workers demand the company to provide a white board and post box for worker delegates use and for workers to view any notifications. However, the company does not agree.
4. The workers demand the company to pay 50%, 90 day [maternity leave payment] prior to maternity leave. However, the company does not agree because it can only provide the 50% [maternity leave payment] each month.
5. The workers demand the company to provide two hours each week for worker delegates to have meetings during the work day. However, the company does not permit [such meetings] during [normal] working hours but will provide them during additional working hours.
6. The workers demand the company to reimburse medical check fees. However, the company cannot provide it immediately and will raise it for discussions directly with the company's director.
7. Representative of UDWR at the factory demands the company to deduct the union contribution fee for any worker who is a union member. However, the company does not agree.
8. The workers demand the company to provide tables and chairs for workers to have meals. However, the company does not agree because there is no space.
9. The workers demand the company to pay termination wages of employment contracts not later than 48 hours. However, the company cannot pay immediately and instead waits until the next month [payday].
10. The workers demand the company to provide fans in the factory. However, the company waits until the Department of Labour Health to check first.
11. The workers demand the company not to dismiss workers who received warnings three times. However, the company confirmed that dismissal of workers comply with Labour Law and Internal Work Rule of the company.

12. The workers demand the company to organize a proper hospital in compliance with the Prakas of the Ministry of Labour and Vocational Training. However, the company waits until the Department of Labour Health to check first.
13. The workers demand the company to pay 2,000 riel as meal allowance during over time from 6:30 p.m. to 8:30 p.m.; and the amount of 3,000 riels from 8:30 p.m. to 10:00 p.m.
14. The workers demand the company to not have male security observe whether or not workers wear their [identification] cards; but if there is female security, workers agree. However, the company does not agree to the demand.
15. The workers demand the company to allow workers to ask for help from the worker representatives or union first in order to solve dispute between employees before calling them to the company administration office. However, the company does not agree.
16. The workers demand the company to provide 100% wages to workers who come to the factory and the company does not have work for them. However, the company does not agree to the demand and will provide only 50%.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labour Law (1997); the Prakas on the Arbitration Council No. 099 dated 21 April 2004; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of Arbitrators No. 076/07 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. 623 dated 3 July 2007 was submitted to the Secretariat of the Arbitration Council 5 July 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: 13 July 2007 (from 8:00 a.m. to 12:00 a.m.)

Procedural issues:

On 7 June 2007, the Department of Labour Disputes received a complaint from URWR at Suit Way Garment regarding the demand for the company to improve working conditions. Upon receiving of this case, the Department of Labour Disputes assigned an officer to conciliate continuously; the last conciliation took place on 26 June, 2007 with a result that 9 issues out of 25 issues were conciliated. The sixteen non-conciliated issues were sent to the Secretariat of the Arbitration Council on 5 July, 2007.

After receiving of the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party to a hearing and [attempted further] conciliation of the sixteen non-conciliated issues on 13 July 2007 at 8:00 a.m. Both parties were present as invited by the Arbitration Council.

On the hearing day, the Arbitration Council attempted to conciliate the sixteen issues indicated in the non-conciliation report of the Department of the Labour Disputes and successfully conciliated issue 1, issue 6, issue 9, issue 10, issue 11, issue 12, issue 13, issue 14, issue 15 and issue 16. Therefore, in this award, the Arbitration Council will consider only issue 2, issue 3, issue 4, issue 5, issue 8 based on the evidence and finding of facts as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party: N/A

Provided by the worker party:

- UDWR's certificate at Suit Way Garment dated 9 October 2007
- UDWR's statute at Suit Way Garment registered No. 1029 dated 9 October 2006
- Internal Work Rule of the company registered No. 105 dated 24 November 2000
- Meeting minutes dated 30 March 2007
- Some workers' thump printed demand the company to reimburse health check
- Election documents for shop stewards
- Minutes of the collective labour dispute conciliation, dated 5 July 2006

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

- Report of the collective labour disputes resolution No. 623 dated 3 July 2007.
- Minutes of the collective labour dispute conciliation, dated 26 June 2007.

Provided by the Secretariat of the Arbitration Council:

- Invitation letter No. dated 6 July 2007 to invite the employer party to attend the hearing.
- Invitation letter No. 257 dated 6 July 2007 to invite the worker party to attend the hearing.

FACTS

- Having reviewed documents the parties submitted to the Arbitration Council
- Having reviewed the report of collective labour dispute conciliation

- Having listened to statements by the representatives of the worker party and the employer party

The Arbitration Council finds that:

- The company is located at Tuol Sangke Village, Khan Reu Seil Keo, Phnom Penh, Cambodia and have employed around 1,000 workers.
- Based on the collective conciliation minutes dated June 26, 2007, there are 716 relevant workers in the disputes among the 1,000 workers.
- UDWR has officially registered at the Ministry of Labour and Vocational Training on 9 October 2006. Based on the statement of the union representative, UDWR at Suit Way Garment has in total 638 members, but it does not have a certificate of most representative status.

ISSUE 2: Workers demand the company to continue comply with clause 8 of the Agreement dated July 5, 2006.

- In the hearing, workers confirm that they demand the company to comply with clause 8 of the Agreement dated July 5, 2006 which states that *“Regarding piece work targets for workers, the company complies with the old policy. If workers cannot reach the targets, the company will not give a warning or blame them.”*
- Mr. Sophea, representative of workers at the over-lock section, stated that the company has violated the Agreement by implementing other new Agreement Policies and increasing the targets. He further mentions the differences between the old policy and new policy as the following:
 - a. Based on the Old Policy:
 - If workers can over-lock according to the target of 250 pieces per day, the company will provide 40 riels per piece.
 - If worker can over-lock more than the target of 250 pieces per day, the company will provide 50 riels per piece.
 - b. Based on the New Policy:
 - If workers can over-lock according to the target of 350 pieces per day, the company will provide 40 riels per piece.
 - If worker can over-lock more than the target of 350 pieces per day, the company will provide 50 riels per piece on those over-lock pieces.
 - The company responds that they cannot follow old policy as it is employer’s right to change due to change of situation such as piece rate that the company received from buyers between previous year and the new year are different, in which previous year

the piece rate was \$12 per piece, but for the new year it is only \$8. This change of target is because the style has changed so the piece rate also changes.

- Workers do not object to [such allegations about] the piece rate and policy change, but they raise that the style is still the same. Workers do not provide evidence to prove that the style is the same. They do not mention the consequence of implementing the new policy which they receive less than minimum wage.
- The Arbitration Council orders employer and workers to provide documents about new and old policies on July 18, 2007. However, both parties failed to provide documents as of the deadline set by the Arbitration Council.

ISSUE 3: THE workers demand the company to provide a white board and post box for worker delegate usage and workers to view any notifications.

- Workers demand the company to provide one white board for worker delegates' usage on posting other notifications and a separate post box for worker delegates' usage regarding worker delegates' tasks.
- Employer agrees to share a white board with worker delegates for posting any notification or information, but workers have to inform the company administrative office first. Workers agree to the request.
- The company allows worker delegates to share a post box by providing one key and schedule an shared opening date on Saturday. However, workers do not agree and demand to have a separate post box that the company has to pay for or they will buy one and put it nearby.
- Union assert that the demand to use a separate post box is to keep workers' confidentiality based on the Labour Law, but cannot remember Labour Law Article.
- In any case the company does not agree to have a separate post box and want to keep their rights as owner of the company. The company does not allow the placing of the company post box and also a worker delegates box at the same location because the company asserts that buyers prohibit this. The company asserts that worker delegates have their own office so they can put the box near that office.

ISSUE 4: The workers demand the company to pay the entire 50% [maternity leave payment] to women workers who are taking maternity leave prior to their leave.

- In the hearing, workers confirm that they demand want the company to pay the entire 50% [maternity leave payment] to women workers who are taking maternity leave prior to their leave.

- The company does not agree to the demand. However, the company will pay once per month because the company is afraid that after having made the payment those workers will not come back to work.
- Workers and employer confirm that there are 15 women workers who are taking maternity leave.

ISSUE 5: The workers demand the company to provide two hours per week during working hours for worker delegates meeting.

- In the hearing, workers confirm that they demanded to have 2 hours per week during the work day for worker delegates to hold a meeting.
- The company does not agree to the demand and will follow its usual practice of providing two hours per week on Saturday for worker delegates meetings (4:00 p.m. - 6:00 p.m.) and calculate the meeting hours as overtime payment. By doing this, it will not impact working hours.
- Workers do not agree to the present implementation. However, workers request the company to provide two hours per week during working hours because it is stipulated in the Labour Law, but workers do not remember the Labour Law Articles.
- According to clause 4 of the Internal Work Rules, the schedule for working hours is from Monday to Saturday. Morning is from 7:00 a.m. to 11:00 a.m. and the Afternoon from 1:00 p.m. to 5:00 p.m.

ISSUE 8: The workers demand the company to provide tables, chairs for workers' meal time.

- In the hearing, workers mention that they demand the company to prepare tables, chairs for workers' meal time because there is no space.
- At the present day, workers buy food in front of the factory and there are not enough tables and chairs for workers.
- Workers did not raise during the hearing issues about hygiene or necessary conditions for workers' health at the factory.
- The company does not agree because there is insufficient space.

REASONS FOR DECISION

Issue 2: Workers demand the company to continue comply with clause 8 of the Agreement dated July 5, 2006.

In this case, workers demand the company to implement clause 8 of the Agreement dated July 5, 2006 which states that *“Regarding targets of piece work for workers, the company complies with the old policy. If workers cannot reach the targets, the company will not give a warning or blame them.”*

The Arbitration Council considers the following:

Article 1 of the Decree 38 dated October 28, 1988 about the contract and the responsibilities outside contract states that *“A contract is an agreement between two or more persons to create, change or terminate one or more obligations which bind them.”*

According to the meaning of this article, the Arbitration Council considers that contracting parties have obligations to comply with agreements which they made or signed. Therefore, employer and workers who have signed the Agreement have an obligation to comply with the Agreement.

However, in the hearing, employer and workers do not agree whether or not their compliance with the Agreement is currently required because of different interpretations. The employer confirms that this Agreement cannot be complied with because there is a new style that workers have to work on. However, workers say that compliance with this Agreement should continue because there is no new style that workers have to work on. As a result, the Arbitration Council should consider as the following:

Article 23 of the Decree 38 mentions that *“If the contract is not clear in meaning that contract shall be interpreted according to common practices or customs of the place where the contract has been made, but the interpretation shall not conflict with the provisions of this law.”*

In this case, the Arbitration Council considers that the above Agreement has important objectives to *set piece rate targets and prohibit blaming if workers cannot reach targets set by the company.* This Agreement requires employers to follow the old policy of piece rate targets for workers to achieve and if they are not able to reach the target, the company will not blame them. This Agreement does not describe the style under the old policy because when the Agreement was made the employer and workers did not have any disagreement about whether the Agreement should apply to the style which workers were working on at that time.

Therefore, the Arbitration Council considers that the Agreement made by employer and workers is not clear. As a result, based on the meaning of Article 23 of Decree 38 on the contract and responsibilities outside contract, interpretation of this agreement shall refer to common practices or customs of the garment industry in Cambodia [] in which the piece rate target for shirts always changes when the style has changed.

In this case, the employer argues this Agreement cannot be implemented because there is new style that workers have to over-lock. However, workers argue that this Agreement still

continues to apply because there is no new style which workers have to over-lock. As a result, the question is whether there is a new style or the style is still the same?

If the style is still the same, based on the above interpretation, the employer has to follow the Agreement and set the piece rate target according to old policy. If there is a new style, the employer does not need to follow the Agreement because that Agreement cannot be enforced as the target is based on the style.

In principle, claimants have obligations to provide burden of proof to show that employer has violated contract. However, in this case, workers do not provide any evidence to show that the shirts' style is the same as the time of signing Agreement. This means that workers do not show that the Agreement is still enforced in this case.

As mentioned above, the Agreement's objective is to prohibit blame in case workers could not reach the target. In previous cases, the Arbitration Council confirms that in general, employer cannot take disciplinary measures which cause fear to workers, except if there is evidence to show that workers are lazy or careless during working hours. (For example, see Arbitral Award 41/05-Violet Apparel, Reason for Decision, issue 8). The Arbitration Council in this case considers that although the Agreement cannot be enforced, the employer should not blame workers if they cannot reach the target, unless there is evidence to prove that they are lazy or careless during working hours.

In conclusion, the Arbitration Council decides to reject the demand.

Issue 3: Workers demand the company provide a white board and post box for worker delegates' usage

In this case, employer and workers agree that worker delegates can jointly use a white board with the company in order to post any notifications or information. Therefore, the Arbitration Council considers whether or not the company must provide a separate post box for worker delegates.

In this case, the workers demand the company to provide a separate box, but the company asks the workers to jointly use a post box which the company uses and [the company] will provide a key to workers and schedule Saturdays for joint opening. Therefore, the Arbitration Council considers as follows:

Article 299 of the Labour Law states that *"The Ministry in charge of Labour shall issue a Prakas to determine the mode of enforcement of the present section, particularly regarding: (c) The means for shop stewards, including the number of working hours, to carry out their duties."*

The Arbitration Council considers that Article 299 requires employer to provide means for worker delegates to carry out their duties, but this Article does not state clearly what kind of means.

Clause 5 of Prakas 286 regarding the worker delegates at the enterprise dated 5 November 2001 mentions that *“The employer shall provide the worker delegate a place to work, meeting room, working materials and appropriate posters-displaying site.”*

The Arbitration Council considers that the meaning of Clause 5 of Prakas 286 regarding the Worker Delegates at the Enterprise dated November 5, 2001 is about other means which the company shall provide to worker delegates such as a working place, meeting room, working materials and appropriate posters-displaying site, but it does not state the requirement for employer to provide a post box or separate place for such box. Even though the Arbitration Council finds that the [Clause] mentions appropriate working materials, Clause 5 of the Prakas does not, however, specify whether they are for private- or common-use, and what appropriate working materials are? In this case, the Arbitration Council finds that the word *any appropriate working materials for worker delegates* includes office supplies, post box, etc. As a result, employer has obligation to provide a post box for worker delegates.

Regarding the post box, in the hearing, employer agrees to allow workers to use a shared box with the company and provides a key and schedules Saturday as the date to open it together, but workers do not agree and demand a separate box. As a result, the Arbitration Council considers whether that box should be a separate box for only worker delegates to open or if there should be a shared box which employer and worker delegates can jointly open?

According to the interpretation of the above Clause 5 of Prakas 286/01 does not mention clearly whether worker delegates' box shall be separate or shared.

However, Article 284 of Labour Law states that *“The missions of the shop steward are as follow:*

- *to present to the employer any individual or collective grievances relating to wages and to the enforcement of labour legislation and general labour regulations as well as collective agreements applicable to the establishment;*
- *to refer to the labour inspector all complaints and criticism relating to the enforcement of the labour regulations that the Labour Inspector is responsible for monitoring;*
- *to make sure the provisions relating to the health and safety of work are enforced;*
- *to suggest measures that would be beneficial to contribution towards protecting and improving the health, safety and working conditions of the workers in the establishment, particularly in case of work-related accidents of illness.*

The shop steward must be consulted and put forward a written option on the draft of internal regulations provided for in Article 24 of this Labour Law, or on draft of modification to these regulations.

The shop steward must also be consulted and put forward a written opinion on the measure for redundancy due to a reduction in activity or an internal reorganization of the enterprise or establishment.”

The Arbitration Council considers that Article 284 of the Labour Law requires worker delegates have some responsibilities on behalf of workers such as for example to present to the employer grievances of workers, refer to the Labour Inspector complaints and criticism relating the enforcement of the labour regulations, and to and monitor the safety and health of workers. Please also see the Clause 3 of Prakas 286/01.

In order to fulfill specific obligations which are required by the Labour Law, worker delegates shall enjoy independence and confidentiality at the level of their own work. There are a variety obligations of worker delegates relating to grievances or complaints against the employer's working conditions/or enterprises, so keeping worker delegates' work confidential is quite important. Meanwhile, to be perform all the tasks required by the Law, worker delegates shall have independence in their activities without interference by the employer.

In this case, the employer requests to use joint box with employer to receive any letters. The workers reject this plan by focusing on confidentiality issues when the workers file a complaint.

The Arbitration Council finds that if the employer's plan is enforced, the confidentiality issue raised by workers cannot be maintained, because when the employer and worker delegates together open the box, employer will be able to see letters and will know any worker who are writing letters to worker delegates if their names are on the top of the letter. The Arbitration Council also finds that worker delegates would not have full independence to open the box whenever they want. In contrast, they can only open it once per week. This is not reasonable because worker delegates may receive more letters or complaints from workers which require urgent action, so they cannot fulfill their obligations which is stipulated by the law.

Therefore, the Arbitration Council decides that employer provides a separate post box for worker delegates.

Issue 4: Workers demand the company to pay 50% to female workers who are taking maternity leave prior to their leave

The workers demand the company to provide the 3 months of wages prior to the maternity leave.

Article 183 of the Labour Law states that *"During the maternity leave as stipulated in the preceding article, women are entitled to half of their wages, 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 finds that, this Article does not provide guideline for the time to pay wages to workers.

In addition, the Arbitration Council notices that Article 115 clause 3 which mentions *“Payment shall not be made on a day-off. If payday falls on such a day-off, the payment of wages shall be made a day earlier.”*

Regarding the Article, the Arbitration Council finds that in the previous Arbitration Awards, the Arbitration Council finds wages for maternity leave must pay to relevant workers prior to their maternity leave. (Please see, the Arbitral Award 57/06-Evergreen, Reason for Decision, issue 6 and the Arbitral Award 97/06-New Max, Reason for Decision, issue 1).

In this case, the Arbitration Council also agrees with the above interpretation because this is the workers’ rights according to Article 115 clause 3. As a result, to be consistent with prior cases, in this case, the Arbitration Council decides that the employer shall pay 50% of three months wages to women workers prior to their maternity leave.

Issue 5: Workers demand the company to provide 2 hours per week during work days to worker delegates to meet

Article 299 of the Labour Law states that *“The Ministry in charge of Labour shall issue a Prakas to determine the mode of enforcement of the present section, particularly regarding: (c) The means for the shop stewards, including the number of working hours, to carry out their duties...”*

Clause 6 of Prakas 286/01 mentions that *“The employer shall allow each shop steward to enjoy two hours per week for performance of its tasks by maintaining its normal wages and fringe benefits.”* However, the Labour Law and Prakas does not specify when this is to be provided, during working hours, outside working hours, or working hours at the end of week.

In this case, the workers demand that the two-hour duration for worker delegates to carry out their duties should be some time from 7:00 a.m. to 11:00 a.m. and from 1:00 p.m. to 5:00 p.m. The employer rejects the demand and proposes to provide two hours on Saturday for the worker delegates’ meeting (from 4:00 p.m. to 6:00 p.m.) and will calculate meeting hours as additional hours. As a result, the Arbitration Council considers whether or not two hours for worker delegates must fall within working hours?

According to the interpretation above, the Labour Law and Prakas do not specify whether the two hours for worker delegates is within working hours or outside working hours.

Based on the interpretation of the Arbitration Council in Issue 3, above, Article 284 of the Labour Law requires worker delegates to take on certain responsibilities on behalf of workers, for example, to present to employer about workers’ grievances and to inform Labour Inspectorate about complaints and other criticisms relating to Labour Law enforcement and monitoring on health and safety of workers. Please see Clause 3 of Prakas 286/01.

The Labour Law and other provisions mention the obligations and responsibilities of worker delegates, including obligations relating to work that occurs during working hours. For example, by law, worker delegates have obligations to monitor on health and safety of workers. These obligations require worker delegates to carry out their duties while other workers are actually working which means during working hours. The worker delegates shall communicate with workers about their grievances at the factory in order to help them to resolve problems, which is the law's purpose for having worker delegates.

In addition, in general, rights and obligations stipulated in the Labour Law refer to rights and obligations occur during working hours because it is the time that employer and employees are working. Besides some exceptional cases, in general, the Labour Law does not govern activities outside working hours. As a result, the Arbitration Council determines that the obligations which are stipulated by the Labour Law require worker delegates to carry them out during working hours.

In addition, Clause 4 of Prakas 80/99 states that "An arrangement for overtime work shall be based on voluntary principles." Please see the Arbitral Award 14/03-Chou Sing, Reason for Decision, issue 2. The law prohibits an employer to force any worker to work overtime. Even though worker delegates are not carrying out their normal work tasks, they still carry out the work required by law as worker delegates. If the worker delegates do not want to work overtime, the employer is not entitled to force them. As a result, the Arbitration Council considers that working overtime is not the work during working hours.

As a result, the Arbitration Council decides two hours for worker delegates shall be within working hours.

Issue 8: Workers demand the company to provide tables and chairs for workers to use during meals

Regarding this case, the Arbitration Council finds that there is no provision in the Labour Law requiring the employer to provide tables and chairs to workers to have their meals. In addition, parties do not raise conditions that are necessary for the health and hygiene of those workers. (Please see the Arbitral Award 94/04-Eternity, Reason for Decision, issue 8, in which the Arbitration Council ordered the employer to prepare tables and chairs at a specific working place for the workers' rights as stipulated by law) Also, there is no confirmation whether there is any agreement to provide tables and chairs (Please see the Arbitral Award 24/04-South Bay, Reason for Decision, issue 1, in which the Arbitration Council ordered the employees to build a food court which was agreed to with the employees). As a result, the Arbitration Council finds that this claim relates to an interests dispute.

In general regarding interests dispute, the Arbitration Council always considers whether the union in a dispute has most representative status. According to findings of the Arbitration Council, this union does not have the most representative status. The Arbitration Council finds that the most representative status of a union provides legal qualifications to negotiate collective bargaining agreements with the company and legal rights to bring a dispute to be resolved at the Arbitration Council. To be the most representative, Article 277 of the Labour Law states that [the union] “*be legally registered and fulfilled some conditions as provided in this Article.*” (Please see the Arbitral Award 99/04-AIA, Reason for Decision, issue 4).

Therefore, this union does not have legal rights to make Collective Bargaining Agreement on behalf of the workers in the whole factory (Please see clause 2 (b) of [Labour Law] Article 96 and clause 5(a) of Prakas 305). This right is for the union which has the most membership and is registered and fulfills other requirements as provided in Article 277 of the Labour Law. Therefore, to be consistent with previous cases, the Arbitration Council finds that this union does not have sufficient legal status to represent and resolve collective disputes of all workers at the company.

However, Article 43 of Prakas 099 dated April 21, 2004 provides that “*An arbitral award which settles an interests 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.*”

So far, the Arbitration Council finds that if the Arbitration Council issues an award on this point, it will become a collective bargaining agreement which will be enforced by the workers at the factory and will make other workers lose their rights to strike on interests dispute in the future, so it will be unfair for other workers. (Please see the Arbitral Award 04/03-Lida; 06/04-Chou Sing; 24/03-Top One; 61/04-Best Honour; 62/04-Ecent; 09/05-Kin Tai). In addition, so the Arbitration Council concluded that a union which does not have the most representative status has no right to bring interests dispute to Arbitration Council for dispute resolution (Please see the Arbitral Award 31/03-Yung Wah; 60/04-United Art and 99/04-AIA).

In conclusion, the Arbitration Council decides not to consider workers’ claim for the company to provide tables and chairs.

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

DECISION

Issue 2: Rejects workers’ demand for the company to comply with clause 8 of the Agreement dated July 5, 2006.

- Issue 3:** A. Orders worker delegates to use the shared white board with the company in order to post notifications and information.
B. Orders the employer to provide a separate post box for worker delegates.
- Issue 4:** Orders the employer to pay the entire 50% of 3 months wages for maternity leave to women workers prior to their leave.
- Issue 5:** Orders the employer to provide two hours per week during normal working hours for worker delegates to carry out their duties.
- Issue 8:** Declines to consider the workers' demand to have chairs and tables during meal time.

Type of Award: Non binding awards

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

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature:

Arbitrator chosen by the worker party:

Name: **An Nan**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Kong Phallack**

Signature: