



**KINGDOM OF CAMBODIA**  
**NATION RELIGION KING**

**ក្រុមប្រឹក្សាអន្តរាគ្នា**

**THE ARBITRATION COUNCIL**

**Case number and name: 68/06 – Hong Mei**

**Date of Award: 5 September 2006**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRATOR PANEL**

Arbitrator chosen by the employer party: **Chhiv Phyrum**

Arbitrator chosen by the worker party: **Liv Sovanna**

Chair Arbitrator (chosen by the two Arbitrators): **Pen Bunchhea**

#### **DISPUTING PARTIES**

##### **1- Employer Party**

Name : **Cambodia Hong Mei Im & Ex Company**

Address : No. 30-31, Canadia Park, Sangkat Chaom Chau, Khan Dangkor,  
Phnom Penh

Telephone : 023 424 553, 012 850 348 Fax: N/A

Employer Representatives:

1. Mr. Bob Zhang Company's Director;
2. Mr. Reoung Saram Assistant;
3. Ms. Keo Nalin Interpreter (Shipping Unit).

##### **2- Worker party**

Name : **Cambodian Industrial Union Federation (CIUF) and Cambodian  
Industrial Union (CIU) in Hong Mei**

Address : No. 60A, Street 386, Sangkat Boeung Keng Kang III, Khan Chamkarmon,  
Phnom Penh

Telephone : 012 580 912, 011 878 034 Fax: N/A

Worker Representatives:

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KHMER ORIGINAL.**

- |                       |                                       |
|-----------------------|---------------------------------------|
| 1. Mr. Li Veng        | General Secretary of CIUF;            |
| 2. Mr. Hem Sok Ponlok | Vice-President of CIUF;               |
| 3. Mr. Soum Sokly     | President of CIU and Worker delegate; |
| 4. Ms. Touch Sambath  | Secretary of CIU in Hong Mei;         |
| 5. Mr. Yi Rainsy      | Member of CIU in Hong Mei;            |
| 6. Mr. Chey Vanna     | Official of CIU in Hong Mei.          |

### **ISSUES IN DISPUTE**

(In the non-conciliation report)

1. The workers demanded that the company stop the discrimination against the union and that the company accept and respect the rights of the union.
2. The workers demanded that the company reinstate five workers Mr. Yi Kun Theang, Mr. Soum Sokly, Mr. Yi Rainsy, Ms. Chhum Makara and Ms. Touch Sambath, who were dismissed during the establishment of the union in the company.
3. The workers demanded that the company provide the worker delegates with two hours per week for meeting, and provide a copy of the Labour Law as needed by the workers and worker representatives.
4. The workers demanded that the company arrange to have a doctor at the company and enough medicine for first aid treatment when workers are sick during working hours.
5. The workers demanded that the company apply voluntary overtime work agreed by the workers.
6. The workers demanded that the company provide them with a meal allowance of 500 riels per hour, if overtime work exceeds two hours.
7. The workers demanded that the company provide them with the accurate and full amount of wage for the month of July.
8. The workers demanded that the company not dismiss pregnant workers.
9. The workers demanded that the company be responsible for work accidents - maintaining their wages and paying for medical treatment.
10. The workers demanded that the company accept workers' resignations and pay the workers in proportion to the days he or she has worked for the company.
11. The workers demanded that the company nullify previous labour contracts made between the company and the workers.

## **JURISDICTION OF THE ARBITRATION COUNCIL**

*The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B (Article 309 to 317) of the Labour Law (1997); the Prakas on the Arbitration Council 099/04; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of the Arbitration Council 099/06 (Fourth Term).*

*An attempt was made to conciliate the collective labour dispute that is the subject of this Award, as required by Chapter XII, Section 2(A) of the Labour Law. However, the conciliation hearing was unsuccessful, and the non-conciliation report No. 1162 dated 17 August 2006 was submitted to the Secretariat of the Arbitration Council on 18 August 2006.*

### **HEARING AND SUMMARY OF PROCEDURE BEFORE ARBITRATION COUNCIL:**

**Place of Hearing** : **The Arbitration Council**, Phnom Penh Centre, Building A,  
Sothearos Blvd, Sangkat Tonle Bassac, Khan Chamkarmon,  
Phnom Penh.

**Date of the Hearing** : 22 August 2006 (from 13:00 p.m. to 17:00 p.m.)

#### **Procedural Issues:**

Having received the complaint from the workers on 10 August 2006 which demanded that the company comply with the working conditions in accordance with the Labour Law, the Department of Labour Disputes designated its expert official to settle and conciliate the dispute, none out of a total of 11 issues was successfully conciliated in the last conciliation session held on 14 August 2006. The 11 non-conciliated issues were submitted to the Arbitration Council on 18 August 2006.

Having received the case, the Arbitration Council summoned the disputing parties to attend a hearing on 22 August 2006 at 13:00.

Both parties were present at the hearing summoned by the Arbitration Council; however, after being informed of the hearing procedure process, Mr. Bob Zhang, the Company's Director said that, "He came to the hearing to conciliate the issues only with the workers and if the union participates, he would not agree to participate in the conciliation meeting." Even though the Arbitration Council tried to explain the procedures and other facts especially in response to the workers' allegation and demands, he did not agree to participate and he left the hearing room. Therefore, the Arbitration Council proceeded the hearing without the employer party's presence.

At the hearing, the Arbitration Council asked for more reasons and facts regarding the 11 issues and as a result, issues 7, 8, 9 and 10 were withdrawn from the complaint. Therefore, the remaining issues were - 1, 2, 3, 4, 5, 6 and 11. The Arbitration Council will

consider and settle the remaining issues based on the evidence and the fact findings as follows:

## **EVIDENCE**

**Witness and experts besides the parties: N/A**

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

- a. Provided by the employer party: N/A
- b. Provided by the worker party:
  - 1- Certificate of Registration No. 989 of Cambodian Industrial Union dated 11 August 2006;
  - 2- Mr. Yi Rainsy's labour contract;
- c. Provided by the Ministry of Labour and Vocational Training:
  - 1- Report No. 1162 dated 17 August 2006 on the collective labour dispute conciliation at Hong Mei Company of Mr. Koy Tepdaravuth, Director of the Department of Labour Disputes;
  - 2- Minute of the collective labour dispute conciliation dated 4 August 2006.
- d. Provided by the Secretariat of the Arbitration Council:
  - 1- Invitation No. 328 dated 21 August 2006 to the worker party to attend the hearing;
  - 2- Invitation No. 329 dated 21 August 2006 to the employer party to attend the hearing.

## **FACTS**

- Having examined the report on the collective labour dispute conciliation;
- Having listened to the testimonies from both the employer party and the worker party;
- Having reviewed other supplementary documents;

**The Arbitration Council finds that:**

### **Issue 1:**

- Cambodian Industrial Union in Hong Mei Company organized an election to select its leaders in Hong Mei on 5 July 2006 with the participation of some 70 founding members working in Hong Mei Company and as a result, Mr. Soum Sokly was elected as the Union President, Mr. Yi Kun Theang as the Union Vice-President and Ms. Touch Sambath as the Union Secretary. The union has already received its certificate of registration from the Ministry of Labour and Vocational Training.

- On 6 July 2006, a day after having heard about the union's establishment, the company dismissed four workers Mr. Soum Sokly; the Union President and Worker Delegate, Mr. Yi Kun Theang; the Union Vice-President and Worker Delegate, Mr. Yi Rainsy; a founding member of the union and the Union President's brother, and Ms. Chhum Makara; a founding member of the union and the Union Vice-President's wife.
- On 7 July 2006 at around 7:00 a.m., all workers went on strike after learning that their representatives were dismissed by the company. The strike went on until 10 July 2006.
- Ms. Touch Sambath, the Union Secretary and Worker Delegate also went on strike.
- The workers claimed that on 11 July 2006, having received the Arbitral Interim Order instructing all the workers to return to work, Ms. Touch Sambath returned to work like other workers but the company did not allow her to return to work because the company had decided to dismiss her because she has joined the union and she joined the strike.
- Beside the above-mentioned five union leaders and founding members, who are the Union leaders' wife and brother, the company did not terminate probationary labour contracts or dismiss any worker.
- Both in the dispute settlement process at the enterprise and at the Department of Labour Disputes, the company affirmed that it would never participate in any labour dispute settlement with the union.
- Before the Arbitration Council, the company confirmed that if the union participated in the dispute settlement, the company would never participate. The company would settle the dispute with only the workers.
- The company decided to withdraw from the Arbitration procedure by claiming that:
  - 1- It will never settle the dispute with the union.
  - 2- The Arbitration Council did not provide the employer with justice because even though the employer withdrew from the Arbitration procedure, the Arbitration Council still has the right to issue its Arbitral Award. It is different from other countries that Arbitrators can settle the dispute only when both disputing parties agree.

**Issue 2:**

- The workers demanded that the company reinstate Mr. Yi Kun Theang, Mr. Soum Sokly, Mr. Yi Rainsy, Ms. Chhum Makara and Ms. Touch Sambath, who were dismissed during the establishment of the union in the company.
- Mr. Soum Sokly, Mr. Yi Kun Theang, Mr. Yi Rainsy and Ms. Chhum Makara were verbally notified about their dismissals on 6 July 2006. The Arbitration previously

made its decisions regarding the four workers in case 53/06 by issuing Award 53/06 dated 28 July 2006 and the worker party lodged a written objection to this Award through Letter No. 059 dated 31 July 2006.

- Ms. Touch Sambath was dismissed on 11 July 2006 without any prior notice and explanation of the reason of the dismissal.
- On 20 March 2006, Ms. Touch Sambath was recruited by the company via a verbal agreement (no written labour contract).
- In May 2006, the company organized an election to select worker delegates with the participation of the representatives from the Ministry of Labour. Ms. Touch Sambath was elected as a worker delegate.
- On 4 July 2006, Ms. Touch Sambath felt unconscious during working hours in the company and the company sent her to a hospital by car. Ms. Touch Sambath took leave from 4 July 2006 to 9 July 2006.
- On 5 July 2006, the workers elected the union leaders without notifying the employer. Ms. Touch Sambath was elected as the Secretary.
- On 6 July 2006, the workers submitted a letter notifying the company on the union's establishment.
- On 7 July 2006, the workers applied for the certificate of registration at the Ministry of Labour.
- On 11 August 2006, the Ministry of Labour and Vocational Training issued the certificate of registration to the Cambodian Industrial Union.
- Ms. Touch Sambath's wage for July 2006 was US\$78 including her minimum wage of US\$45.
- On 10 July 2006, Ms. Touch Sambath returned to work, but she saw an on-going strike in the company. Ms. Touch Sambath then joined the strike with other workers.
- On 11 July 2006, Ms. Touch Sambath came to work but the company did not allow her to work and did not pay her wage. Ms. Touch Sambath claimed that the company dismissed her for no reason because it had never notified or warned her.

**Issue 3:**

- In May 2006, the company organized an election to select worker delegates with the participation of the representatives from the Ministry of Labour and Vocational Training.
- At the hearing, the workers claimed that the company did not give time during working hours for worker delegates to fulfil their duties as provided by the law.

**Issue 4:**

- The workers demanded that the company arrange to have a doctor in the factory and enough medicine for first aid treatment for workers who are sick during working hours.
- The workers asserted that up until now the company has yet set up the factory clinic with adequate first-aid kit for workers who get sick during working hours. Every time a worker got sick, the company always sent the worker by car to nearby hospitals outside the company.
- The workers party added that previously three workers had fell unconscious in the company during working hours. Ms. Srey Mao fell unconscious in April 2006, Ms. Ty Lay fell unconscious in July 2006 and Ms. Touch Sambath fell unconscious on 4 July 2006. Ms. Touch Sambath, who was present at the hearing, asserted that when she fell unconscious on the above date, the company sent her by car to a hospital outside the company.

**Issue 5 and 6:**

- The workers demanded that the company apply voluntary overtime work agreed upon by the workers.
- The employer party and the workers party had never negotiated or discussed overtime work or the 500 riels per hour for a meal allowance for any overtime work that exceeds more than two hours per day. Thus, both parties have not agreed on this issue.
- The workers claimed that when the company had overtime work, the company required the workers to work overtime even though the workers did not agree or did not volunteer. The company has implemented a policy of not ringing the bell and closing the factory's gate at 4 p.m. so that no workers could leave.
- The workers added that if a worker was not willing to work overtime as required by the company, he or she would be verbally warned.

**Issue 11:**

- The workers demanded that the company nullify previous labour contracts made between the company and the workers because the company mixed the apprenticeship contract, probationary contract and regular contract together.
- The workers requested the company to separate the apprenticeship contract, probationary contract and regular contract and make a photocopy of the contract for the contracted worker.

- The Arbitration Council finds that the company signed the apprenticeship contract, probationary contract and regular contract on the same date.

### **REASONS FOR DECISION**

Both disputing parties appeared at the hearing according to the date, time and venue of the Arbitral proceeding. However, at the hearing, Mr. Bob Zhang, the Director of the company left the hearing room even though the Arbitrators tried to explain to him the [dispute resolution] procedures and reasons [to stay], in particular [that] the company would lose its opportunity to provide reasons and evidence in response to the workers' allegations and demands. The employer asserted at the hearing that, "*[It] will never resolve the dispute with the union and the Arbitration Council did not provide the employer with justice because even though the employer withdrew from the arbitral proceeding, the Arbitration Council still has the rights to issue its Award.*" [Dispute resolution in Cambodia] is different from other countries where Arbitrators can settle the dispute only when both disputing parties agree.

Therefore, in this case, the Arbitration Council will consider whether or not it has the jurisdiction to consider the case when the employer party withdrew from the Arbitral proceeding.

Article 309 of the Labour Law (1997) provides, "*If conciliation fails, the labour dispute shall be referred to settle:*

- a) by any arbitration procedure set out in the collective agreement, if there is such a procedure; or*
- b) by any other procedure agreed on by all the parties to the dispute; or*
- c) by the arbitration procedure provided for in this Section."*

Article 10 of the Labour Law (1997) provides, "*In a case covered by paragraph c) of Article 309 above, the Minister in Charge of Labour shall refer the case to the Arbitration Council within three days following the receipt of the report from the conciliator as specified in Article 308 above*".

Clause 18 of the Notification No. 099 dated 21 April 2004 on Arbitration Council provides, "*The Arbitration Panel shall invite the disputing parties to make an oral presentation of their arguments before the Arbitration Panel and to submit documentation and any other useful information*".

Clause 21 of Prakas No. 099 dated 21 April 2004 of the Ministry of Labour provides, "*In the case that one of the parties, although duly invited, fails to appear before the*

*Arbitration Panel without showing good cause, the Arbitration Panel may proceed in the absence of that party or may terminate the arbitral proceedings by means of an Award."*

Moreover, Clause 4.7 of the Arbitral Procedures within the Annex of Prakas No. 099 dated 21 April 2004 on the Arbitration Council provides, *"If a party fails to appear in person or to be represented at the Arbitral Proceedings, the Arbitration Panel may proceed in the absence of that party or may terminate the Arbitration Proceedings by means of an Award. In either case, it must be satisfied that the parties have been properly notified of the date, time and venue of the Arbitration Proceedings before making such decision."*

Based on the content of Article 310 of the Labour Law and Clause 4.7 of the Arbitral Proceedings as well as actual practice, the Arbitration Council received the complaint from the Minister of Labour and Vocational Training, not directly from the disputing parties and based on Clause 21 and Clause 18 of Prakas No. 099 dated 21 April 2004 of the Ministry of Labour, the Arbitration Council can still continue its proceedings and issue the Award, although the employer party withdrew from the Arbitral Proceedings. This withdrawal may makes the employer party lose it opportunity to present evidence to protect his benefits and the Arbitration Council may decide based on the evidence submitted by the worker party (See Award 03/03 – Tong Ga Garment).

#### **Issue 1:**

##### **Did the employer of Hong Mei Company discriminate against the union?**

The workers demanded that Hong Mei Company stop discriminating against the union and that the company accept and respect the rights of workers in joining the union.

The Arbitration Council finds that after receiving the information about the union's establishment, Hong Mei Company terminated labour contracts and dismissed five workers including the Union President, the Union Vice-President, the Union Secretary and two other founding members of the union, who were involved in the establishment of the union. Moreover, the company did not acknowledge the union's rights in negotiating to resolve the labour disputes. Both in the conciliating phase facilitated by the Labour Disputes Official from the Ministry of Labour and before the Arbitration Council, the employer party still did not acknowledge the union.

At the Arbitral hearing, the employer confirmed that he came to conciliate dispute in the hearing only with the workers and he will not participate in the dispute settlement, if the union takes part.

Article 266 of the Labour Law provides, *"Workers and employers have, without distinction whatsoever and prior authorisation, the right to form professional organisations of their own choice..."*

Article 12 of the Labour Law provides, *“Except for the provisions fully expressing under this law, or in any other legislative text or regulation protecting women and children, as well as provisions relating to the entry and stay of foreigners, no employer shall consider on account of: race, color, sex, creed, religion, political opinion, birth, social origin, membership of workers' union or the exercise of union activities; to be the invocation in order to make a decision on: hiring, defining and assigning of work, vocational training, advancement, promotion, remuneration, granting of social benefits, discipline or termination of employment contract.”*

Article 279 of the Labour Law provides, *“Employers are forbidden to take into consideration union affiliation or participation in union activities when making decisions concerning recruitment, management and assignment of work, promotion, remuneration and granting of benefits, disciplinary measures and dismissal.”*

Based on Article 266 of the Labour Law, workers have the right to form professional organizations of their own choice without prior authorization from the employer. Moreover, based on Article 12 and Article 279 of the Labour Law, the termination of labour contracts or dismissal of a worker, who joins the union, is an act of discrimination.

Therefore, the Arbitration Council considers that Hong Mei Company did discriminate against members and the union leaders by terminating their labour contracts and dismissing the union leaders and the union founding members, who are a union leader's brother and wife from work.

### **Does the Arbitration Council have jurisdiction over this dispute?**

Clause 34 of Prakas No. 099 dated 21 April 2004 on the Arbitration Council provides, *“...Within the limitations of the Labour Law and this Prakas, it has the power and authority to provide any civil remedy or relief which it deems just and fair, including:....D. Orders to cease immediately any other illegal or prohibited conduct, including but not limited to retaliation...”*

Since discriminating against the union is an illegal conduct (Article 12 and Article 279 of the Labour Law); therefore, based on the above Clause 34, the Arbitration Council does have the power and authority to order Hong Mei Company to immediately stop the discrimination against union members and their participation in lawful activities of the union.

### **Issue 2:**

**A. The dismissal of Mr. Yi Kun Theang, Mr. Yi Rainsy, Mr. Soum Sokly and Ms. Chhum Makara**

Mr. Soum Sokly, Mr. Yi Kun Theang, Ms. Chhum Makara and Mr. Yi Rainsy were verbally notified by the company about their dismissal on 6 July 2006.

Having examined the documents and evidence submitted by the party, the Arbitration Council finds that the demand in dispute issue 2 regarding the dismissal of Mr. Yi Kun Theang, Mr. Yi Rainsy, Mr. Soum Sokly and Ms. Chhum Makara in case 68/06 was exactly the same as the demand in the dispute case 53/06, which the Arbitration Council had already issued an Award on 28 July 2006 and the worker party also lodged an objection to the Award through Letter No. 059 dated 31 July 2006.

According to the content of Clause 40 of Prakas 099 on the Arbitration Council, in case the Arbitral Award is non-binding, either party can lodge an opposition to the Arbitral Award to a competent institution and take other actions as permitted by the law. In this context, the Arbitration Council does not have jurisdiction to settle the opposition or complaint regarding the implementation of its own Award.

In legalistic principle, both dispute resolution in court and alternate dispute resolution must follow Res Judicata principle. This principle refers to the act of not considering the same issue in the same dispute when it had already been decided in order to avoid producing two opposite results for the same dispute settlement and to have the dispute ended with a final decision. This principle is not only the legalistic principle in the Court procedure, but it is also the public policy (Public Order).

According to Clause 40 of Prakas 099 and the above [principle of] Res Judicata, the Arbitration Council did not have the jurisdiction to resolve the above-mentioned dispute again (See Awards 18/04 – Raffle Le Royal and Raffle Grand d'Angkor and 10/06 – North Gaiety)

### **B. The dismissal of Ms. Touch Sambath**

At the hearing, Ms. Touch Sambath asserted that she has been recruited by the company to work through a verbal agreement. It was an employment which was not under any written labour contract and it does not specify any limited duration.

Article 65 (3) of the Labour Law provides, "*The verbal contract is considered to be a tacit agreement between the employer and the worker under the conditions laid down by the labour regulations, even if it is not expressly defined.*" Thus, the Arbitration Council considers that Ms. Touch Sambath's labour contract is an undetermined duration contract.

Ms. Touch Sambath added that after she fell unconscious on 4 July 2006, she returned to work on 11 July 2006 but the company did not allow her to work and did not pay her wages, without asserting any of the reasons about her misconduct. Thus, the Arbitration Council considers whether or not Ms. Touch Sambath's dismissal was made in accordance to the law.

Article 74 of the Labour Law provides, “*The labour contract of undetermined duration can be terminated at will by one of the contracting parties. This termination shall be subject to the prior notice made in writing by the party who intends to terminate the contract to the other party. However, no layoff can be taken without a valid reason relating to the worker's aptitude or behaviour, based on the requirements of the operation of the enterprise, establishment or group.*”

Based on the above Article 74, the Labour Law does allow the employer to legally dismiss his/her worker but this Article requires the employer to respect some conditions as follows:

- (1) Prior notice made in writing by the party who intends to terminate the contract to the other party;
- (2) No layoff can be taken without a valid reason relating to the worker's aptitude or behaviour, based on the requirements of the operation of the enterprise, establishment or group (See Award 64/05 – Jiang Wei).

Article 75 of the Labour Law provides, “*The minimum period of a prior notice is set as follows: seven days, if the worker's length of continuous service is less than six months...*” Thus, condition (1) was not fulfilled.

Article 293 (1) of the Labour Law provides, “*The dismissal of a shop steward or a candidate for shop steward can take place only after authorisation from the Labour Inspector...*”

At the hearing, the Arbitration Council finds that the company dismissed Ms. Touch Sambath on 11 July 2006 by forbidding her from working and not paying her wage without giving any reason of her misconduct, which leads to her dismissal and the company did not ask for authorization from the Labour Inspector. The Arbitration Council considers that the reason, which leads the employer dismissed Ms. Touch Sambath, was that Ms. Touch Sambath was the Union Secretary.

Therefore, the Arbitration Council considers that the employer did not have any valid reason to dismiss Ms. Touch Sambath from work and her dismissal was not done in accordance to the Labour Law.

Clause 34 of Prakas 099 dated 21 April 2004 on the Arbitration Council provides, “*In matters referred to the Arbitration Council, the Arbitration Council shall have the power and authority to fully remedy any violation of the provisions in the Labour Law, implementing regulations under the Labour Law, collective bargaining agreements or other obligations*

*arising from the professional relationship between the employer and the employees. Within the limitations of the Labour Law and this Prakas, it has the power and authority to provide any civil remedy or relief which it deems just and fair, including:*

- A. Orders to reinstate dismissed employees to their former or any other appropriate position;*
- B. Orders to the immediate payment of back pay;*
- C. Orders to cease immediately any industrial action which is being conducted by a party to the dispute;*
- D. Orders to cease immediately any other illegal or prohibited conduct, including but not limited to retaliation;*
- E. Orders to bargain;*
- F. Orders following a settlement under Article 30 of this Prakas;*
- G. The establishment of terms for a collective bargaining agreement;*
- H. Such other relief as is appropriate.”*

The Arbitration Council considers that Ms. Touch Sambath’s dismissal was not done in accordance to the Labour Law. In conclusion, the Arbitration Council orders the employer to reinstate Ms. Touch Sambath (See Award 47/06 – Flying Dragon).

**Issue 3:**

The workers demanded that Hong Mei Company provide worker delegates and worker representatives with two hours per week for meeting and provide a copy of the Labour Law for the needs of workers and worker representatives. At the hearing, the worker party asserted that worker representatives are also referred to as worker delegates.

According to Clause 6 of Prakas No. 286 dated 5 November 2000 of the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation on worker delegates in enterprises and institutions provides, “*Employer shall provide each work delegate two hours per week to perform their duties and maintain the wage and other perquisites previously received. In special case and agreed by the employer, each worker delegate can perform their duties longer than limited duration.*” The Arbitration Council considers that employer is obliged to provide two hours per week for worker delegates to fulfil their duties. Thus, the workers’ demand that the company provide the worker delegates with two hours per week is

appropriate in accordance to the provision of the law, which the employer shall comply with because meeting is also part of the worker delegates' duties.

On the other hand, the demand that the company provide a copy of the Labour Law for the needs of workers or worker representatives is the demand stated in Article 14 of the Labour Law.

Article 14 of the Labour Law states, "*The employer must keep at least one copy of the labour law at the disposal of his workers and, in particular, of the workers' representatives in every enterprise or establishment set forth in Article 1 of this law.*"

Therefore, the Arbitration Council considers that the company must provide at least one copy of the Labour Law and keep it at the disposal of the workers and worker delegate. Having the knowledge of the Labour Law benefits both the workers and the employer and it can reduce labour disputes which arise within an enterprise.

#### **Issue 4:**

The workers demanded that the company arrange to have a doctor at the factory and have adequate medicine for first aid treatment for workers who are sick during working hours.

Article 238 of the Labour Law provides, "*Enterprises and establishments covered by Article 1 of this law must provide the primary health care to their workers.*"

Article 1 of the Labour Law provides, "*This law governs relations between employers and workers resulting from employment contracts to be performed within the territory of the Kingdom of Cambodia, regardless of where the contract was made and what the nationality and residences of the contracted parties are...*"

Article 239 of the Labour Law provides, "*The Labour Health Service shall be led by one or more physicians who are called Labour Physicians and whose curative and preventive role consists in avoiding a deterioration of workers' health that is adversely affected by their work. In particular, they monitor the hygienic standards of the work, the risks of contagion and the workers' state of health...*"

Clause 1 of the Prakas No. 330 dated 6 December 2000 provides, "*Employers of enterprises and establishments stated in Article 1 of the Labour Law, who employ more than 50 workers, shall establish a permanent clinic within their enterprises.*"

Clause 3 of the Prakas No. 330 dated 6 December 2000 also defines the number and the quality of medical staff within the enterprises. The number and the quality of medical staff

are defined in proportion to the number of workers of the enterprises and establishments as follows:

| <b>Number of workers in enterprise</b> | <b>Number of nurse(s)</b> | <b>Number of medical doctor(s)</b>      | <b>Minimum presence of medical staff per shift of 8 hours</b> |
|--|---------------------------|---|---|
| 50-300 workers                         | 1 permanent               | 1 Medical doctor or 1 Medical Assistant | 2 hours   |
| 301-600 workers                        | 1 permanent               | 1 Medical doctor                        | 2 hours   |
| 601-900 workers                        | 2 permanent               | 1 Medical doctor                        | 3 hours   |
| 901-1,400 workers                      | 2 permanent               | 1 Medical doctor                        | 4 hours   |
| 1,401-2,000 workers                    | 2 permanent               | 1 Medical doctor                        | 6 hours   |
| More than 2,000 workers                | 3 permanent               | 1 Medical doctor                        | 8 hours   |

When an enterprise or establishment has overtime work, clinic staff shall consist of nurse and medical doctor during the overtime work.

Based on the above mentioned Article, employers are obliged to organize medical treatment with labour physicians (Labour Physicians led by one or more physicians) and first-aid kit for its workers.

In this dispute issue, the Arbitration Council considers that the company has yet to set up the first-aid kit treatment for its workers. Apparently, three workers had fallen unconscious in the company during working hours and the company sent them by car to a hospital outside the company. The Arbitration Council considers that the company must arrange for labour physician(s) and medicine for first-aid treatment for its workers in the company. Thus, the Arbitration Council orders the employer of Hong Mei Company to arrange for labour physician(s) and first-aid kit for its workers (See Award 03/03 – Tong Ga Garment).

#### **Issue 5:**

The workers demanded that the company apply voluntary overtime work as agreed by workers.

Clause 4 of Prakas No. 80 dated 1 June 1999, provides "*Overtime work shall be based on a voluntary principle; the owner or director of an enterprise or establishment shall*

*not force or impose any disciplinary action against any worker who does not voluntarily work overtime.”*

In this case, the Arbitration Council considers that when the company had overtime work for the workers, the company required the workers to work overtime even though the workers did not agree or did not volunteer. Thus, the Arbitration Council considers that Hong Mei Company has yet to apply the principle of voluntary overtime work. Moreover, the Arbitration Council considers that the act of closing the factory gate in order to prevent workers from leaving and the act of verbally warning workers, who disagreed to work overtime, was a practice contradicted to the Labour Law. Therefore, the Arbitration Council decides to order the employer to apply the principle of voluntary overtime work.

**Issue 6:**

The workers demanded that the company provide them with a meal allowance of 500 riels per hour, if overtime work exceeds two hours per day.

Clause 4 of Prakas No. 017 dated 18 July 2000 provides, *“A worker, who voluntarily works overtime as required by the employer, shall receive a meal allowance of 1,000 riels per day or get a free meal.”*

In this dispute issue, the Arbitration Council considers that providing workers who voluntarily work two hours overtime with a meal allowance of 1,000 riels per day, appropriately complied with the Labour Law. However, the workers demanded that the company provide them with an additional meal allowance of 500 riels per hour, if the overtime work exceeds two hours per day.

The Arbitration Council considers that besides Clause 4 of Prakas 017/00, no other article provides for the provision of an additional meal allowance of 500 riels to workers who have worked overtime for more than two hours per day. Thus, the Arbitration Council considers that the workers' demand was an interests demand and it was beyond what the Labour Law provides; therefore, it was an interests dispute.

Regarding the interests dispute, the Arbitration Council always considers on the most representative status of the union that brings the dispute before the Arbitration Council for settlement because the Arbitration Council always considers that the most representative status of a union provides legal capacity to negotiate the collective bargaining agreement within a company and legal rights to bring a dispute before the Arbitration Council for settlement (See Awards 57/06 – Evergreen, 81/04 – Evergreen and 98/04 – Great Union).

In order to receive the most representative status, Article 277 of the Labour Law provided that, the union has to register and meet other requirements as provided in this Article.

In this dispute issue, the Arbitration Council finds that Cambodian Industrial Union in Hong Mei factory has yet the most representative status. Thus, the union has no legal rights to sign any collective bargaining agreement on behalf of all workers within the factory (See Article 96 (2B) and Clause 9 (1) of Prakas No.305). Award 07/06 – Dai Young explained, *“This right belongs to the registered union that has the majority members and meets all the requirements as stipulated in Article 277 of the Labour Law.”* Therefore, to be consistent with previous rulings, the Arbitration Council considers that the union does not possess adequate legal rights to represent workers to settle the collective interests dispute for all workers in Hong Mei Company.

Furthermore, Clause 43 of Prakas 099/04 on the Arbitration Council provides, *“Arbitral Award that resolves interest disputes will replace the collective bargaining agreement for one year starting from the date that Award comes into practice unless parties negotiate new collective bargaining agreement to replace the Award.”*

In the previous Awards, the Arbitration Council considered that if the Arbitration Council issues an Award on this issue, it will become a collective bargaining agreement that applies to all workers in the company and it will make other workers lose their rights to strike when there are interest disputes in the future; it will cause unfairness to other workers” (See Awards 04/03 - Lida, 06/04 - Chou Sing, 24/03 - Top One, 61/04 - Best Honour, 62/04 – Ecent, 09/05 - Kin Tai and 48/06 – Build Up). Additionally, the Arbitration Council previously concluded that a union without the most representative status has no legal rights to bring the interests dispute before the Arbitration Council for settlement (See Awards 31/03 - Hong Wah, 60/04 - United Art and 99/04 - AIA).” Therefore, the Arbitration Council rejects to consider the workers’ demand that the company provide them with an additional meal allowance of 500 riels, if the overtime work exceeds two hours per day.

#### **Issue 11:**

The workers demanded that the company nullify previous labour contract made between the company and the workers because the mixed apprenticeship contract, probationary contract and regular contract was signed with only one date.

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

The general law is the law that covers all contracts. That general law existing today is Decree No. 38 dated 28 October 1988.

Moreover Article 67 (4) of the Labour Law provides, “.... *At the signing of the contract, the employer must inform the worker of the eventually sensitive issues and the approximate duration of the contract...*”

Based on the content of the above Article, a contract cannot be made unless both parties agreed and none of the contracting parties forces the other party to sign the contract. A labour contract can be made in any form that is agreed upon by the contracting parties as long as it is not contrary to the conditions of the Labour Law.

In this dispute issue, the worker party demanded that the company make the apprenticeship contract, probationary contract and regular contract separately. The Arbitration Council considers that the workers have the rights to decide whether or not they would sign on such labour contracts.

Decree No. 38 dated 28 October 1988 provided, “*Contract is considered as law for contracting parties. Contract can be changed, if parties agree. Contract shall be implemented honestly and at the discretion of the contracting parties.*” Therefore, the Arbitration Council does not have the authority and power to force both parties to make a specific labour contract.

The Arbitration Council will consider a labour contract as long as it meets the conditions as follows: (1) the contract has expired; (2) both parties agree to the termination of contract; (3) both parties agree to have the contract amended; (4) the labour contract does not comply with the Labour Law and so on.

Therefore, the Arbitration Council decides to decline to consider the workers’ demand that the company nullify previous labour contracts.

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

### **ORDERS AND DECISIONS**

**Issue 1:** Order the employer to immediately stop the discrimination against workers who are union members and have participated in the union’s activities and the company shall accept and respect the rights to freedom of association.

**Issue 2:** Order the employer to reinstate Ms. Touch Sambath and to provide her with wages and other benefits as usual from 11 July 2006, starting from the date this Award comes into effect.

- Issue 3:** Order the employer to provide each worker delegate with two hours per week to fulfil his or her duty and to keep at least one copy of the Labour Law at the disposal of the workers and the worker delegates.
- Issue 4:** Order the employer to arrange to have a labour physician(s) and medicine for first-aid treatment for its workers according to the number and quality of the medical staff in proportion to the number of workers as provided in Clause 3 of Prakas 330 SKBY dated 6 December 2000.
- Issue 5:** Order the employer to apply the principle of voluntary overtime work.
- Issue 6:** Decline to consider the workers' demand that the company provide them with an additional meal allowance of 500 riels per hour, if the overtime work exceeds two hours per day.
- Issue 11:** Decline to consider the workers' demand that the company nullify previous labour contracts.

**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 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: **Chhiv Phyrum**  
 Signature: .....

Arbitrator chosen by the worker party:  
 Name: **Liv Sovanna**  
 Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):  
 Name: **Pen Bunchhea**  
 Signature: .....