

**KINGDOM OF CAMBODIA**

**NATION RELIGION KING**



**ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល**

**THE ARBITRATION COUNCIL**

**Case number and name: 89/06 - YGM**

**Date of Award: 3 November 2006**

### **ARBITRAL AWARD**

(Issued under Article 313 of the Labour Law)

#### **ARBITRATOR PANEL**

Arbitrator chosen by the employer party:

**OUK RY**

Arbitrator chosen by the worker party:

**VEN POV**

Chair Arbitrator (chosen by the two Arbitrators):

**TAN TRY**

#### **DISPUTING PARTIES**

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

Name : **YGM (Cambodia) Ltd.**

Address : Russian Federation Blvd., Sangkat Toeuk Thla, Khan Russey Keo,  
Phnom Penh

Telephone : 023 883 183 Fax: 023 890 393

Employer Representatives:

- |                   |                                   |
|-------------------|-----------------------------------|
| 1. Mr. Long Heang | General Manager's Representative; |
| 2. Mr. Khan Borin | Administrative Manager.           |

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

Name : **Khmer Youth Free Trade Union (KYFTU) at YGM Factory**

Address : Toeuk Thla Village, Sangkat Toeuk Thla, Khan Russey Keo, Phnom Penh

Telephone : 012 645 766, 011 632 812 Fax: N/A

Worker Representatives:

- |                     |                          |
|---------------------|--------------------------|
| 1. Ms. Chhum Savenn | Workers' Representative; |
| 2. Ms. Touch Ban    | Workers' Representative; |

3. Ms. Meas Sokheang      Workers' Representative;  
4. Ms. Nong Samnang      KYFTU's Coordinator.

### **ISSUES IN DISPUTE**

(In the non-conciliation report)

1. The workers demand three days leave in cases of emergency and that their bonuses be maintained;
2. The workers demand that the company provide transportation when their overtime-work is more than two hours;
3. The workers demand that the company pay them US\$1 including a food allowance when their overtime-work is up to two hours;
4. The workers demand that the company arrange medical check-ups for those workers who have not received medical check-ups and to reimburse the check-up fee to those who have already received medical check-ups.

### **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 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 1480/06 was submitted to the Secretariat of the Arbitration Council on 11 October 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** : 19 October 2006 (from 8:00 a.m. to 11:30 a.m.)

#### **Procedural Issues:**

On 15 September 2006, the Department of Labour Disputes received a complaint from KYFTU seeking the improvement of working conditions in accordance with the Labour Law. Having received the complaint, the Department of Labour Disputes designated its expert official to settle the disputes. Four out of a total of 11 issues were not successfully conciliated in the last conciliation session held on 3 October 2006.

On 11 October 2006 the Secretariat of the Arbitration Council received the case and the non-conciliation report 1480/06 from the Director of the Department of Labour Disputes. Having received the case, the Arbitration Council summoned both the employer party and the worker party at the factory to a hearing in order to conciliate the four non-conciliated issues on 19 October 2006 at 8:00 a.m. Both parties were present at the hearing, but the Arbitration Council's attempt to further conciliate the four non-conciliated issues was not successful.

Therefore, regarding this award the Arbitration Council considers the four non-conciliated issues based on the evidence and the findings of fact 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:
  - 1- Internal Work Rules of YGM Company, dated 29 November 2000;
  - 2- Notification No. 746 on the election for KYFTU's new committee in YGM Factory, dated 12 October 2006 ;
  - 3- Collective Bargain Agreement registered on 3 August 2005;
  - 4- Statutes of YGM Company registered on 19 January 2000;
  - 5- Business Registration License No. 857, dated 15 March 2000;
  - 6- Minute of the collective labour dispute conciliation, dated 15 September 2006;
  - 7- Minute of the collective labour dispute conciliation, dated 3 October 2006;
  - 8- Invitation No. 1120 on the collective labour dispute conciliation meeting on 16 August 2006, dated 10 August 2006;
  - 9- Invitation No. 1286 on the collective labour dispute conciliation meeting on 15 September 2006, dated 7 September 2006;
  - 10- Invitation No. 1373 on the collective labour dispute conciliation meeting on 3 October 2006, dated 27 September 2006;
  - 11- Letter No. 459 from KYFTU in YGM Factory, dated 15 July 2006;
  - 12- Letter No. 044/06 YGM and 045/06 YGM of YGM Company, dated 13 October 2006 to the Director of the Department of Labour Disputes;
  - 13- Statement No. 047/06 YGM of YGM Company, dated 25 October 2006;
  - 14- Letter rejecting the list of names and accompanying thumb prints of workers, dated 8 September 2006;
  - 15- Collective complaint and list of names of workers complaining about the thumb prints, dated 8 September 2006;
  - 16- Job application of Ms. Meas Sokheang, dated 2 December 2003;

17- Job application of Ms. Chhum Savenn, dated 22 April 2003;

18- Authorized Letter No. 046/06 YGM of YGM Company, dated 18 October 2006.

**b.** Provided by the worker party:

1- Thumb prints of workers supporting the agreement, dated 15 September 2006;

2- Registration Certificate No. 988, dated 11 August 2006;

3- Letter No. 991 recognizing the union leaders, dated 11 August 2006;

4- Minute of the collective labour dispute conciliation, dated 15 September 2006;

5- Letter No. 459 of KYFTU at YGM Factory, dated 19 July 2006.

**c.** Provided by the Ministry of Labour and Vocational Training:

1- Report No. 1480 on the collective labour dispute conciliation at YGM (Cambodia) Ltd., dated 10 October 2006;

2- Minute on the collective labour dispute conciliation at YGM (Cambodia) Ltd., dated 3 October 2006.

**d.** Provided by the Secretariat of the Arbitration Council:

1- Invitation No. 423 to the four worker parties to attend the hearing, dated 12 October 2006;

2- Invitation No. 422 to the employer party to attend the hearing, dated 12 October 2006.

**FACTS**

- Having examined the report of the collective labour dispute conciliation;
- Having listened to the testimony from both the employer and the worker parties;
- Having reviewed other supplementary documents;

**The Arbitration Council finds that:**

- YGM (Cambodia) Ltd., employs approximately 2,000 workers and there are at least two unions - Cambodia Federation of Independent Trade Union (**CFITU**) and **KYFTU** (the party [in this case]) in the factory;
- Clause 4 of the Internal Work Rules set out the working hours as follows:
  - Morning: 7:30 a.m. to 11:30 a.m.;
  - Afternoon: 12:30 p.m. to 4:30 p.m.;
- At the hearing, the worker party claimed that overtime work usually starts from 4:45 p.m. to 6:45 p.m.;
- According to the employer, CFITU has most representative status and has signed a collective bargaining agreement with the employer. The collective bargaining agreement, dated 29 July 2005, was registered on 3 August 2005 with the Director of the Department of Labour Disputes;
- Based on the collective bargaining agreement, dated 29 July 2005; when a worker is on sick leave with a proper medical certificate, the company allows them to take one-

day of leave per month without deducting the attendance bonus; however, if the leave exceeds more than one day, the company has the right to deduct the attendance bonus (Clause 11.D);

- Based on the invitation 1286/06, the Department of Labour Disputes invited the employer party to attend a collective labour dispute conciliation on 15 September 2006 and it clarified that “***The disputing party could be accompanied or could be represented***”;
- Based on the Department of Labour Disputes’ minute on the collective labour dispute conciliation, dated 15 September 2006; the company representative (Administrative Manager) and the workers’ representatives (which includes: 1. Chhum Savenn, 2. Khun Sary, 3. Touch Ban, 4. Meas Sokheang) attended the meeting to conciliate the labour dispute at YGM Company at 10:00 a.m. on 15 September 2006 facilitated by Labour Dispute Officials (Mr. Va Yuthvathana and Mr. Prom Veasna). Both parties agreed to implement the conciliation agreement and underneath the heading 20 (of the non-conciliated issues) of the minute states “none”;
- Based on the content of letter 042/06 YGM dated 15 September 2006 to the Department of Labour Disputes, YGM Company asked for a further negotiation on some of the issues that the company had already agreed with the workers’ representatives during the conciliation session on 15 September 2006;
- Based on the content of letter 1373, dated 27 September 2006, the Department of Labour Disputes invited the employer party to attend the new collective labour dispute conciliation on 3 October 2006. At the conciliation session, the employer party had not implemented the issues demanded by the workers (Issue 1, 2, 10 and 11) by claiming that the company implemented the registered collective bargaining agreement recognized by the Department of Labour Disputes instead. KYFTU had not registered at YGM Factory and the company had not received any notification. The workers’ representatives refused to sign the minute on the collective labour dispute conciliation held on 3 October 2006. As mentioned above, the minute on the conciliation, dated 3 October 2006, was sent to the Arbitration Council and the Arbitration Council commenced resolution of the case;
- The minute of the collective labour dispute conciliation, dated 15 September 2006, stated that out of the 12 issues; only issue 1 to issue 10 had been agreed upon. Regarding issue 11 the company would consult with the Management before discussing the issue again on 4 October 2006 at 2:30 p.m. On the other hand, issue 12 stated that the agreed issue (Issue 1 to issue 11) would be implemented from the day of the labour dispute conciliation onwards.

## **REASONS FOR DECISION**

### **A. Preliminary issue at the hearing:**

At the start of the hearing, the worker party claimed that the four issues which were forwarded to the Arbitration Council were conciliated by the employer party and worker party during the conciliation meeting facilitated by the Labour Dispute Officials from the Department of Labour Disputes on 15 September 2006. The worker party brought up the minute of the collective labour dispute conciliation, dated 15 September 2006 claiming that both parties had already conciliated the 12 issues and that the four issues were among those 12 conciliated issues. Therefore, the employer party should simply implement the conciliated agreement on those issues as stated in the conciliation minute.

However, the employer party did not agree with the workers' claim. The employer argued that the company implements only the collective bargaining agreement recognized by the Department of Labour Disputes regarding the four issues, and that KYFTU has not registered at YGM Factory and has not informed the company about their union.

Regarding the above primary claim, the Arbitration Council compares the content of the conciliation minute of the Department of Labour Disputes, dated 15 September 2006 with the content of the issues demanded in the non-conciliation report dated 3 October 2006 of the Ministry of Labour and Vocational Training as follows:

Non-conciliation report, dated 2 October 2006	Minute on the collective labour dispute conciliation, dated 15 September 2006
Issue 1: The workers demanded for three days leave in cases of emergency and that their bonuses be maintained.	Issue 11: For a worker who takes a three-day leave (In the case of emergency) and asks for a bonus, the company representative will consult with the company management and will discuss with the workers again on 4 October 2006.
Issue 2: The workers demanded the company to provide transportation when their overtime-work is more than two hours.	Issue 1: The company agreed to provide transportation the workers when their overtime-work is more than two hours.
Issue 3: The workers demanded the company to pay them US\$1 including food allowance when their overtime-work is up to two hours.	Issue 2: The company agreed to pay the workers US\$1 including food allowance when their overtime-work is up to two hours.
Issue 4: The workers demanded the	Issue 10: The company agreed to arrange for

company to arrange for medical check-ups for those who have not had medical check-ups and reimburse the check-up fee to those who have already had the medical check-up.	medical check-ups for workers who have not had medical check-ups and to reimburse within the wage for October 2006.
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**B. Validity of the agreement in the conciliation minute dated 15 September 2006**

The Arbitration Council considers that it is necessary to consider the conciliation minute and determine its validity.

The company rejected the four issues based on two legal bases: (1) the legal capacity of its representative who signed the conciliation minute and the legitimacy of KYFTU at YGM Factory and (2) the use of the company's stamp on the conciliation minute. The employer party claimed that the presence of the company's representative should be null and void because the said representative had not yet received written authorization from the company.

The Arbitration Council examined the contents of some formal documents and some facts related to the conciliation meeting held on 15 September 2006 to identify whether there was an irregularity concerning the legitimacy of the company's representative during the conciliation negotiation.

Based on the invitation 1120/06, the Department of Labour Disputes invited the General Manager of YGM Company to attend the collective labour dispute conciliation meeting on 16 August 2006. In response to letter 038/06 YGM dated 14 August 2006, the Department of Labour Disputes sent invitation 1268/06 to the General Manager of YGM Company to attend the collective labour dispute conciliation meeting again and the new deadline of the meeting was 15 September 2006. According to the content of invitation 1268, the Department of Labour Disputes clarifies that, "...*the disputing party can be accompanied or can be represented...*"

Based on the content of these corresponding letters, the Arbitration Council notes two points: (1) The Department of Labour Disputes invited the company to attend the conciliation meeting with a new deadline and (2) The Department of Labour Disputes made it clear that the company may appoint its representative to attend the conciliation meeting, in case the General Manager was not available. The attendance of the Administration Manager to attend the conciliation meeting on 15 September 2006 means that to the worker party and the Labour Dispute Officials he [the Administrative Manager] is the company's representative who will participate in the collective labour dispute settlement on behalf of YGM Company before the Labour Dispute Officials.

The Arbitration Council notes that in the content of the conciliation minute both parties agreed upon issue 1 to issue 10 and issue 12 and the three issues (issue 2 to 4) in this case were among the 11 conciliated issues; issue 11 of the conciliation minute, which is the first

issue in this case, was not agreed upon. The conciliation minute does not need to be approved by the General Manager or the Management except with respect to issue 11 which requires consultation with the company's management before bringing it to be discussed further on 4 October 2006. It was written in issue 12 that the above-eleven agreed issues would be implemented from the day of the labour dispute conciliation. Furthermore, the Arbitration Council did not see any objection from the employer party to the agreed issues. Therefore, it is not appropriate that the company rejects some of the agreed issues and stay quiet on some others.

The employer party further asserted that the company has filed an objection against the recognition of KYFTU at YGM Factory because there were some problems concerning the union leaders. The problems that the company considered issues were: the incorrect name of the union leader and that he did not meet the age requirement as provided by the law and the Vice-President and the Secretary General are illiterate and their names were incorrect. The Arbitration Council considers that the individual issue of the union leader is not directly related to the effectiveness of the agreement. Moreover, the Arbitration Council considers that the employer party did not provide enough evidence to prove that the workers' representatives who thumb-printed the agreement on 15 September 2006 were not qualified to thumb-print on behalf of the union. In the job application of one of the union leaders (Secretary General) it clearly showed that the union leader is at least 25-years old and educated. The Arbitration Council also notes that the Ministry of Labour and Vocational Training recognized the leaders of KYFTU at YGM Factory following the registration license 988/06 and the Letter of Union Recognition dated 11 August 2006.

In regard to the company's stamp on the conciliation minute, the Arbitration Council does not see any provisions of the Labour Law which states that the labour dispute conciliation minute will lose its validity for this reason. Moreover, Article 115 of the Business Enterprise provides that any documents or contracts made in the name of a company or a manager or an agent of the company is valid even if there is no company stamp on the document. Therefore, the issue of not having a stamp on the conciliation minute is not an obstacle to the legitimacy of the agreement.

The Arbitration Council also notes that during the hearing the employer party did not raise other issues that were obstacles to the validity of the conciliation minute; therefore, the Arbitration Council considers that there is not enough facts to impede the legitimacy of the agreement.

### **C. Conciliation Agreement**

The Arbitration Council continues to examine whether or not the 11 conciliated issues in the minute can be considered as a conciliation agreement as provided in Article 307 of the Labour Law.

Article 307 of the Labour Law provides that a conciliation agreement, signed by the parties and visaed by the Conciliator, has the same force and effect as a collective

agreement between the parties and the persons they represent. However, when the party representing the workers is not a trade union, the agreement is neither binding on such union nor on the workers that union represents.

The Arbitration Council notes two conditions stated in Article 307(1): (1) the conciliation agreement must be signed by the parties and (2) the conciliation agreement must be visaed by the Conciliator. Regarding the first condition, the Arbitration Council has already considered the agreement contained in the conciliation minute which was indeed signed by the parties. The second condition can be considered as fulfilled since the agreement by the parties was completed before the Conciliator designated by the Department of Labour Disputes to settle the dispute and the signature of the Conciliator can be considered as the visa on the agreement. Therefore, the agreed issues in the conciliation minute can be considered as the conciliation agreement as provided by Article 307 of the Labour Law.

The Arbitration Council continues to examine the relationship between the conciliation agreement, Internal Work Rules and provisions of the Labour Law, which are the bases for considering the issues as follows:

**Issue 1: The workers demanded three days leave in cases of emergency and that their bonuses be maintained**

At the hearing, the employer party stated that if a worker's relative or parents are sick and they have a proper medical certificate, s/he will be allowed to take one day off and the company will not deduct her/his attendance bonus. However, if a worker takes more than one day off, the worker will not receive the bonus from the company.

The worker party on the other hand said that both parties agreed upon issue 1 on 15 September 2006, as issue 11 of the conciliation minute, and thus the company has to implement the conciliation agreement. The employer party refused and asked the workers to implement the collective bargaining agreement because the agreement applies to all workers.

The Arbitration Council has already clarified the content of the agreement in the conciliation minute and that 11 issues were agreed upon without setting a condition that the General Manager or the Management had to approve it [before implementation]. Only issue 11 had a condition that the company representative needed to consult with the management of the company before bringing it to be discussed further on 4 October 2006. Because there was not a successful conciliation with respect to issue 11, the Arbitration Council determines that the parties did not reach any agreement on issue 11 and it therefore requires the Arbitration Council to return to examine the provisions in the collective bargaining agreement.

As mentioned earlier, the employer party has signed a collective bargaining agreement with the Cambodia Federation of Independent Trade Unions (**CFITU**) which has most representative status in the factory. At the hearing, the worker party did not oppose the

collective bargaining agreement. According to Article 97 of the Labour Law, the provisions of a collective bargaining agreement shall apply to the employer concerned and all categories of workers employed in the establishment as specified by the collective bargaining agreement. Clause 1 of the collective bargaining agreement states that, "...except officials, Secretary, Supervisor and Senior Management....all workers of YGM Factory (Cambodia) and its branches within Cambodia are bound by the agreement or the collective bargaining agreement." Thus, the collective bargaining agreement signed on 29 July 2005 and registered on 3 August 2005 has the power to bind all workers of YGM Factory including KYFTU at YGM Factory and its members. Based on these contents, the Arbitration Council considers that if any provision of the collective bargaining agreement covers the issues in dispute, the provision shall have the power to apply to that dispute.

Clause 11(d) of the collective bargaining agreement states, "*when a worker takes sick leave and s/he has a proper medical certificate, the company will allow one day off per month without deducting the attendance bonus; however, if the worker takes more than one day off, the company has the right to deduct the bonus.*"

Before concluding, the Arbitration Council first needs to examine the public order as provided in the Labour Law. Article 13 of the Labour Law provides for the maintenance of public order, which means that all provisions of a collective bargaining agreement that do not comply with the provisions [of the Labour Law] can be nullified; however, it is permitted to offer benefits or rights that are better than those contained in the CBA.

Article 98(1) of the Labour Law provides, "*The provisions of collective agreements can be more favourable toward workers than those of laws and regulations in effect. However, the collective agreements cannot be contrary to the provisions on the public order of these laws and regulations.*"

Notification 017/00 states, "*A worker, who works regularly in every working of each month, is entitled to at least US\$5.*" In Award 15/05-Wing Tai II, the Arbitration Council considered that Notification 017/00 does not state whether or not the company should provide the bonus in cases where a worker is on sick leave and cannot come to work and [in that case] the Arbitration Council ordered the company to provide the attendance bonus to workers who were on sick leave with permission in proportion to the number of days they worked based on the principles of equity. Furthermore, in other cases, where neither provision nor agreement clearly states about the bonus during sick leave, the Arbitration Council has ordered that the employer may deduct the bonus only in proportion to the number of days the worker is on leave with permission (*see Arbitral Award 62/04 - Ecent, 15/05 - Ving Tai II*). However, in case 41/05 - Violet Apparel, the Arbitration Council did not rule based on the principle of equity as it did in case 15/05 because [it was considered in this case that a] ruling based on the principle

of equity can only be made if the dispute is [about an issue that is] not stated in the law or regulations including the company's Internal Work Rules. In that dispute, the Arbitration Council decided to reject the workers' demand for the bonus.

Nonetheless, Clause 11(d) of the collective bargaining agreement of YGM Company states that, "... *when worker is on sick leave with proper medical certificate, the company allows one day leave per month and will not deduct the bonus, but if a worker takes more than one day off, the company will not provide the bonus...*" The Arbitration Council considers that Clause 11(d) is not contrary to the provision stated in the Labour Law that has the nature of the public order. On this basis, the provision stated in Clause 11(d) is enforceable to issue 1.

**Issue 2: The workers demanded that the company provide them with transportation when their overtime work is more than two hours.**

The worker party claimed that this issue (issue 2) was agreed upon by both parties on 15 September 2006. They assert that it was the first conciliated issue in the conciliation minute, thus the company should implement the conciliation agreement with respect to this issue. However, the employer party rejected this and insisted on implementing the collective bargaining agreement that applies to all workers.

The first conciliated issue in the conciliation minute states that the company agreed to provide safe transportation to workers, when they work overtime for more than two hours.

The Arbitration Council does not see any provision of the collective bargaining agreement, Internal Work Rules or the Labour Law which discusses safe transportation for workers.

However, based on Article 307(1), Issue 2 can be considered as the first conciliated issue of the conciliation minute dated 15 September 2006 which states, "*The Company agrees to provide safe transportation for workers, when they work overtime for more than two hours.*" Clause 5 and 6 of Prakas 80/99 determines that the employer must provide safe transportation to workers, when they finish their work at night between 10:00 p.m. and 5:00 a.m. Based on Clause 4 of the Internal Work Rules, working hours are from 7:30 a.m. to 11:30 a.m. and 12:30 p.m. to 4:30 p.m. However, at the hearing the worker party claimed that overtime work is usually from 4:45 p.m. to 6:45 p.m. unlike night-shift work in Clause 5.

The Arbitration Council finds that issue 1 of the conciliation agreement dated 15 September 2006 is not contrary to any provision or regulation. As mentioned earlier, the agreement has the same value and effect as that of the collective bargaining agreement between the parties and between those who are represented. Yet, the conciliated issue applies to only KYFTU at YGM Factory and the workers that KYFTU represents. Based on these reasons, the first conciliated issue of the conciliation minute is enforceable on this issue.

**Issue 3: The workers demand that the company pay them US\$1 including food allowance when their overtime work is up to two hours.**

Similar to issue 2, the worker party claimed that the issue was agreed upon by the parties on 15 September 2006 and that the agreement was contained as the second conciliated issue in the conciliation minute. [The workers asserted that] the company must implement the conciliation agreement on this issue. The employer party rejected this and insisted on implementing the collective bargaining agreement that applies to all workers.

The Arbitration Council does not see any provision of the collective bargaining agreement, Internal Work Rules and the Labour Law which requires a US\$1 wage and food allowance for overtime work. Even if it is so, issue 2 of the conciliation agreement dated 15 September 2006 states, "*The Company agrees to provide US\$1 and food allowance, when a worker does overtime work for more than two hours.*"

Clause 4 of Notification 017/00 requires the employer to provide 1,000 riel food allowance or provide one free meal to workers who voluntarily work overtime. In the previous cases, the Arbitration Council has ruled that the employer must pay at least 1,000 riel or provide one free meal to workers who work overtime regardless of the number of hours they work (see Arbitral Award 53/05 – *Finegis*).

The Arbitration Council considers that the conciliated issue 2 in the conciliation minute is a conciliation agreement that offers benefits to the workers of more than 1,000 riel food allowance provided by Clause 4 of Notification 017 and is therefore is not contrary to the content of Article 13 and Article 98(1) of the Labour Law. Therefore, the conciliated issue 2 in the conciliation minute is enforceable with respect to this issue.

**Issue 4: The workers demand that the company arrange medical check-ups for those who have not had medical check-ups and reimburse the check-up fee to those who have already had the medical check-ups.**

Similar to issues 2 and 3, the worker party claimed that issue 4 was agreed upon by both parties on 15 September 2006 and it was contained as issue 10 of the conciliation minute; therefore, the employer party should implement the conciliation agreement. The employer party rejected this and insisted on implementing the collective bargaining agreement that applies to all workers.

The Arbitration Council does not see any provision in the collective bargaining agreement, Internal Work Rules or the Labour Law which directly discussed the medical check-ups of workers.

Article 247(c)(4) of the Labour Law provides that the medical check-up fee is the burden of the employer. Based on this Article, the Arbitration Council similarly considers that the employer party shall pay for the medical check-up fee of its workers (*see Arbitral Award*

02/03 - Chu Sing, 53/04 - Kbal Koh, 05/06 - W&D and 36/06 - Max Pearl). Furthermore, in conciliated issue 10 of the conciliation minute, the employer party agreed to arrange medical check-ups for workers who have not had one and the company will also reimburse the medical check-up fee, in the workers' October wages, to those who have already had the medical check-up.

The Arbitration Council considers that conciliated issue 10 of the conciliation agreement is not contrary to any provision of the Labour Law. Therefore, conciliated issue 10 in the conciliation minute is enforceable with respect to this issue.

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

**ORDERS AND DECISIONS**

- 1- Reject the workers' demand for the bonus to be maintained when a worker takes a three days of emergency leave;
- 2- Order the company to implement conciliated issue 1 in the conciliation minute dated 15 September 2006, which is enforceable with respect to issue 2 of this case;
- 3- Order the company to implement conciliated issue 2 in the conciliation minute dated 15 September 2006, which is enforceable with respect to issue 3 of this case;
- 4- Order the company to implement conciliated issue 10 in the conciliation minute dated 15 September 2006, which is enforceable with respect to issue 4 of the case.

**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 objection 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: **OUK RY**

Signature: .....

Arbitrator chosen by the worker party:

Name: **VEN POV**

Signature: .....

Chair Arbitrator (chosen by the two Arbitrators):

Name: **TAN TRY**

Signature: .....