



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាអាជ្ញាកណ្តាល
THE ARBITRATION COUNCIL

Case number and name: 66/10-New Wide

Date of Award: 16 July 2010

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: **Tuon Siphann**

Chair Arbitrator (chosen by the two Arbitrators): **Koy Neam**

DISPUTING PARTIES

Employer party:

Name: **New Wide (Cambodia) Garment Co., Ltd.**

Address: Phum Toul Pongror, Sangkat Chorm Chao, Khan Dangkor, Phnom Penh.

Telephone: 077 777 277 Fax: N/A

Representative:

- | | |
|----------------------|---|
| 1. Mr. Chu Man Pun | Director of the Company |
| 2. Mr. Phou Sun | Director of Human Resource and Administration |
| 3. Mr. Cheat Khemara | Official from the Garment Manufacturers Association in Cambodia |
| 4. Ms. Thiv Dany | Interpreter |

Worker party:

Name: **Khmer Democratic Federation of Workers**

Khmer Democratic Union of Workers of New Wide Factory

Address: Phum Toul Pongror, Sangkat Chorm Chao, Khan Dangkor, Phnom Penh.

Telephone: 017 489 448 Fax: N/A

Representative:

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| 1. Mr. Roeum Bora | President of the Khmer Democratic Union of Workers |
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| 2. Mr. Nork Heng | Official of the Federation |
| 3. Mr. New Phearun | Secretary to the Federation |
| 4. Ms. Chhorn Shivorn | President of Khmer Democratic Union of Workers |
| 5. Ms. Oum Srey | Vice-President of the union |
| 6. Ms. Yart Sreynyub | Secretary to the union |
| 7. Ms. Tuy Pors | Head of Sewing Section |
| 8. Mr. Bot Tongseng | Mechanic |

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

- 1- The union with most representative status demands the company comply fully with and implement effectively, the contents of the collective bargaining agreement. The company asserts that it will completely abide by the contents of the collective bargaining agreement, registered on 4 January 2010 except for clause 8 of the agreement for which the company will follow the decision of the Arbitration Council when the next Arbitral Award is issued.
- 2- The union with most representative status demands the company reimburse the union contribution fees as the company once practised in the past. The company states that it will follow the decision of the Arbitration Council when the next Arbitral Award is issued.
- 3- The union with most representative status demands the company provide the local union and the federation with the rights to jointly oversee the implementation of the collective bargaining agreement in the factory. The company states that it will follow the decision from the Arbitration Council when the next Arbitral Award is issued.
- 4- The union with most representative status demands the company provide relevant documents in which the company claimed that the workers affixed their thumbprints to a request for a boycott. The company states that it will follow the decision from the Arbitration Council when the next Arbitral Award is issued.
- 5- The union with most representative status demands the Company provide damages for non-compliance with the collective bargaining agreement in the past. The Company asserts that it cannot afford to pay damages.

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. 133 dated 9 June 2010 (Eighth Term).

An attempt was made to conciliate the collective dispute that is the subject of this Award, as required by Chapter XII, Section 2A of the Labour Law. The conciliation was unsuccessful, and the non-conciliation report No. 511, dated 21 June 2010, was submitted to the Secretariat of the Arbitration Council on 22 June 2010.

HEARING AND SUMMARY OF PROCEDURE

Place of hearing: The Arbitration Council, No. 72, Street 592 (corner of St. 327 and in front of En Tarak Tevy High School), Sangkat Boeung Kak II, Khan Tuol Kork, Phnom Penh.

Date of hearing: 2 July 2010 at 8:00 a.m.

Procedural issues:

On 2 June 2010, the Department of Labour Disputes received a complaint from the Khmer Democratic Federation of Workers (KDFW), regarding the demand for the company to improve working conditions. After receiving the claim, the Department of Labour Disputes assigned an expert officer to resolve this labour dispute and the last conciliation session was held on 15 June 2010. The five non-conciliation points were referred to the Secretariat of the Arbitration Council on 22 June 2010.

Upon receipt of the case, the Secretariat of the Arbitration Council summoned the employer party and the worker party to the hearing and conciliation on the five non-conciliation issues on 2 July 2010 at 8:00 a.m. Both parties were present as invited by the Arbitration Council.

On the hearing day, the Arbitration Council attempted to further the conciliation on the five non-conciliation points and the employer agreed with the workers' demand on points 3 and 4; however, the two parties did not sign an agreement and requested the Arbitration Council to issue an award. Therefore, in this case the Arbitration Council will consider the issues in dispute based on evidence and reasoning as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council:

A. Provided by the employer party:

1. Certificate of commercial registration, dated 4 August 2008, of New Wide Company.
2. Letter, No. 85 SSYX, dated 12 March 2010, from the Khmer Youth Federation Trade Union to the Director of New Wide Company requesting the suspension of the

- deduction of 1,000 riels from workers' wages in consideration of the collective agreement.
3. Notification of New Wide Company regarding a bonus of US\$ 5 for meeting the production targets, consecutively for half of a month, dated 2 September 2009.
 4. Internal Work Rules of New Wide Company, dated 29 May 2008.
 5. Minutes of meeting, dated 1 September 2008.
 6. Authorisation letter from the Director of New Wide Company to Mr. Phu Shun, dated 28 June 2010.
 7. Notification of New Wide Company regarding the elimination of Bonus, A B C, and the increase to main wages, dated 1 March 2008.
 8. Payroll of wages for February 2008.
 9. Notification of New Wide Company regarding the living allowance bonus and transportation bonus, dated 1 August 2008.
 10. Payroll of wages for July 2008.
 11. Letter of the workers requesting the company to stop the deduction of 1,000 riels of the workers' monthly wages in consideration of the collective agreement.
 12. Collective agreement, dated 4 April 2010.
 13. Payment voucher.
 14. Name list of 107 workers who are members of the Khmer Democratic Union of Workers at New Wide Company.
 15. Name list of 459 workers who are members of the Khmer Youth Trade Union at New Wide Company.

B. Provided by the worker party:

1. Certificate of union registration, dated 28 August 2007, of the Khmer Democratic Union of Workers of New Wide Company.
2. Brief statement of the labour dispute case No. 66/10, dated 1 July 2010.
3. Certificate of most representative status, dated 30 January 2008, of the Khmer Democratic Union of Workers at New Wide Company.
4. Letter from the Department of Labour Disputes, No. 24 KB/RK/VK, dated 11 January 2010, to the President of the Khmer Democratic Union of Workers at New Wide Company regarding the recognition of the union in the second mandate.
5. Letter from the Department of Labour Disputes, No. 569 KB/RK/VK, dated 26 May 2010, to the President of the Khmer Democratic Union of Workers at New Wide Company regarding the recognition of the union in the new mandate.
6. Statute of the Khmer Democratic Union of Workers at New Wide Company, dated 28 August 2007.

7. Collective agreement, dated 4 April 2010.
8. Report of the collective agreement implementation, dated 1 January 2010.
9. Letter from workers refusing to recognise Mr. Pou Sun, dated 27 March 2010.
10. Letter from the Khmer Democratic Federation of Workers to the Director of the Garment Manufacturers Association in Cambodia regarding intervention on Mr. Pou Sun's case, dated 29 March 2010.
11. Minutes of meeting, dated 5 May 2010.
12. Letter from the Khmer Democratic Federation of Union of Workers to the Director of New Wide Company regarding a request for copying the name list of workers and slips on which the workers have affixed their thumbprint to withdraw union membership and boycott the collective agreement, dated 18 May 2010.
13. Letter from the Director of New Wide Company to the President of the Khmer Democratic Federation of Workers regarding a request to copy the name list of workers who withdrew their union membership and boycotted the collective agreement, dated 19 May 2010.
14. Letter from the Khmer Democratic Federation of Workers to the Director of New Wide Company reasserting a request for copying the name lists of workers and slips on which the workers have affixed their thumbprints to withdraw their union membership and boycott the collective agreement, dated 20 May 2010.
15. Invitation letter from the local union of KDFW to President of KDFW regarding a request to oversee the implementation of the collective bargaining agreement at New Wide factory, dated 19 Mar 2010.
16. Letter from the KDFW submitted to the Director of New Wide Company regarding a request to oversee the implementation of the collective bargaining agreement, dated 20 March 2010.
17. Minutes of meeting, dated 20 March 2010.
18. Minutes of the collective labour dispute conciliation of New Wide Company, dated 15 June 2010.
19. Intervention letter of the KDFW submitted to the Head of the Department of Labour Disputes to help implement 30 clauses of the collective bargaining agreement at New Wide factory, dated 28 March 2010.
20. Minutes of the Collective Labour Dispute Conciliation at New Wide Company, dated 15 June 2010.
21. Letter of the KDFW submitted to the Arbitration Council regarding more evidence on collective labour dispute case No.66/10, dated 6 July 2010.
22. Payment voucher.
23. Receipt of money, dated 30 June 2010.

24. Printing and copying receipt from Dara Printing House.
25. Receipt of travel expense (by tri-vehicle).
26. Letter of the KDFW Committee of New Wide factory submitted to the Director of New Wide Company regarding the negotiation to implement the collective bargaining agreement (CBA), dated 18 March 2008.
27. Letter of the KDFW Committee of New Wide factory submitted to the Director of New Wide Company regarding the negotiation to implement the CBA, dated 10 April 2008.
28. Letter of the Director of New Wide Company submitted to the committee of KDFW of New Wide factory regarding the postponement of the negotiation of the CBA, dated 23 April 2008.
29. Letter of the KDFW Committee of New Wide factory submitted to the Director of New Wide Company regarding its third anniversary and agenda of the CBA negotiation, dated 2 June 2008.
30. Letter of the Director of New Wide Company submitted to the Committee of the KDFW of New Wide factory regarding the previous postponement of the negotiation of the CBA, dated 3 June 2008.
31. Letter of the Director of New Wide Company submitted to the committee of the KDFW of New Wide factory regarding the meeting on the procedures of negotiation of the CBA, dated 11 June 2008.
32. Internal regulation regarding CBA negotiation, dated 17 June 2008.
33. Notification of the cost of living and travel allowance, dated 1 August 2008.
34. Minutes of meeting, dated 1 September 2008.
35. Notification of the production bonus for meeting the production target for a consecutive half of a month, \$US 5, dated 2 September 2008.
36. Notification of the elimination of Bonus, A B C, and of minimum wage increase (Main wages).

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

1. Report of the collective labour dispute conciliation at New Wide Company No.511 KB/RK/VK dated 21 June 2010.
2. Minutes of the collective labour dispute conciliation at New Wide Company dated 16 June 2010.

D. Provided by the Secretariat of the Arbitration Council:

1. Letter of invitation to the company party to attend the hearing, No. 329 KB/AK/VK/LKA dated 24 June 2010.
2. Letter of invitation to the worker party to attend the hearing, No. 330 KB/AK/VK/LKA dated 24 June 2010.

FACTS

- Having examined additional documents
- Having listened to statement by representatives by workers and employer, and
- Having reviewed documents submitted to the Arbitration Council

The Arbitration Council finds that:

- New Wide Company employs approximately 1350 workers.
- The Khmer Democratic Federation of Workers of New Wide factory is the claimant.
- The Workers stated the union represented approximately 800 workers when it signed a collective agreement in 2009. Current members of the union total more than 500 workers; however, the company deducted workers' wages for union contribution fee from only about 200 workers. The employer stated there is only about 200 thumbprints of union members from whom the company is allowed to deduct the wages for union contribution.
- The workers stated the company and the union started to negotiate a collective agreement on 17 June 2008 and registered the collective agreement at the Ministry of Labour and Vocational Training on 11 December 2009.
- Clause 4 of the collective agreement dated 11 December 2009 between New Wide Company and most representative status unions (Khmer Democratic Federation of Workers and Khmer Democratic Union of Workers of New Wide Factory) stated the scope of collective agreement; "This collective agreement covers all workers in New Wide Company excluding A. Director of the company and foreigners B. Office personnel (Administration/Human Resources and Accounting section staff, identified as OF, TS), C. Cook (CK) and Chauffeur (driver OF) D. Company's doctor F. Generator mechanic and Construction worker and G. Security guard."

Issue1: The worker party demands the company deduct workers' wages to pay a gratuity for the collective agreement.

- The workers demand the company fully implement the collective agreement including clause 8 of the collective agreement which outlines union contribution fee collection and the obligation to pay a gratuity for the collective agreement. In this case, the

- issue is about the collective agreement gratuity and not about the union contribution fee collection.
- Clause 8 of the collective agreement dated 11 December 2009 between New Wide Company and most representative status unions (Khmer Democratic Federation of Workers and Khmer Democratic Union of Workers of New Wide Factory) states, *“The Company agrees to deduct wages for the union contribution fee where the members sign and affix thumbprints properly and the Company will give this union contribution fee to the Federation accountant when it receives a written authorisation letter from the President of the **Khmer Democratic Federation of Workers**. When this collective agreement comes into force, all the workers in New Wide factory are obliged to pay the collective agreement gratuity which is an amount equal to the monthly union contribution fee. The Company will stop deducting this union contribution fee immediately when it receives a direct request not to deduct wages from any worker through the local union. If any worker withdraws his or her union membership or boycotts the collective agreement, then that worker shall not be obliged to pay the union contribution fee nor the collective agreement gratuity; however, those workers are not entitled to receive benefits as stated in the collective agreement.”*
 - The employer argued the company could not fully implement clause 8 of the collective agreement, particularly the workers’ wages deduction to pay for the collective agreement gratuity.
 - The workers argued the company used to deduct this collective agreement gratuity in January, February, and March 2010 to pay the union. The workers paid for this consideration without any problems; however, when the new administration took over, the company stopped deducting this gratuity for the union. The employer party agreed with the claim of the workers and the company stated it could not continue to deduct the collective agreement consideration from workers’ wages because this deduction did not comply with Article 129 of the Labour Law.
 - The company argued there are 800 workers who requested the company to deduct their wages to pay the gratuity to the union. The gratuity was deducted from the workers who are not members of the Khmer Democratic Federation of Workers Union. For example, members of Khmer Youth Trade Union paid this gratuity to Khmer Democratic Federation of Workers Union in an amount equal to the union contribution fee and also paid the union contribution fee to Khmer Youth Trade Union. If the workers are not members of the KDFW, they paid the union contribution fee to the union that they are a member of, and the gratuity for the collective agreement;

however, if they are the members of the KDFW, they paid only the union contribution fee.

- The company stated the employer was told by one non-governmental organisation that the company could not deduct workers' wages without their permission because it did not comply with the Labour Law.
- The workers argued the union did not force the workers to pay this collective agreement gratuity; however, according to clause 8 of the collective agreement, it clearly stated the workers who did not pay this gratuity are not entitled to receive benefits provided by the collective agreement. Moreover, this collective agreement was registered at the Ministry of Labour and Vocational Training; so it was recognised lawfully and provided more benefits to the workers.
- The employer argued that according to *Prakas* 305, the benefit stated in the collective agreement shall be provided to all workers in the company regardless of whether the workers are members of a particular union. In addition, according to Article 13 of the Labour Law, the employer is not prohibited to give more benefits which are not set out in the law. Thus, the employer continues to provide benefits to the workers as stated in the collective agreement to the workers even those workers who do not pay the collective agreement gratuity.

Issue 2: The workers demand the company reimburse the gratuity payment.

- The union argued the workers who are not members of the KDFW must pay the collective agreement gratuity in an amount equal to the monthly union contribution fee. For the workers who are members of the KDFW, they pay only the union contribution fee. The employer did not object to the claim.
- The employer argued the company could not deduct the collective agreement gratuity for the KDFW anymore on the grounds that 800 workers had affixed their thumbprints to a request not to deduct the payment from their wages.
- The workers stated they demand the employer reimburse the gratuity payment from March 2010 up to now (July 2010). The employer stated the company could not reimburse the gratuity payment.

Issue 3: The union with most representative status demands the company provide the local union and the Federation with the rights to jointly oversee the implementation of the collective bargaining agreement in the factory.

- The workers and the employer agreed they would implement the collective agreement; as a result, the company will hold a meeting with the local union and the Federation in accordance with clause 5 of the collective agreement. The meeting will

be held at the administration office of the company or another place in the company but not at the workplace of the workers which could disrupt the production line of the company.

Issue 4: The union with most representative status demands the company provide relevant documents in which the company claimed that the workers affixed their thumbprints to a demand for a boycott.

- The workers and the employer agreed the company would copy the documents in which the workers boycotted the payment of the gratuity to the union with most representative status, the KDFW, and if the union felt suspicious about the thumbprints of the workers, the union could examine it with the company and ask those workers to verify it.

Issue 5: The union with most representative status still demands the company provide damages for non-compliance with the collective bargaining agreement in the past.

- The workers demand the company provide damages for non-compliance with the collective bargaining agreement; the damages also includes wasting time in resolving the dispute. The union demanded the company pay them 2 million riels per month in four consecutive months which equals 8 million riels.
- The employer argued there is no legal basis that required the company to provide damages to one party that it spend in the process of resolving the dispute. The company also spent time and money in resolving this dispute.
- The workers argued the party who did not obey the contract must provide damages and compensations to another party who spend money in the litigation of contract execution on the ground that collective agreement is also a contract.
- The Arbitration Council ordered the worker party to submit evidence by the 6 July 2010 deadline.

REASONS FOR DECISION

Issue 1: The union with most representative status demands the company fully comply with and effectively implement the collective bargaining agreement.

The union demands the company fully implement the collective agreement; however the employer stated that the employer will implement it except for clause 8 of the collective agreement which relates to the gratuity payment for the KDFW because the workers have not allowed the company to deduct their wages. The employer stated it could not continue to deduct workers' wages to pay the gratuity for the collective agreement. The Arbitration Council considers whether or not the employer should deduct workers' wages to pay the

collective agreement gratuity to the union and whether or not the workers should receive benefits from the collective agreement if they boycott it.

1. Should the employer deduct workers' wages to pay the gratuity for the collective agreement to the union?

Clause 8 of the collective agreement dated 11 December 2009 between New Wide Company and most representative status unions (Khmer Democratic Federation of Workers and Khmer Democratic Union of Workers' of New Wide Factory) states, "...[w]hen this collective agreement comes into force, all the workers of New Wide are obliged to pay the gratuity for the collective agreement which has an amount equal to the monthly union contribution fee...if any worker withdraws his or her union membership or boycotts the scope of this collective agreement, then those workers shall not be obliged to pay union contribution fee nor the gratuity for the collective agreement; however, those workers are not entitled to receive benefits as stated in the collective agreement".

According to clause 8 of the agreement above, the Arbitration Council finds clause 8 does not oblige the employer to deduct workers' wages to pay the gratuity to the union. Rather, this clause imposes an obligation on the workers to pay for the gratuity to the union.

In addition, Paragraph 1 of Article 98 of the Labour Law states, "*[t]he 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*".

In accordance with the article above, the Arbitration Council considers that the provisions of the collective agreement cannot be contrary to the provisions on the public order of labour laws and regulations. In Chapter 6 of the Labour Law on working conditions, Section 1 on wages, and specifically point F on wage reductions, and Articles 127 and 128 provide the employer can deduct workers' wages in the following cases:

Article 127

- 1. Tools and equipment required for the work and that are not returned by the worker upon his departure;*
- 2. Items and materials under the control and usage of the worker;*
- 3. Amounts advanced to acquire the said items;*
- 4. Amounts owed to the company store.*

In Article 128 of the Labour Law, it is stated that the employer can deduct wages to reimburse the money the workers owe to the employer; installments, as stipulated in Article 166 of the Labour Law [paid annual leave] and partial wage payments made before the

normal deadline but in payment for finished work, can also be fully deducted from the following paycheck.

Paragraph 1 of Article 129 of the Labour Law states, "Collective agreements authorising any wage deduction other than these cases are null and void."

Based on the above articles of the Labour Law, the Arbitration Council finds the collective agreement shall not provide for workers' wage reduction (excerpt for Articles 127 and 128 of the Labour Law) to pay the gratuity for the collective agreement. Hence, the employer does not have an obligation to deduct workers' wages to pay the gratuity for the collective agreement.

2. Should the workers receive benefits from the collective agreement when they boycott the collective agreement?

Paragraph 4 of Article 96 of the Labour Law states, "...[c]ollective agreements shall specify their scope of application. This can be an enterprise, a group of enterprises, an industry or branch of industry, or one or several sectors of economic activities.

Clause 4 of the collective agreement dated 11 December 2009 between New Wide Company and most representative status unions (Khmer Democratic Federation of Workers and Khmer Democratic Union of Workers of New Wide Factory) stated the scope of collective agreement as follows, "[t]his collective agreement covers all workers in New Wide Company excluding A. Director of the Company and foreigners B. Office personnel (Administration/Human Resources and Accounting Sections identified as OF, TS) C. Cook (CK) and Chauffeur (car driver OF) D. Company doctor F. Generator mechanic and Construction worker and G. Security guard."

In accordance with Paragraph 4, Article 96 of the Labour Law and clause 4 of the above collective agreement, the Arbitration Council considers the parties to the collective agreement shall determine the scope of the agreement and the collective agreement at New Wide Company covers all workers in the company with the exclusion of certain people, such as the Director of the Company, foreigners, office personnel, cook, chauffeur, company doctor, generator mechanic, construction worker, and security guard. Hence, the Arbitration Council considers all the workers in this collective agreement shall receive benefits as stated in the collective agreement and equally, all these workers have an obligation to implement the provisions stated in the agreement.

Clause 8 of the collective agreement dated 11 December 2009 between New Wide Company and most representative status unions (Khmer Democratic Federation of Workers and Khmer Democratic Union of Workers of New Wide Factory) states, "...[w]hen this collective agreement comes into force, all workers at New Wide are obliged to pay the gratuity for the collective agreement which is an amount equal to the monthly union contribution fee...if any worker withdraws his or her union membership or boycotts the

collective agreement, then those workers shall not be obliged to pay the union contribution fee nor the gratuity for the collective agreement; however, those workers are not entitled to receive benefits as stated in the collective agreement”.

According to clause 8 of the agreement above, all the workers in New Wide factory have an obligation to pay the collective agreement gratuity; however, they are also entitled to boycott this agreement. If the workers boycott the agreement, then they are not entitled to receive the benefits provided for in the agreement.

The Arbitration Council considers clause 8 of the agreement above is clearly states that in order to receive the benefits in the collective agreement, the workers must pay the gratuity for the agreement. The Arbitration Council finds the workers are not exempt from this obligation unless they boycott the collective agreement.

In conclusion, the Arbitration Council rejects the demand of the KDFW for the employer to deduct workers' wages who request the employer cease the deduction of their wages to pay the gratuity in accordance with clause 8 of the collective agreement.

Issue 2: The workers demand the company reimburse the gratuity payment.

The workers demand the employer reimburse the union, the gratuity payment from March 2010 up to now (July 2010). The employer stated the company could not reimburse this payment because the workers had affixed their thumbprints to not allow the company to deduct their wages to pay the gratuity for the collective agreement. The Arbitration Council considers whether or not the company should reimburse the union with the gratuity payment that the company did not deduct from workers' wages from March to July 2010.

According to the interpretation of issue 1 above, the employer does not have an obligation to deduct workers' wages who are not members of the KDFW to pay the gratuity for the collective agreement. Those who have an obligation to pay for this agreement are the workers.

Hence, the Arbitration Council rejects the union's demand for the company to reimburse the union with the gratuity payment from March to July 2010.

Issue 3: The union with most representative status demands the company provide the local union and the Federation with the right to jointly oversee the implementation of the collective bargaining agreement in the factory.

Based on the facts above, the workers and the employer agreed they would implement the collective agreement; as a result, the company will hold a meeting with the local union and the Federation in accordance with clause 5 of the collective agreement. The meeting will be held at the administration office of the company or another place in the

company but not at the workplace of the workers which could disrupt the production line of the company.

Since the two parties have agreed on the issue in the hearing, the Arbitration Council does not consider this issue.

Issue 4: The union with most representative status demands the company provide it with relevant documents in which the company claimed that the workers affixed their thumbprints to a demand for a boycott of the collective agreement.

Based on the above facts, the workers and the employer agreed the company would copy the documents in which the workers boycotted the payment of the gratuity for the collective agreement to the union with most representative status, the KDFW, and if the union felt suspicious about the thumbprints of the workers, then the union could examine it with the company and ask those workers to verify them.

Since the two parties have agreed on the issue in the hearing, the Arbitration Council does not consider the issue.

Issue 5: The union with most representative status demands the company provide damages for the non-compliance with the collective bargaining agreement in the past.

The workers demand the company provide damages for non-compliance with the collective bargaining agreement. The employer argued there is no legal basis that required the company to provide damages to one party asserting that it spent a lot of time and money in the process of resolving the dispute. The Arbitration Council considers whether the company should pay damages to the union for the cost of resolving the dispute.

Clause 34 of *Prakas* 099 S/K/B/Y dated 21 April 2004 states, “[i]n matters referred to the arbitration panel, the panel shall have the power and authority to fully remedy any violation of provisions provided in the Labour Law, implementing regulations under the Labour Law, collective bargaining agreements or other obligations arising from the professional relationship between employer and employee. 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:... H- such other relief as is appropriate”.

Based on the above clause 34 of the *Prakas*, if one party of the claim proves damages that result from the implementation of this collective agreement, then generally, the Arbitration Council considers the damage claim only if there is actual damage and the reason is justified.

Based on the facts, the claim of the workers is on the ground that the employer does not implement clause 8 of the collective agreement; as a result, the workers spent a lot of time and money in order to ensure the implementation of the collective agreement.

Based on the above interpretation of issue 1, the employer does not have an obligation to deduct workers' wages to pay the gratuity for the collective agreement. So, the Arbitration Council considers the employer does not violate the collective agreement which leads to workers' damages. Thus, the Arbitration Council rejects the union's demand for the company to provide damages.

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

DECISION AND ORDER

Issue 1: Reject the demand of the union for the employer to deduct workers' wages to pay the gratuity for the collective agreement as stated in clause 8 of the agreement.

Issue 2: Reject the demand of the union for the company to reimburse the gratuity payment from March 2010 to July 2010.

Issue 3: Order the two parties to implement the agreement reached in the hearing which states that the two parties will hold regular meetings as stipulated in clause 5 of the collective agreement.

Issue 4: Order the two parties to implement the agreement reached in the hearing which states that the union will examine the documents in which the workers have boycotted the payment of a gratuity to the union; and if the union is doubtful about the thumbprints of the workers, the union is to ask the workers to verify their thumbprints.

Issue 5: Reject union's demand for the company to provide damages of 8 million riels.

Type of Award: Binding award

This Award is immediately binding upon the parties after the notification of the award because the two parties agreed to choose this type of award in conformity with the collective agreement which was registered on 4 January 2010.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **Ing Sothy**

Signature:

Arbitrator chosen by the worker party:

Name: **Tuon Siphann**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **Koy Neam**

Signature: