

KINGDOM OF CAMBODIA

NATION RELIGION KING

THE ARBITRATION COUNCIL

Case: 29/03

Date of award: February 02, 2004

ARBITRAL AWARD

(Issued under Article 313 of the Labor Law)

Employer: Raffles Le Royal, Stephan Gnaeal, Hotel General Director.

Address: Building No. 98, Blv. Dounpenh, Watphnom district, Phnom Penh

Tel: 023 981 888 **Fax:** 023 981 168

Employer represented by a Lawyer Miss Seng Vuch Hun and accompanied by Mr. Mariapan Mario, Han Hun Juan and Phoung Socheat.

AND

Employee: Union of Raffles Le Royal, Sao Vanthen, union president, and Mr. Svay Chan Dara, union vice president.

Address: #141, St. 146, Toek La'ak II, Tuol Kork, Phnom Penh.

Tel: 012 494 587

Employee party represented by Lawyer Sun Kasan and accompanied by Peov Chamnan and Cheng Sony, union advisor, Mr. Ly Kom, president of Union Federation of Tourism and Nhorn Sony, Chairman of tourism committee.

ISSUES IN DISPUTE:

Negotiation on the Collective Bargaining Agreement (CBA) between the Union of the Employees of Raffle Le Royal and the employer of Raffles Hotel Le Royal. Issues which have not been agreed include:

- 1- Article 2-h: The employees demanded that the employer provide a room which includes six chairs and one white board to make a union library for the union to arrange and to keep the union's collection of legal documents for employees to read when they are free. The union and the employees can access the library when they are free or on their days off.

- 2- Article 4d: The employees demanded that the employer consults with the union in the selection of a health insurance company, and a hospital for professional illnesses and work-related accidents.
- 3- Article 5-1&2: The employees demanded that the employer make employment contracts in accordance with the Labor Law. A probationary or temporary period shall be determined under the Labor Law.
- 4- Article 5-3: The employees demanded that in periods when there is a lot of work, the employer hires temporary workers and shall pay them at the same wages as the regular workers for the same work, positions and skills .
- 5- Article 5-h: The Employees demanded that if they are required by the employer to attend any training, their wages shall not be deducted and if that training lasts longer than working hours (eight hours) or is organized outside the hotel, the employer shall pay overtime and mission allowances: travel, accommodation and other expenses.
- 6- Article 7-d & i: The employees demanded that the employer apply the Labor Law to the employees who work overtime, on public holidays and on weekly days-off. [They] demanded that the employer comply with the voluntary basis for work on national holidays and weekly days-off.
- 7- Article 7-j: The employees demanded that the company apply the Labor Law to workers who work at night from 22h00 to 5h00, on public holidays and days off.
- 8- Article 8-b: The employees claimed that they are entitled to be paid annual leave at the rate of one and a half days per month of continuous service. The length of paid leave shall be increased according to the seniority of the employee, at the rate of one day per three years of employment.
- 9- Article 8-c: The employees demanded that the employer provide paid sick leave for work related illnesses or injuries suffered during employment. The employees demanded that the employer provide 7 days of special leave based on the Labor Law for employees who have personal business or for events directly affecting the employee's family, marriage of themselves or their children, wife giving birth, husband, wife, children or parents getting sick or dying without deducting wages.
- 10- Article 8-d: The employees demanded that the employer provide 100 days of maternity leave, not to limit the number of times such leave is taken, and offer full pay and other benefits as usual. Women who are on maternity leave can ask for an extension of a maximum of 100 days if they are not well and this is certified by a doctor, the employer shall

maintain their wages and other benefits. When they come back from leave, their job, position and seniority are guaranteed.

- 11- Article 9-d: The employees demanded that the employer pay a seniority bonus of \$15.00 per month in addition to their basic wage for 2004.
- 12- Article 9-e and f: The employees demanded that the employer distribute the service charge amounts to all employees working at the hotel except for the foreign supervisors and to provide a report of collection and distribution of this service charge to the union every month in order for them to review.
- 13- Article 9-i: The employees demanded that the employer pay a 13th month bonus equal to a full month of basic wage, 50% [of which] shall be paid for the Khmer New Year and the other 50% for Phumbin.
- 14- Article 9-l: The employees demanded that the employer provide a travel allowance in the amount of US\$20.00 to employees who work on split shifts.
- 15- Article 10 annex A: a table of disciplinary guidelines
- 16- Article 13-f: The employees demanded the employer purchase insurance for life, illness and work-related accidents for the employees. The employees demanded that the employer pay for life insurance when there is a work related accident causing the death of a worker in the amount of US\$20,000.00, US\$1,500.00 for a slight injury, US\$3,000 for a serious injury and US\$10,000.00 for a permanent disability.

Jurisdiction of the Arbitration Council

The Arbitration Council derives its power to make this Award from Section II B of chapter 12 of the Labor Law (1997); the Prakas on the Arbitration Council (no. 338, of 11 December 2002); and the Arbitration Council Procedural Rules which form an Annex to the same Prakas.

An attempt to conciliate the collective dispute which is the subject of this Award was made as required by Chapter XII Section 2A of the Labor Law. That conciliation hearing was unsuccessful and a non-conciliation report dated 24 December 2003 was submitted to the Secretariat of the Arbitration Council on 25 December 2003.

Composition of the Arbitration Panel

Arbitrator chosen by the employer party:	Mr. Mar Samborana
Arbitrator chosen by the worker party:	Mr. An Nan
Chair arbitrator (chosen by the two arbitrators):	Mr. Ang Eng Thong

Hearing and Evidence

Date and place of hearing:

- December 30, 2003 at 14h30 at the Secretariat of the Arbitration Council;
- January 05, 2004 at 14h30 at the Secretariat of the Arbitration Council; and
- January 13, 2004 at 14h00 at the Secretariat of the Arbitration Council.

Witnesses and experts: N/A

Documents and other evidence considered by the AC are as follows:

From the Employer Party:

- 1- Tourism License of the hotel and restaurant Raffle Le Royal for 2003-2004
- 2- Financial report for the end of the year dated December 31, 2002 prepared by Price Waterhouse Cooper;
- 3- Report on expenses and damages of the hotel caused by a strike on 24-25 December 2003;
- 4- Internal Work Rules registered at Ministry of Social Affairs, Labor, Vocational Training and Youth (MoSALVY) on August 03, 2001;
- 5- Warning letters to workers who committed misconduct;
- 6- Samples of employment contracts of some employees in English;
- 7- *An employee's written request for a loan;***
- 8- Order in response to request No.1406/2003 dated December 22, 2003 temporarily prohibiting employees from conducting a strike and ordering them to wait for an Arbitration Council settlement;
- 9- Warrant on urgent matter No. 09 dated December 25, 2003 determining that a strike conducted by employees of Raffles Le Royal was illegal and therefore ordering employees to stop striking; and
- 10- A list of disagreed points in CBA and a full CBA in English.

From the employee party:

- 1- Application for registration at MoSALVY No. 193SALVY and certification of registration No. 462 dated May 23, 2003 recognizing the union of Raffles Le Royal;
- 2- Bylaw of the union of Raffles Le Royal dated February 03, 2003;
- 3- The complaint of the Union of Raffle Le Royal Hotel filed with the Arbitration Council on wage deduction for two days during a strike, dated December 31, 2003;
- 4- A draft CBA between the union of Raffles Le Royal and the employer of the Raffles Le Royal company which had been negotiated until 13 December 2003;

- 5- Strike Notice of the union of Raffle Le Royal dated December 16, 2003;
- 6- Advertisement of Café Monivong Dinner in 2003 which states that it cost \$18.00 per person and \$19.50 in 2004; and
- 7- Menu for 2003 and 2004 after the service charge was stopped being collected.

CASE SUMMARY

Hotel Raffle Le Royal located at building No. 98, Bvd. Dounpenh, Sangkat Watphnom, Khann Doun Penh, Phnom Penh employs around 280 employees. On December 16, 2003 the Union of Hotel Raffle Le Royal notified the MoSALVY about a strike and their 10 demands without a specific date. On December 17, 2003, Hotel Raffle Le Royal filed a complaint with the Labor Inspection Department to have the collective labor disputes between the employer and employees settled. As a result, on December 18-19, 2003, a Labor Inspector asked parties for information to serve as background for a conciliation. On December 23, 2003, the parties successfully conciliated one of the eight demands. On December 22, 2003, Phnom Penh municipal Court issued a warrant in response to a request to prohibit the employees of hotel Raffle Le Royal from striking and ordered them to wait for the Arbitration Council's settlement. On December 25, 2003 at 5h00a.m the union of the hotel Raffle Le Royal started striking. On December 25, 2003, the Arbitration Council issued an order to stop striking temporarily in order to wait for the Arbitration Council's settlement. On December 25, 2003, the Phnom Penh court issued a warrant on the urgent matter determining that the strike was illegal and ordering the employees to stop their strike immediately. On the evening of December 25, 2003, there was a meeting for conciliation and negotiation between the disputing parties at the Phnom Penh Municipality in the presence of Excellency Kep Chouktema, Phnom Penh governor and General Heng Peuv. As a result, there was agreement between the parties on a number of issues that the Labor Law be followed. The union and employees returned to work in the morning on December 26, 2003.

On December 30, 2003 and January 05, 2004 at 14h30, the Arbitration Council held pre-hearing meetings to attempt to mediate between the disputing parties. The Arbitration Council finds that the non-conciliation issues referred to the Arbitration Council were only some of the issues in relation to the Collective Bargaining Agreement (CBA) which both parties had negotiated for a long time. There were still some disagreed points in the nine issues which were conciliated by the Labor Inspector. On January 13, 2004 The Arbitration Council conducted a hearing according to legal procedures on all articles of the CBA which the parties were not able to conciliate, including issues which the parties had not complained of to the Labor Inspection Department.

At the hearing neither party agreed to have a **binding award**.

FACT FINDING:

- having reviewed the non-conciliation report of the collective labor dispute
- having heard the presentation of the Company and employees as described above and in the hearing record
- having reviewed the documents as described above

We find that:

- 1- Article 2-h: The employees demanded that the employer provide a room which includes 6 chairs and 1 white board in order to make a union library for the union to arrange and keep its collection of legal documents for employees to read when they are free. The Union and employees can access the library when they are free or on their days off as well as on holiday. Union and employee representatives said that it is very important that the union should have one room for worker representatives to hold meetings or to hold discussions with the hotel employees who are union members, in order to raise awareness of the Labor Law or labor provisions and the rights of workers and provide a place where employees can research and study when they are free or on a day off. The Employer Party did not agree to provide an exclusive library for the union as demanded because the union would use the library to conduct activities which are against the hotel. The employer argued that in the hotel, there is a common library which all employees can use and in which the hotel will put documents relating to the Labor Law in that library .
- 2- Article 4-e: both parties agreed to implement this point in accordance with the Labor Law.
- 3- Article 5-a: both parties agreed to delete this from the CBA.
- 4- Article 5-j: The employees requested a security fund for all employees because when an employee or his/her family has an incident such as a fire, there is no fund or money to help them. We requested the employer to contribute US \$10.00 in the interest of hotel employees. The employer requested the deletion of this clause and said that if an employee is faithful and performs work well, when there is an incident and s/he makes a request to the employer, then the employer will help them. However a foundation should not established which requires the employer to contribute US \$10.00 every month and is managed by the union.
- 5- Article 5-1&2: both parties agreed to follow the Labor Law.
- 6- Article 5-3: The employees demanded that the employer hire casual employees when there is a lot of works. The employer should pay equal to the regular employees who have the same work, position and skills. The worker representative said that hiring casual workers at

low wages for long periods while there is a lot of work, affects the interests and work of permanent employees. So far the hotel has hired many casual workers for long time periods and extended those contracts for many months without converting them to be regular or permanent employees. Furthermore, by doing that it has a bad impact on the employees who are temporarily hired by the employer without full wages and other benefits when they are dismissed. The Employer said that hiring casual workers is based on the needs and scope of work at times when the hotel occasionally has a lot of work. The hotel cannot determine the number of workers or the number of days to do that work. The wages paid for those casual workers are based on an agreement between the hotel and those workers according to the type and scope of work and the capacity of those workers.

- 7- Article 5-h: both parties agreed that the employer would determine a schedule for in house training during the employees' working hours when it is possible. The training conducted outside working hours will be on a voluntary basis.
- 8- Article 5-l: both parties agreed to remove this clause from the CBA.
- 9- Article 6-d: both parties agreed to remove this clause from the CBA.
- 10- Article 6-e: both parties agreed that when an employee is transferred from one section to another, employees shall be trained until they can perform the new work.
- 11- Article 7-a: both parties agreed that daily working hours are eight hours. An individual employee's meal break is an hour during the above eight hours. The eight working hours do not include the one-hour meal break.
- 12- Article 7-c: both parties agreed that the employer shall allow the employees to work in any particular shift according to their own schedule, as long as they give an acceptable reason such as going to school or living far away and they have received prior approval from the management.
- 13- Article 7-d&i: both parties agreed to follow the Labor Law.
- 14- Article 7-j: both parties agreed to follow the Labor Law.
- 15- Article 8-b: both parties agreed to follow the Labor Law.
- 16- Article 8-c: both parties agreed to follow the Labor Law.
- 17- Article 8-d: employees demanded that the employer provide 100 days maternity leave, not to limit the number of times such leave is taken, and offer full pay and other benefits as usual. Women who are on maternity leave can ask for further leave up to a maximum of 100 days if their health is not good and is verified by a doctor's certificate. In this case the employer shall pay their wages and other benefits as usual. When they come back from the leave, their job, position and seniority are guaranteed. The employee representatives said

that this demand is to protect and to provide women who are pregnant and deliver their baby with some benefits in cash and time so that they can take good care of themselves as well as their baby. However, the employer requested to follow the Cambodian Labor Law.

- 18- Article 8-f: both parties agreed that in respect of sick leave they should follow the Labor Law. For sick leave, a certificate from a doctor recognized by the hotel is required.
- 19- Article 8-g: both parties agreed to remove this clause.
- 20- Article 9-d: the employees still demanded the employer increase their basic wage to US \$15.00 per month in 2004 referring to what the employer had agreed to during the past negotiation. The employer representative responded, that it was true that the employer considered and agreed to give this benefit among other benefits, as a package with other terms of the CBA during the process of CBA negotiation. However, the employees refused to accept the proposed package and conducted an unlawful strike which did not follow correct procedures against the hotel on December 24 & 25, 2003. This caused the hotel serious damage both presently and in the future. Therefore the employer decided not to pay employees the seniority bonus as demanded above because the hotel was not in a good financial situation as it had lost millions of US dollars every year up until now and is facing additional damage caused by a strike that did not follow correct procedures.
- 21- Article 9-e-f: The employees demanded that the employer distribute the service charge equally and in full to employees including probationary employees, casual workers and the old employees working in the hotel but not expatriate managers and senior managers and provide the union with a report on collecting and distributing the amount of service charge every month. The employer responded that if the hotel collects a service charge the hotel would agree to distribute it according to the employees' demands. However the hotel decided to stop collecting the service charge starting from January 01, 2004. But the employees demanded that the employer continue collecting the service charge.
- 22- Article 9-i: the employees demanded that the employer pay a 13th month bonus equal to a full monthly wage by paying 50% during Khmer New Year and the other 50% during Phumbin. The employer party said the same reason to the above 10th issue.
- 23- Article 9-j: the employees demanded that the employer pay travel allowance to employees who work a split shift. The employer argued that employees agreed to work for the hotel under the hotel's working conditions and receive wages according to the agreement. A split shift or normal shift requires a worker to work and that worker must come to work as a requirement without demanding any extra payment.
- 24- Article 9a: both parties agreed to remove this from the CBA.

25- Article 10-2-7 Annex A (Table of disciplinary actions and guidelines for continuous events): the employee party attached and submitted this table in response to the table of disciplinary actions and guidelines made by the employer to the Arbitration Council. The employee party said that they found that, according to the employer's table, when employees committed small mistakes they were warned once or twice then dismissed; i.e. in this table there are a lot of chances to dismiss employees. The employer responded that the work of the hotel is special work which requires employees of the hotel to be disciplined and to have order in order to provide a high level of service to customers and maintain the effectiveness of working standards at the hotel. Therefore this disciplinary table is the most appropriate way to enhance discipline and provide opportunities to employees to correct their small mistakes. However, it is unacceptable to the hotel if employees commit serious misconduct and repeat the same misconduct many times even though they were warned each time but did not change their behavior and then complain that the employer cannot set disciplinary level E - dismissal.

26- Article 13-f: both parties agreed to follow the Labor Law.

27- Article 13-g, h & l: both parties agreed to delete.

28- Article 14-a&b: both parties agreed to delete.

Reasoning:

1. Article 2-h: According to Prakas No. 286 dated November 5, 2001 on Shop steward in Enterprises and Establishments, Article 5 states that the employer should provide the shop steward with an office, meeting room, and a place to post information. The hotel should therefore provide the union with a room equipped with sufficient supplies, as stated in Article 5, to do its work.
2. Article 4-e: The Arbitration Council finds that this article is related and overlaps Article 13 below about which both parties agreed to follow the Labor Law and the Prakas on notification of work related accidents, how to pay compensation and the work disability rate. It should therefore be deleted.
3. Article 5j: The Arbitration Council finds that the employees' demand for establishing a social fund that requires the employer to contribute \$10.00 per month has no legal basis and is not reasonable. Moreover in this context the relationship between the employer and employee is not as good as before, so the employer is not ready to contribute this fund. The Arbitration Council finds that in the future if the relationship between both parties is

better, they could discuss the social fund issue again and reach an understanding. Therefore this article should be omitted.

4. Article 5-1&2: Article 65 of the Labor Law states that the employment contract is a contract which establishes a labor relationship between the employee and employer. According to Article 66-67 and 68 of the Labor Law, there are three categories of employment contract: (1)- a probationary employment contract which gives a limited period to the employer to judge employee's work and cannot exceed 3 months; (2) a fixed duration contract which is a written contract having a specified period and can be renewed one or many times for which the total duration is not more than 2 years; (3) an undetermined duration contract is a verbal or written contract which has no time limit, or a fixed duration contract which has a duration of over 2 years and/or quietly continues and is renewed many times for longer than two years.
5. Article 5-3: Same as article 5-1 and 2, a contract for a temporary worker should be made in accordance with the Law and its format can be made based on the parties' agreement. Accordingly, the hotel can enter into an employment contract with a temporary worker based on the agreement of both parties without restriction. However, this contract must be in accordance with the above provisions; that means that the contract not only refers to the agreement of the parties but also to the provisions of the Labor Law. The temporary employment contract must be one of the above three types of employment contract: a probationary period contract, a fixed duration contract or an undetermined duration contract. If a temporary worker's employment contract is continuously and quietly continued for more than three months, the temporary employment contract automatically becomes a fixed duration contract (if it is a written contract and has a specific time) and becomes an undetermined duration contract (if it has no time limit or is a verbal contract). Moreover, according to Article 104 of the Labor Law, wage payment, even though, they were referred to an agreement of the parties as was the need of the labor market, must follow the standard of the minimum wage. Therefore the Arbitration Council finds that the hotel can make employment contracts with temporary employees for an unspecified period according to the needs of the hotel business and the parties' agreement. The hotel must follow the rules of the employment contract and must pay wages not less than the minimum wage received by a skilled permanent employee.
6. Article 5h: Both parties agreed that the employer would schedule training during the employees' working hours when possible. Training outside working hours is voluntary. The

Arbitration Council finds that this agreement is not contrary to the law and principles of equity.

7. Article 7-d: Article 139 of the Labor Law states that in cases of urgent unusual work that requires employees to work overtime, this overtime is paid at the rate of an additional 50%. If the overtime is at night or on a weekly day off, it shall be paid at the rate of an additional 100%.
8. Article 7-i: According to Article 164 of the Labor Law, in establishments or enterprises where the work cannot be interrupted because of the nature of their activities which require the workers to perform work during holidays, those workers shall be entitled to an indemnity, which is in the burden of the employer, in addition to their wages for the work performed. On the other hand, according to Prakas No. 10, MoSALVY dated February 04, 1999 on Payment for Work on Paid Holidays, Article 4 states that an employee who works on a public holiday has the right to get a compensatory benefit equal to the payment of work on a normal day. According to Article 139-2 of the Labor Law work at night or on a weekly day off shall be paid at a rate of an additional 100%, which is the same rate as working on a public holiday. Therefore, the Arbitration Council finds that the hotel is an enterprise where its work cannot be interrupted because of the nature of their activities which require workers to work on public holidays. Therefore the hotel shall additionally pay workers an indemnity equal to the normal daily wage. For work on a weekly day off, the employer shall pay two times the normal daily wage adding this to their basic salary.
9. Article 7-j: According to Circulation of MoSALVY, No. 024 dated October 19, 1999 on Wage for Night Work, an employee who works at night time between 22:00 p.m. to 05:00, receives double the normal daily wage. This circular is supported by Article 139 of the Labor Law. The Arbitration Council finds that an employee, who works a night shift between 22:00 to 05:00, shall receive double the normal daily pay. For night work on a public holiday, the Arbitration Council finds that it shall follow the above 10th point [according to] which employees shall be paid an additional indemnity equal to the normal nightwork pay rate, in total three times the normal daily wage. For night work on a weekly day off, the Arbitration Council finds that the employer shall pay an additional indemnity equal to two times the daily night pay rate, in total four times the normal daily wage.
10. Article 8-b: Under Article 166 of the Labor Law an employee is entitled to have 18 days annual leave. The length of this leave shall be increased according to the seniority of the employee at a rate of one day for three years. Under Article 167 an employee is entitled to use this leave if h/she has worked for one year. In case of cancellation or termination of

the contract prior to the time that the employee has to use this leave, [the employer] shall pay the employee compensation at the rate of one and half days per month of continuous work. An employee has the right to extend the time for taking leave but it shall not be longer than three continuous years and can apply only for any leave which is longer than 12 working days per year. According to Article 179 the employer is entitled to negotiate with the employee and prepare a schedule to implement this annual leave.

11. Article 8-c: Article 169 of the Labor Law states that " Included in the period for which the worker is entitled to get paid leave each year is as follows: ... sick leave". But, there is not a provision stating clearly the amount of sick leave. The Arbitration Council finds that employees have a right to suspend their employment contract (without pay) if they have certification from a doctor (read Article 71-3 and Article 72), but the employer still has an obligation to provide accommodation for those workers. Under the Internal Work Rules of the hotel Raffle Le Royal an employee taking leave because of sickness certified by a State hospital is paid 100% of wages for the first month, 60% for the 2nd and 3rd months and if this leave exceeds three months the employer has no obligation to pay any wages to the employee. However the employer cannot terminate the employment contract during the six months of sick leave. The Arbitration Council finds that the above practical rule on the suspension of employment contract during sick leave is equitable and acceptable. For special leave, under Article 169 and 171 of the Labor Law and Prakas No.76 MoSALVY dated February 19, 1998, an employee is entitled to seven days of special leave in [respect of] an event directly affecting to the employee's family.
12. Article 8-d: Article 182 of the Labor Law states that in all enterprises, women are entitled to take 90 days of maternity leave. For two months after returning to work, these women shall be provided with light work. Article 183 states that during the leave as stipulated in the above Article 182, women are entitled to half of their wages including their benefits, paid by the employer. Wages stated in the first paragraph of this article will be provided only for women who have worked for the enterprise for at least one full year. Article 184 states that within one year from the date of the birth of their child, women employees nursing their children are entitled to an hour per day during working hours to nurse their children.
13. Article 9-d and i: the Arbitration Council finds that because the employees will receive 100% of the service charge from the employer's collection as stated in Article 9-e-f & g, distributing 100% of the service charge will make the employees' wages remarkably increased. Thus there is no reason to require the employer to pay a bonus or increase the

[seniority bonus]. Therefore the Arbitration Council decides to refuse the demand for a pay rise of US \$15.00 per month in 2004 and a 13th month bonus.

14. Article 9-e and f: Article 134 of the Labor Law states that the service charge is remuneration paid by clients to personnel of certain establishments such as hotels, restaurants, cafe, bars and hair salons and received by the employer as a mandatory percentage added to the client's bill with a note of "service charge". The service charge shall be collected by the employer and distributed in full to all employees of the hotel. Regarding the argument of market competition on service costs in the hotel sector, which requires the hotel to reduce hotel fee, this does not respond to the legal issues and the real situation because as the Arbitration Council noted the service cost of some hotels is still high even after stopping the collection of the service charge. This means it is a transformation from a service charge to the hotel service cost. Moreover, the Arbitration Council finds that international standard hotels abroad collect a service charge. Therefore the Arbitration Council finds that because this hotel has collected a service charge for many years, so it shall continue collecting this service charge and contribute 100% to employees of the hotel. The legal reason requiring the employer to continue to collect the service charge is that the hotel has collected it for a long time which has established a legal custom between the hotel and the hotel employees.
15. Article 9i: Article 138 of the Labor Law states that the work schedule is set by each enterprise for different jobs based on the nature of their activities and the organization of work. When the work schedule is separate shifts, the enterprise' s management can normally only have two separate shifts, one in the morning and another in the afternoon. Therefore the Arbitration Council finds that the hotel should organize the employees to work for two shifts, based on their duties and not more than two shifts, one in the morning and another in the afternoon. If the hotel organizes more than two shifts (one in the morning and another in the afternoon), the hotel has an obligation to provide these employees with an allowance for round trip travel.
16. Article 10 Annex A (Table of disciplinary guidelines for continuous events) According to Article 27 of the Labor Law any disciplinary sanction shall be proportional to the seriousness of the misconduct and in accordance with Article 83-b on the Type of serious misconduct and the real practice of discipline in Cambodia, especially in the hotel sector of international standard, the Arbitration Council finds that the annexed table of misconduct and guidelines of continuous events provided by the employer is reasonable to implement.

17. Article 13-f: The Arbitration Council finds that the hotel should apply Prakas No 243, MoSALVY dated September 10, 2004, on Notification of work-related accidents, How to pay benefits and rates of disability; and annex 5 of Prakas on Conditions for the justification of disability rate.
18. According to Prakas No. 338, MoSALVY, dated December 11, 2002, Article 34-g on the establishment of terms for a collective bargaining agreement, and with the documents submitted by both parties which had been agreed during the negotiation process, the Arbitration Council finds that the award shall be issued as a package of the whole CBA.
19. The parties still have two issues to be considered in their complaint: (1)- employees may sue the employer for the service charge so far collected by the employer, and also, the employer may claim for damages caused by a strike conducted by the employees and union which did not follow the proper procedures. The Arbitration Council finds that the two complaints should be dropped in order to ensure good cooperation between the parties in the future.

Based on the above reasoning and law, as well as equity, the Arbitration Council decides:

Decision

- 1- Both parties must apply the Collective Bargaining Agreement (annex a) of this award.**
- 2- The Employer must not sue the other party (union or employee) who joined the strike and union or employee party must not claim [against] the employer for the service charge that was collected and distributed so far.**

Signatures of Members of the Arbitration Panel:

Arbitrator chosen by the employer party:

Name: Mr. Mar Samborana

Signature:

Arbitration chosen by the employee party:

Name: Mr. An Nan

Signature:

Chair of Arbitration Panel:

Name: Mr. Ang Eng Tong

Signature:

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.

This Award is immediately binding upon the parties if parties have agreed as such in writing before the notification of the Award, or if parties are bound to comply with a collective bargaining agreement stipulating that no opposition to the Award may be lodged.

COLLECTIVE BARGAINING AGREEMENT

Raffles Le Royal Employees Union and Employer Of Raffles Le Royal, Phnom Penh

For application from February 02, 2004

Introduction

This Collective bargaining agreement is a written agreement between the employees' union and the employer with the aim to maintain good relations, partnership between the employees' union and the employer, to improve labor conditions, to obey the law, regulations and their working responsibilities. Moreover, the purpose of the collective bargaining agreement is to elevate the effectiveness of the works, reputation of the company, to prevent any unforeseen conflicts in the future, and to maintain the interests of both parties.

The employees union of Raffles Le Royal and the management and ownership of Raffles Le Royal agreed to the following provisions:

Employees' union of Raffles Le Royal hereinafter called "Union" located at No. 141, Street 146, Sangkat Tek Lork II, Khann Toul Kok, Phnom Penh. The management and ownership of Raffles Le Royal hereinafter called "Employer" located in Hotel, Raffles Le Royal.

This agreement has taken into consideration Cambodian Labor Law as a minimum rule, there will not be any points lower than the above law. For any other points not mentioned in this agreement, the Cambodian Labor Law will be applied.

The union and employer should negotiate honestly, respectfully, and obey the laws of the procedures for negotiation, which have been agreed and signed.

Article 1: Recognition of Union

- A- Union will be recognized in accordance with the provision and procedure stated in the Labor Law.
- B- The employees of the Raffles Le Royal who have the right to recruit, terminate, punish [and] warn employees are not allowed to join Union and are not covered by the Collective Bargaining Agreement.
- C- Only the above union has the right to accompany employees when they have individual disputes or collective disputes and has the right to investigate the complaints of employees and solve the disputes. The employees who are not union members have the right to ask the union to accompany them when they have a problem or dispute.

Article 2: Union Rights

- A- The President, Vice President, General Secretary, general accountant or a maximum of 3 representatives of the union committee and employees have the right to attend to settle any grievance and their wages and benefits are maintained in cases of settling labor dispute only.
- B- Union and employer will arrange a meeting to settle any disputes immediately in order to minimize the interruption of services and works operations.
- C- The employer shall hold elections of shop stewards according to legal procedures and give the shop steward two hours per week (within working hours) to do their work without deducting wages and bonuses. When there is no shop steward who was elected through a legal procedure, union which has representative status shall nominate a union delegate to do all the works of the shop steward temporarily to protect the interests of the employees and s/he shall receive all the rights which belong to a shop steward of this hotel.
- D- Deleted**
- E- The employees have the right to invite the labor inspector to certify the implementation of the Collective Bargaining Agreement at the hotel. Union has the right to invite a lawyer to discuss and settle any dispute with the employer.
- F- The employer should not interfere [with] union internal affairs, such as, frightening, discrimination, persuasion or using money to buy union leaders or union members and give the employees freedom to chose union leaders. The union should not interfere with management affairs of the employer and not threaten other employees who are not union members.
- G- The employer should deduct union fees from the wages of the employees who make a written request to the employer to deduct through the union and then transfer this money into a bank account of the union.
- H- The employer should provide the shop steward with a meeting room, office supplies and an appropriate place to post public information in the hotel.
- I- Deleted**
- J- Union and employer should meet each other at least once a month. Each meeting is to last for three to four hours to discuss and to maintain a good relationship between union and employer.

Article 3: Moral and dignity in the workplace

- A-** The Employer and employee shall behave and use polite words with colleagues or their subordinates and their supervisor.
- B-** Use of any abusive language or looking down on a weak person shall be handled under the hotel disciplinary procedure outlined in Article 10.
- C-** An employee who was looked down upon or harassed shall make a written complaint to the union not later than 3 days after the problem occurred. The union shall investigate the case for a maximum of 5 days and then decide whether it will present the case to be solved with the employer.
- D-** The process of problem solving is stated in the grievance procedure set out in Article 11.

Article 4: Infirmary in the hotel

- A-** Under a Joint Prakas No. 330 of the Ministry of Social affairs, Labor, Vocational Training, Youth Rehabilitation and the Ministry of Health, an infirmary shall be a room of 20 meters square, clean, having no smoke or smell. It shall have enough light, not be in a noisy place, not dusty and be airy. Each bed shall have sufficient bed accessories. The infirmary shall have sufficient medicine and have two nurses on duty during working hours and one doctor working at least 4 hours in each shift as stated in the joint Prakas No.330 MoSALVY and Ministry of Health.
- B-** The infirmary shall have both a warm water container and a cool water container, glasses, a glass plate, 1 office desk, 4 chairs, 1 filing cabinet, 1 cabinet for medicine, 1 [piece of] sterilization equipment and sufficient electric power to operate anti-virus equipment and other facilities as stated in the appendix of the Parkas No. 330.
- C-** The infirmary shall have medical equipment, a mattress, bed sheets, pillow, and all kinds of medicine as stated in the Prakas No. 330. All medical services and medicine in the hotel are provided [to staff] without charge or discrimination.
- D-** The Hotel's vehicle shall be used to transport employees who have work related accidents to a clinic or hospital selected by the hotel. If the hotel's vehicle is not available any other car including an ambulance shall be used for this purpose.
- E-** Any of Company's rules and regulations contradictory to the Prakas No.330 will be void and null.

Article 5: Hiring employees

- A.** Every employee's employment contract shall follow this collective bargaining agreement. The Employer shall provide a copy of the collective bargaining agreement to the employee when [they] sign the contract and the employer shall inform the new employee that this is the only Union representing all employees of the company.
- 1- The employment contract of each employee shall accord with the Labor Law as follows:
 - a. a probationary contract is for 3 months
 - b. a fixed duration contract is a written contract which has a specific time and can be renewed one or many times as long as the total period does not exceed two years.
 - c. an undetermined duration contract is a contract made verbally or in writing, which has an unspecified time or a specific time longer than two years and/or is quietly continued and a fixed duration contract which is renewed many times and the total period is longer than two years.
 - 2- A probationary contract shall not exceed the periods below:
 - a. three months for a non-laborer
 - b. two months for a mechanic
 - c. one month for a laborer
 - 3- The employer can hire casual workers when there is a lot of work based on the need and an agreement but has to follow the employment contract conditions as stated in Article 5-1 and 2 and shall provide wages for such employees not less than minimum wage received by permanent employees.
- B.** The Employer shall ensure job security for employees and shall not fire, terminate the contract, suspend the contract or take disciplinary action against on employees unreasonably, illegally and unfairly. The Employer shall not discriminate against the employees on grounds of race, religion, age, sex or union membership.
- C.** The Union and employer shall not allow sexual harassment to happen and the employer shall solve any complaints related to sexual harassment in an attentive and serious manner.
- D.** Seniority shall be rewarded every year and shall be kept when there is a change in work assignment or scope of job.
- E.** Seniority is accumulated from the time of a probationary or temporary period. The Employer shall give priority in promotion opportunities to an employee who has longer seniority, good behavior and good work background

- F. Termination from work will be done in accordance with the Labour Law.
- G. The employer shall notify an acceptance to reemploy on a union's information board and give notice to new employees and old employees who are listed on the reemployment list at least 2 weeks before the new offers are published.
- H. The hotel will schedule training programs at the hotel during the employee's working hours whenever possible. Training out of working hours is on a voluntary basis.
- I. **Both parties agreed to drop [this clause.]**

Article 6: Job and Working Skill Changes

- A- Change of work scope, rules or provisions causing an employees' job to be changed from one department or one place to another, can be enforced only if there is voluntary agreement from the employee without any coercion from the employer or any department head. In a case where an employee disagrees, the union can help to settle the problem in accordance with the law.
- B- When there is a job transfer under the above provisions, the employee who was transferred shall not be paid less than the previous wage. The transferring of an employee from one department to another shall be based on the principle of equal position or better.
- C- Under no circumstances shall the employer demote an employee on the pretext of job change. Any such demotion is absolutely prohibited **except at the employees own request.**
- D- Any work which is subjected to change from one to another skill department; employees shall be trained until they can perform the new work.

Article 7: Working Hours and Extra Hours

- A- Working hours are eight per day. A personal meal break for each worker is one hour during the above eight hours. The hour meal break for employees is not included in the eight working hours.
- B- For employees who work in the same department and having same skills and role can exchange their shifts. They have to fill out an application for a shift change and inform to their respective department/section head three days before the change is made and subject to approval.
- C- The employee may apply to work a specific shift according to their schedule providing appropriate reasons such as study, other skills or long distance living. This request is subject to management approval.

- D- Any hour that employees have performed their work shall be paid in cash and there will be no overtime work. If the work requires an employee to work overtime the employer shall inform the relevant employees. Any overtime work shall be voluntary and not forced by the employer. The overtime work shall be one hour as minimum and two hours maximum for each work shift and can only exceed two hours with agreement. Any overtime work shall be paid at 1.5 of the normal rate.
- E- The Weekly roster shall be posted at least seven days in advance in all respective departments. Each respective department head shall allow for leave such as annual leave, special leave and other leave as applied by employees and subject to approval from the department head.
- F- Employees can change working days or the weekly day off with other employees working in the same department if [they] have equivalent capability or the same position or role. They have to inform their department head three days prior to the change. The change is subject to approval from the department head.
- G- The employees shall receive a free meal for each 8-hour shift, including any swapped shifts and shall receive two free meals if they work a split shift or overtime.
- H- Daily wage = (monthly wage) divided by (number of working days per month)
 - 1- Hourly wage = (Daily wage) divided by (8 hours)
- I- The employees working on public holidays shall get an additional benefit which is equal to a normal daily wage. The employees working on a weekly day off shall get a benefit which is double the normal rate in addition to the basic wage.
- J- Employees working on night shift as stated in Article 144 shall be paid double the wage of a normal days work. Night work on a public holiday shall be paid an additional benefit which is equal to the wage for night work. This is three times the wage of day work. Employees working night work on a weekly day off shall be paid an additional benefit which is equal to three times the wage for night work. This is four times the wage of day work in addition to the basic wage.

Article 8: Public Holiday and Paid Leave

- A- Public holidays will be granted according to Prakas 300 of Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation (MoSALVY).
- B- Employees shall be entitled to paid annual leave at the rate of one and a half days of paid leave per month of continuous service. The length of paid leave as stated above shall be

increased according to the seniority of employees at the rate of one day for 3 years of service.

C- Employees are entitled to paid leave as follows:

- a. Special leave of 7 days per year for an occasion which directly affects the employees' families or relates to an employee's personal affairs.
- b. Sick leave certified by an official doctor will be applied as follows:
 - A Full wage for the first month
 - A 60% of wage for the 2nd and 3rd month
 - No wage from the 4th to 6th month or until a replacement is hired

D- The employer shall provide 90 days maternity leave with half pay including other benefits. This wage is provided only for women who have worked for the hotel for at least one year. For a year from the birth, women who nurse their babies can take an hour to nurse their baby during working hours.

E- The Employer shall not object unreasonably to any paid leave. The employer will respond within 7 days to an employee's request for leave.

F- Deleted

H- Any request for leave as stated above in article 8 shall be made by filling out a leave form provided free of charge by the company administration or a department head at least 7 days in advance. In case of an unexpected emergency the employee shall request such leave by using any form or by telephone call to the administration or the department head and will also promptly inform the union.

Article 9: Salary

A- The employer shall pay a minimum wage equal to US \$50.00 per month.

B- The employer shall pay a wage to the employees in cash (**Dollar**) at the end of each month including the basic wage, service charge, payment for overtime, work on public holidays and work at night, and any other benefits. The pay slip shall be written in Khmer and clearly describe the rate of basic wage and other above payments and any union fee deduction transferred into union accounts. Compensation for overtime work is made on the 15th of each month.

C- Salary deductions will be done in accordance with the Labour Law.

D- Deleted

E- F and G - The Employer shall continue collecting the service charge (10%) as done previously and shall distribute all the collected service charge to each employee who

work for the hotel except the 10 members of the Executive Council. The employer shall provide the union with a report of the collection and distribution of the service charge for their review.

H- Both parties agreed to drop [this clause].

I- Transportation shall be provided between 11h00p.m. to 2h00a.m.

J- Deleted

K- Deleted

L- The employer can arrange for employees to work split shifts based on [the employees'] activities and their work format if it does not exceed two shifts a day: morning shift and afternoon shift. If an arrangement is more than two shifts (morning shift and afternoon shift) the hotel has an obligation to provide the employees with a round trip travel allowance.

Article 10: Discipline and termination

DISCIPLINARY ACTIONS/PROCEDURES

POLICY

The Hotel will provide employees with adequate opportunities to improve their work performance or attitude. The hotel will not take any disciplinary action unless all efforts to help an employee change his attitude or performance within an appropriate time have failed.

Applying disciplinary action, the principles of consistency and impartiality are implemented.

PROCEDURES

A) A DISCIPLINARY GUIDELINE

A Disciplinary Guideline Action Table (See Appendix A) is designed to help the Supervisor, Department Head apply their disciplinary action correctly. It takes into account the following factors:

- The nature of the misconduct
- The circumstances leading to the misconduct
- The amount of misconduct committed by the employee
- The past record of the employee in terms of performance, attitude and length of employment service.

B) CLASSIFICATIONS

The type of disciplinary actions can be classified as:

- a. Giving instruction
- b. Verbal Warning
- c. Written Warning
- d. Final Warning Letter
- e. Termination/Dismissal/Suspension/Down-grading

The Disciplinary Guideline is an action plan under the principle that the more serious offence is, the more severe the disciplinary action should be. Disciplinary action will be progressively severe for successive occurrences of the same misconduct.

D) DISCIPLINARY PROCEDURE

The disciplinary procedure varies with the type of disciplinary action taken:

1. COUNSELLING

Counselling of the employee is to be done by the employee's Supervisor, the Department Head. This should concern the offence itself, the consequences of continued lack of improvement and how improvement can be attained by the employee. This counselling should be recorded in writing by completing a Disciplinary Notice to Employee Form, to ensure that there is proper follow-up. A copy is to be submitted to the Human Resources Department.

2. VERBAL WARNING

This form of Disciplinary action to an employee should only be issued by the Department Head after consultation with the employee's Supervisor/Department/Section Head. This consultation is to be documented in writing in the prescribed form. This document shall be referred to the Human Resources Department for inclusion in the employee's personal file.

3. WRITTEN WARNING

A written warning will only be given by the Human Resources Department in consultation with the EXCO Member/Department Head. The gravity of the situation, along with the serious implications of repetition must be in writing in the prescribed form. A copy of which must be retained in the employee's file and another must be retained by the EXCO Member/Department Head. This written warning will be valid for twelve months.

4. FINAL WRITTEN WARNING

A final written warning is only issued by the Human Resources Department to the employee in the presence of the Department Head. The employee must be informed that a continued failure to change, or a repetition of the misconduct is likely to result in termination. This warning is signed by the Human Resources Manager and countersigned by the employee. A document signed by both sides shall be submitted to the EXCO Member, the relevant Department Head and a copy retained in the employee's personal file. Only the Human Resources Department can issue a written warning or a final warning.

5. DISCIPLINARY NOTICES

All disciplinary notices should be signed by the employee him/herself. If an employee refuses to sign, a witness requested by the Human Resource Manager shall be called to be witness and sign that document.

APPENDIX A

DISCIPLINARY GUIDELINE – ACTION PLAN

OFFENCES	GUIDELINE FOR SUCCESSIVE OCCURENCES				
	TI1	TI2	TI3	TI4	TI5
PERFORMANCE RELATED					
Absenteeism	A	B	C	D	E
Abandoning Workplace without proper authorization	C	D	E		
Failure to Comply with Work Procedures & Safety Standards	C	D	E		
Lateness/Failure to Follow Timekeeping Procedures	A	B	C	D	E
Negligence Causing Loss/Damage up to USD200.00	D	E			
Negligence Causing Loss/Damage of more than USD200	E				
Sleeping While on Duty	C	D	E		
Working Performance Below Required Standard	A	B	C	D	E
RELATED TO BEHAVIOR					
Abusive/Offensive Terms of Reference	C	D	E		
Cheating, Fraud, Theft	E				
Consumption of Alcohol or Drugs while on duty	E				
Eating in Unauthorized Area	A	B	C	D	E
Fighting With Weapons	E				

Fighting Without Weapons	D	E			
Gambling on Company Premises	D	E			
Insubordination	D	E			
Clocking In or Out for Colleague	D	E			
Quarrel/Fighting With Guest	E				
Rudeness to Guests	C	D	E		
Rudeness to Supervisor/Co-workers	C	D	E		
Sexual Harassment/Rape Offence	E				
Smoking in Unauthorized Areas	D	E			
Unruly Behavior	C	D	E		
Eating and using Food, Beverage and Property of the Company without permission	D	E			
Unauthorized Presence on Company's Premises	B	C	D	E	
Unauthorized Removal of Company's Property	D	E			
Willful Damage to Company's property	E				
Not Elsewhere Classified	To consult with Human Resource Manager				

Article 11: Appeal Resolution Procedure (Dispute)

A- The aim of the procedure is to settle problems quickly and systematically, preventing any minor problem or conflict from becoming worse, which may interrupt operations, and to settle problems in the hotel rather than outside which may take longer and might lead to an eventual strike.

The formal step of appeal or dispute resolution

When one or more employee(s) disagree or are dissatisfied and bring a complaint to the union then the union shall:

- 1-** Union and a relevant employee can ask for a verbal discussion with a supervisor. The supervisor shall meet them very quickly. Complaining in writing to a Department Head, the employer shall reply in writing to the employee within a maximum of 3 days after the complaint was submitted. If the employee agrees on a solution, the case is definitely ended. But if the result is not agreed, that employee shall:
- 2-** Union and the employees continue to bring the written complaint to the Administration Managers or Human Resources Manager and the manager shall respond in writing within

5 days. If the employee agrees on the solution, the case is definitely ended. But if the result is not satisfied, the employee shall:

- 3- Union and employee continue to bring the written complaint to the Top Management who is the General Manager or the employer. The employer or the General Manager shall respond in writing within 5 days. If the employee agrees on the solution, the case is definitely ended. But if the result is not satisfied, the employee shall bring the case to the Arbitration Council of the Government in which both parties shall first decide whether the decision of the council is binding or open to the court for each dispute.
- 4- If the employer or the hotel owner hasn't solved the problem or exceeds the above time limits the employer shall allow the union to bring the case to the Ministry of Labor. If the Ministry cannot solve the problem, the Ministry will refer the case to the Arbitration Council or **Court**.
- 5- The Union and the employer can agree to delay [their] responses.
- 6- If there is sexual harassment, the victim shall fill a complaint to the union immediately or the Human Resources Department in order to make a complaint to the competent authority immediately.
- 7- In the event that an employee is dissatisfied after having the problem solved with the Department Head the employee can be accompanied by at least 2 union leaders to discuss with the hotel management. Both parties are prohibited against violating the above-agreed Grievance Procedures.

Article 12: Strike and Lockout

- A- The union shall not lead an illegal strike. For every problem, the union will request a discussion with the employer or [the employer will request a discussion with the Union]. When a party suggests a discussion the other party shall hold a discussion as soon as possible. Both parties shall follow the procedures as stated in the law and striking is the last choice of the union.
- B- The union has the right to strike and the employer has the right to lockout under the Labor Law and Prakas # 005.

Article 13: Job Safety, Hygiene, Environment and Order

- A- [The hotel] shall have a number of bathroom/toilets complying with the Prakas No. 052. The bathroom shall always be clean and cleaners will clean it regularly.

- B-** [The hotel] shall have an exit/entry ways for emergencies and training in fire fighting and training on how to escape in an emergency. Equipment and measures for the safety of the employees will be provided.
- C-** Pregnant women shall be transferred to do light work thereby making it easier for them and their wage, benefit and other payments shall be maintained.
- D-** Upon seeing that occupational safety is not good, the Union shall report this immediately to the employer and the [employees] shall stop working temporarily if the work is found to be unsafe.
- E-** The electricity system shall be safe and cause no electrical shocks and no damaging circuits that might cause fire.
- F-** The employer, in respect of work related accidents, shall follow the Prakas No. 243 MoSALVY dated September 10, 2002 on Notice of work related accident, on how to pay benefits and the rate of lost work capacity and Annex5 of the Prakas on the criteria to classify the rate of lost work capacity.
- G- Deleted**
- H- Deleted**
- I-** The employees entry and exit area and their workplace shall always be clean and it will be cleaned daily and regularly.
- J-** Employees who have a car shall pay 2,000 riels per month and employees who have a bike or motorbike shall pay 1,000 riels per month to the employer to arrange to have a security guard to guarantee safety for their private transportation means of the employees who work at the hotel.
- K-** Employees who are required to wear a uniform will be provided with two sets of the uniform and two pairs of shoes per year.
- L-** The employer shall provide an annual party and a Khmer New Year party.

Article 14: Deleted

Article 15: Effectiveness of Collective Agreement

- A- In case of a change to the management or hotel ownership or sharing the hotel with another employer, however, this Collective Bargaining Agreement is still effective for a year starting from the effective date of this CBA. This CBA is still effective after one year if neither party give 3-month prior notice to other party for not to implement the award.
- B- The employer will keep employees & the union informed of events and critical information relating to them by posting such information on the employee Notice Board.

Articles 17: Final Provision

Under the provisions of the Labor Law this agreement is effective from the date of its adoption and registration with the Ministry of Labour. Any **Rules or regulations contrary to this Collective Bargaining Agreement shall be null and void.**