



**FOCUSED INVESTIGATION AND ANALYSIS FOR  
WAL-MART STORES, INC.**

**THE ONGOING WORKERS' STRIKE AT  
CHONG WON FASHION, INC.  
CAVITE, PHILIPPINES**

**RECOMMENDED STRATEGY FOR CONFLICT RESOLUTION  
MARCH 2007**

**A. BACKGROUND**

Verité was engaged by Wal-Mart Stores, Inc. to conduct a focused investigation of the ongoing worker strike staged by the union Nagkakaisang Manggagawa ng Chong Won. Verité was asked to provide Wal-Mart with a set of recommendations for action.

Verité conducted an intensive review of legal and other documents related to the strike. Verité also interviewed workers (both union and non-union members, off-site and at the factory), and key members of Chong Won's management between the period December 18, 2006 to January 12, 2007.

This report is one of three outputs from Verité's investigation at Wal-Mart's request. In addition to this report, which focuses on recommendations for moving forward, Verité also completed:

- 1. Chronological Incident Report Leading to the September 25, 2006 Worker Strike**  
The Chronology presents a chronological and annotated list of incidents and events leading up to and during the ongoing worker strike held by officers and members of the union Nagkakaisang Manggagawa ng Chong Won. Data for this report was taken from a review of legal documents provided by both factory management and the union, and interviews with factory management, the factory's legal counsel, union members and officers, and officers and staff members of the Workers Assistance Center in Rosario, Cavite. Some of the source documents were cross-checked against documents filed with relevant government agencies.

2. **Confidential Report of the Comprehensive Factory Evaluation of Chong Won Fashion Inc.** This report presents the findings and recommendations of Verité from its audit of Chong Won Fashion Inc. The report assesses the performance of Chong Won Fashion Inc. against Wal-Mart's Standards for Suppliers and related social compliance standards. Data for this report was taken from a review of factory documents, interviews with management, onsite and offsite interviews with workers, and a physical inspection of the factory's production facilities.

After the initial submission of this report, new developments in this case required Verité to revise the recommendations to Wal-Mart Stores. These revisions are included in section E below.

The recommendations in this report are based on the findings contained in the Chronology, the Report of the Comprehensive Factory Evaluation, and the Key Findings discussed below.

## B. Key Findings

This section outlines key findings relating to the involvement of the factory, the union, the workforce, and international buyers.

### 1. The Factory

- 1.1 Chong Won Fashion produces knit garments for Wal-Mart's supplier One Step Up, beginning in 2001. The factory was disclosed to Wal-Mart in 2006 and shortly thereafter the factory was audited as part of the company's Ethical Standard program.<sup>1</sup> Chong Won Fashion is located in the Exporting Processing Zone in Rosario, Cavite, the Philippines.
- 1.2 Verité's review of legal documents indicates that Chong Won management has, since 1994, consistently and systematically opposed all efforts made by workers to form a union and to enter into a collective bargaining agreement. (These findings are documented more substantially in the **Verité Comprehensive Audit Report of Chong Won Fashion, Inc.**, under the sections *Freedom of Association* and *Auditors' Briefing Notes*).
- 1.3 From May 2000, to date, the management of Chong Won Fashion has filed at least 11 petitions and appeals to the Department of Labor and Employment (DOLE) and to the Court of Appeals to protest the legitimacy of the union. None of the petitions and appeals prospered in either venue.
- 1.4 Citing financial difficulties, Chong Won management did not respond to the eight letters of intent with which they were served by the union over a period of fourteen months beginning April 21, 2005. These letters of intent called for the start of negotiations to lead to a collective bargaining agreement.

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<sup>1</sup> Although the factory could not confirm exactly when they started producing for Wal-Mart through the supplier One Step Up, Omar Francisco, Chong Won's attorney, reported that the factory was producing for Wal-Mart at the time of his hire in 2000.

1.5 Chong Won management informed Verité auditors that its hesitance to negotiate a CBA with the union is due to concern that a CBA could result in increased costs. Management reported to Verité that the company is currently suffering financially making it difficult for them to meet a potential increase in costs. Management reported the following reasons for their financial difficulties:

- Closure of Chong Won Fashion's Korea-based mother company and the cost of the buy-out of the business, which included the adoption of bank loans and obligations by current ownership. The owner notes that since September 2006 the factory has changed its name to C Woo Trading.<sup>2</sup>
- Pull-out of buyers such as The Gap Inc. and Target Corporation due to the current conflict has increased the factory's financial vulnerability.

1.6 In a conversation with Verité auditors on December 18, 2006, Chong Won management indicated that the factory was willing to recognize the union and start the negotiation process for a CBA. The factory did not indicate a willingness, however, to meet the union's demands for a full reinstatement of the 117 workers who had been issued termination letters for their participation in the strike, or of the two union officers who had been dismissed prior to the strike.

The factory reported it was open to the possibility of a selective reinstatement of these workers, saying it was willing to set up a selection committee composed of representatives from the union, the non-unionized workforce (represented by the Care Taker Committee), factory management, and a third-party mediator. Management told Verité that they would be open to ceding to the selection committee the development of the criteria and process for reinstatement and would abide by the committee's decisions.

1.7 Verité auditors noted that the reason the factory refuses to agree to full reinstatement is its contention that the strike is illegal. The factory's legal counsel reported that the company has filed an illegal strike case against the union and is willing to wait for the case to be decided before taking further action. Verité asked the management what written proposals had been submitted to the union. Chong Won's legal counsel submitted a statement that the factory is "willing to reinstate workers selectively, based on the degree of their participation in the worker strike." This statement differs substantially from earlier positions taken by Chong Won's management.

1.8 The factory filed an illegal strike case at the National Labor Relations Commission (NLRC) against the union on December 1, 2006. The following is a summary of the *factory's* points in the filing, according to which:

- The union formed and instituted a picket line at the main gate that prevented company vehicles and non-striking workers (allegedly numbering 1,000) to

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<sup>2</sup> Verité auditors were not provided with official documents to verify the change of company name and ownership. Change of company name and ownership documents were not available at the Securities and Exchange Commission at the time of the audit. Verité auditors did determine that Chong Won Fashions Inc. financial statements for 2000, 2001, 2004, and 2005 are available at the Security and Exchange Commission (SEC).

enter the factory from September 25 to 27 posing imminent threat of harm and physical injury to non-strikers.

- Strikers forced all other workers to join them as they were no longer allowing entry into the factory.
- Strikers pushed away a group of non-striking workers in an agitatedly violent and tumultuous manner, with strikers armed with sharply bladed chokays, scissors, pointed sticks and other dangerous sewing devices causing injury to Jantro guards.
- The barricade caused full and complete paralysis of the company's operations for three days resulting in enormous financial losses and damage to the company. The factory anticipates that this damage will result in the imminent closure of the factory and all business conduct.

## 2. The Union

2.1 The union Nagkakaisang Manggagawa ng Chong Won is composed of 221 members. This represents 100 percent of the total number of workers employed on regular status at the factory (under Philippine law, contract workers and apprentices are not eligible for union membership).

2.2 Verité's review of legal documents and interviews with union officers and workers reveal that efforts to unionize the factory, with a view to being able to negotiate a collective bargaining agreement, date back to 1994. During the ensuing decade to 2004 there were four failed attempts to form and certify a union. The union reported that in each case there was active intervention from Chong Won's management to upset the certification process. (This is covered in more detail in **Verité's Comprehensive Audit Report of Chong Won Fashion, Inc.**, under the section *Freedom of Association and Auditors' Briefing Notes*).

2.3 The union Nagkakaisang Manggagawa ng Chong Won held a successful certification election on August 5, 2004. Chong Won management contested the certification, but on June 27, 2005, DOLE issued a final judgment upholding the legitimacy of the union and certifying the Nagkakaisang Manggagawa ng Chong Won as the sole and exclusive bargaining representative of all regular and rank and file workers of Chong Won Garments. This judgment was later upheld by the Court of Appeals in answer to subsequent motions filed by Chong Won management assailing the DOLE order.

2.4 Verité's interviews with union officers and members indicate that the basic reasons for organizing a union at the factory were the following:

- To incentivize seniority and performance - Workers told auditors that regular workers who have been with the factory for years receive the same salary as contract workers who are hired for short-term contracts, except that regular workers receive an additional PHP 1.00 per day for every year of service.
- To augment and assure retirement and vacation leave benefits.
- To ensure regular workers have priority (over contract workers and trainees) in work assignments during low production periods (when groups of workers are asked to go on compulsory unpaid vacation due to lack of orders).

2.5 At the time of this report, the union continued to demand that Chong Won management (1) withdraw the termination of the 117 union members who

participated in the strike, (2) reinstate the two union officers dismissed prior to the strike, and (3) negotiate a CBA.

The union maintains that the ongoing strike is legal and that the termination of 117 workers on the grounds of their participation in a strike constitutes discriminatory and unfair labor practices.

### **3. The Workforce**

3.1 Management reported a total workforce of 1,000 workers before the strike. At the time of Verité's audit, there were 400 workers on the factory's payroll, approximately 90 of whom were regular workers (and members of the union).

3.2 The rest of the workers were either trainees/apprentices or contract workers. (Contract workers are skilled workers who are initially hired on a five-month contract. At the end of their contracts, they leave the factory's employ but can re-apply for another five-month contract. Some workers said they could re-apply after about six months, others say it could take a year). Some of the workers interviewed had been working with the factory for as long as eight years, on and off, under this arrangement.

Verité notes that non-permanent workers are not eligible for union membership and therefore would not gain from positive outcomes that could result from unionization. Verité notes that the use of contract workers has the potential for abuse as an anti-union tactic.

3.3 Verité interviewed union members who did not participate in the strike but expressed sympathy with the union and its demands. Their stated reasons for not participating in the strike were that they needed to work to support their families.

3.4 Seventy percent of the workforce is female. The typical worker has a high school education and comes from Rosario or surrounding towns in Cavite. The basic salary in Rosario, Cavite, is about PHP 272.00 a day (USD 5.61<sup>3</sup>). All skilled workers hired receive this rate. Regular workers receive an additional PHP 1.00 per day for each year of service. Apprentices, or unskilled workers, receive a daily wage of PHP 204.00 (USD 4.20).

### **4. Wal-Mart Stores and other international stakeholders**

4.1 At the time of the audit, the only buyer at the factory was One Step Up, Wal-Mart's supplier.

4.2 Before the strike, other buyers at the factory included Target Corporation, The Gap Inc., Mervyn's California and Activ, among others.

4.3 Verité notes that at the time the strike began, international buyers placed advertisements in the Philippines daily newspapers in which they printed a letter

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<sup>3</sup> The exchange rate for 2007 is currently USD 1 = PHP 48.5

to President Arroyo to denounce the treatment of strikers at the Chong Won factory. Wal-Mart signed on to the letter.

4.3 International NGOs monitoring freedom of association at this factory had requested buyers to put pressure on Chong Won management to, among other demands, recognize the union and negotiate a collective bargaining agreement. Wal-Mart has had direct interactions with some of the most vocal international NGOs, including the Maquila Solidarity Network, the Interfaith Center on Corporate Responsibility, and the Worker Rights Consortium. These organizations have in some cases issued public reports on their own investigations in the Philippines.

## **5. Other local stakeholders**

5.1 Other local stakeholders have had influence over and involvement in the course of the activities in and around Chong Won. Verité has not focused in this report on their roles within the current conflict, choosing instead to outline options that can be implemented by the main stakeholders, whose interests and influence remain foremost at present. These additional stakeholders include:

- ☑ the Philippine Economic Zone Authority (PEZA), which sets rules for export processing zones, is an investment promotion agency and a government-owned corporation, attached to the Department of Trade & Industry. PEZA grants fiscal and non-fiscal incentives to developers of economic zones, export producers, and I.T. service exporters. PEZA develops and implements administrative rules and structures that govern operations within export processing zones. PEZA contends that the strike at Chong Won violated PEZA regulations.
- ☑ the Workers Assistance Center, Inc, a non-governmental organization in Rosario, Cavite that aims to help workers organize themselves and form unions.
- ☑ Solidarity of Cavite Workers, an alliance of labor organizations and unions based in Rosario, Cavite, which was formerly a program of the WAC.
- ☑ the national Government of the Philippines (GoP). It is relevant to note that the GoP is currently negotiating implementing rules for a free trade agreement with the US.
- ☑ the garments industry in the Philippines which has been affected by the impact on free trade negotiations of the Chong Won case and others like it.
- ☑ One Step Up, Wal-Mart Stores' supplier in this factory, through which orders are placed.

## **6. Conflict Identification**

At the core of the current conflict at Chong Won are the diametrically opposed positions of the factory and the union regarding freedom of association and the right to bargain collectively. Verité's assessment found that the union has, based on the documentary

evidence provided to Verité, followed established procedural requirements for exercising freedom of association rights. The factory has manifested persistent opposition to its workforce exercising these rights and, as the chronology of incidents leading up to the strike shows, has invested heavily in legal actions. It is apparent that the factory has lost a significant amount of business in recent years, some due to the conflict and the negative attention it has attracted, and has laid off approximately half of its workforce. In the middle of this conflict are about 400 remaining workers who may lose their jobs and 117 terminated strikers who may remain unemployed if the situation is not properly resolved and the factory is forced to close as a result.

Verité's analysis of options for arriving at a reasonable resolution to the strike and the conflict that it represents is focused on achieving positive outcomes for these primary stakeholders: the factory, the union, the remaining workforce, and the dismissed workers.

It is vital to recognize that the interests of the union (to negotiate a collective bargaining agreement that serves the interests of its members) and the non-union members in the workforce will not be served if the factory closes down. **Thus, ensuring that the factory stays in business must be a central consideration for any forward-looking strategy to resolve this conflict.**

At the time of this report, the factory had already indicated that it was willing to meet two of the union's key demands: (1) recognition of the union (which includes ceasing all legal action disputing its legitimacy) and (2) negotiation of a CBA.

**Where the two parties remained deadlocked is in their opposing positions regarding the fate of the workers terminated by management for participating in the strike.**

The union's standing demand is for the factory to recall the termination notices issued to 117 workers who participated in the strike, and the reinstatement of two union officers dismissed before the strike. The union maintained that the strike was legal and, therefore, it logically follows that the termination of the 117 workers on the grounds of their participation in the strike was discriminatory. The union also maintains that the dismissal of the two union officers was related to their union affiliation. The union further contends that both cases constitute unfair labor practices under Philippine labor law.

The factory, on the other hand, has filed an illegal strike case against the union with the National Labor Relations Board and continues to maintain that its termination of the strikers was legal. The factory is willing to reinstate workers only after they have undergone an evaluation process overseen by a multi-stakeholder selection committee.

Selective reinstatement assumes that the workers had been rightfully terminated, which further assumes that the strike was illegal. If the strike, on the other hand, is legal, the dismissal of workers on the grounds of their participation in the strike would be a case of discriminatory and unfair labor practice.

Some key factors related to the legality of the strike, drawn from criteria suggested in an interview with the National Conciliation and Mediation Board (a unit of the national Department of Labor and Employment), include:

- Verité’s review of documents provided by the union indicates that the union observed the legally required waiting period between their filing of the Notice to Strike on July 19, 2006, and their conduct of the strike vote on August 11, 2006 (required minimum waiting time is 15 days), and between the strike vote and the actual start of the strike on September 25, 2006 (required minimum waiting time is 7 days). These two waiting periods are key procedural conditions for a legal strike.
- The stated grounds for which the strike was called are the failure of management to negotiate a CBA, the allegedly unfair dismissal of union officers, and the allegedly unfair treatment of union members in the assignment of overtime work. Information available to Verité establishes that the union issued eight letters of intent to the CWFII over a 14-month period prior to the strike. There is no record that management responded to any of the eight letters. Verité does not have sufficient information related to the substantive merit of the specific complaints of unfair treatment and dismissal of a union member referred to in the union’s Notice of Strike. However, information from Verité’s comprehensive audit of the factory in December 2006 indicates that there have been reported cases of discriminatory treatment of union members and officers in job assignments.
- Accounts of violence during the conduct of the strike were reported by both the union and the factory. Verité notes that it is difficult to apportion responsibility for violence in a chaotic and dynamic situation. According to workers interviewed by Verité offsite and during its onsite audit, between September 25 and 28, 2006 strikers set up a picket line to keep other workers who wanted to report for work from entering the building and that the strikers harassed these other workers with taunts and insults. During the three days, violence ensued when the PEZA police, Jantro guards, and the factory’s own security guards forcibly tried to break the barricade so that non-striking workers could get into the factory. On September 28, the PEZA police, Jantro and factory guards, assisted by the Philippine National Police (PNP), succeeded in breaking the barricade which allowed non-strikers to enter the factory premises. The incident resulted in injuries to 16 strikers, one security guard, and one non-union member who fell and hit his head on the ground in the scuffle to enter the factory. Subsequent to this, the factory sought to dismantle the picket line and the picketers’ makeshift structures on at least three additional occasions known to Verité. Picketers told Verité that they asked for but were not provided with a temporary restraining order from the proper authority (DOLE) required in support of such actions.
- According to PEZA regulations, barricades preventing non-strikers from entering a facility are prohibited. According to factory sources, one reason why the factory tried forcibly to break the strikers’ barricade was in response to violations of PEZA regulations.

At the time of this report, no judgment has been made on whether the strike was legal or illegal.

The factory has intimated that it will wait for the decision of the National Labor Relations Council (NLRC) on its illegal strike case before it reinstates the terminated workforce if it is forced to meet the “full reinstatement” demand. However, this could take months or years, if appeals and counter appeals are made, and a further lapse of time in resolving this conflict would be damaging for all concerned. Furthermore, legal documents provided to Verité by management showed a pattern of management using legal actions



in the past to delay, for example, having to recognize the legitimacy of the union, even when such actions might have been technically infirm or even ill-advised from a legal and business standpoint (none of these actions prospered in the legal venues where they were filed). The factory's legal counsel told Verité that even if he knew that the chances of winning some of these cases were slim, he nevertheless filed them simply to "go through the process."

**It is essential that the factory be persuaded to drop the illegal strike charges and seek an immediate amicable and conciliatory resolution to the conflict.**

In implementing the recommendations below, Wal-Mart will of necessity require its supplier and the supplier's buying agent, in addition to the factory, to adhere stringently to the company's code of conduct. The supplier One Step Up and its buying agent, under monitoring from Wal-Mart, must play significant roles in ensuring the implementation of these recommendations as well as ongoing compliance to corporate codes and Philippines law.

### **C. SUMMARY OF RECOMMENDATIONS**

1. The withdrawal of the termination notice served to 117 strikers. This will also entail:
  - a. Ensuring that the factory drops its illegal strike case.
  - b. Reviewing and monitoring the procedures for return and the aftermath of strikers' return to work.
2. A strategy for ensuring that management cooperates with a course of action that avoids a factory closure.
3. Management of the first round of negotiation meetings between union (see updated recommendations below) and management via a third-party facilitator. The focus on initial meetings should be on conflict resolution. Subsequent meetings should focus on CBA negotiations.
4. Requirement that factory management undergo freedom of association training.
5. Ensuring that the factory is placed on a rigorous social compliance performance improvement plan that is monitored quarterly for at least one year (Verité's Comprehensive Audit report identifies the areas for improvement), with future steps to be determined.

### **D. DISCUSSION OF RECOMMENDATIONS**

**Verité recommends that the factory issue an unconditional return to work order for the workers terminated during the strike.**

There are two potential risks to this option which will need to be mitigated. The first potential risk is that the factory refuses to cooperate and closes down (perhaps to re-incorporate under a new name). Verité notes that Philippine corporation laws make it reasonably simple for a factory to close and re-incorporate; this can be (and in other

contexts has been) a union-busting strategy. It is in the interest of all stakeholders that a factory closure be avoided.

**Verité recommends that an effective strategy be implemented to manage the factory's resistance to the stated option in a manner that avoids a factory closure.** One clear and direct approach would be to offer the factory business incentives in return for committing to "full reinstatement" and a course of conflict resolution and negotiation with the union. Given its stated financial difficulties and the fact that most buyers have left, the factory may be willing to consider incentives. Business incentives (including the simple step of continued sourcing from the factory) might help to alleviate the pressure of potential increased cost related to the implementation of a Collective Bargaining Agreement ("CBA") and performance improvement requirements.

Once the factory issues an unconditional return to work notice to the striking workers, **the factory management must be monitored to ensure that the procedure is done fairly and peacefully.** In addition, returned workers face some risks of retaliation upon returning to the factory. Wal-Mart and its supplier will need to institute monitoring procedures to ensure retaliation does not result.

Once strikers have returned to work, a second potential risk that requires mitigation is the possibility that once the factory and union begin negotiating the CBA, the negotiations would fail.

**Verité recommends that the first meetings between the factory and the union be mediated by a third party and focus on conflict resolution before moving on to the review and negotiation of the CBA.** The factory and the union have been at odds for a number of years and the accumulation of negative feelings between the parties could dominate discussions and lead to a premature failure of the negotiation process. Verité notes that there may be opportunities for education of both the union and the factory to focus on common interests. Mutual accountability and cooperation for any goals set will need to be nurtured. Transparency and effective communication will be key to the process. Mediation by an expert external party will help to achieve a better environment for negotiations.

**The factory must be required to undergo training on developing an effective freedom of association and collective bargaining policy and procedure.** Management has persistently opposed the unionization of its workers. The factory lacks an appreciation of the business value of sound labor relations practices and the impact this has on its relationships with its buyers. Verité judges that management currently believes that it is the *union's* actions, rather than management's that has kept previous buyers from placing orders. The factors that contribute to the factory's opposition to the union and a CBA include unwillingness to invest in CBA, financial vulnerability, lack of understanding of the link between labor relations and relationships with buyers and reinforcement by the factory's legal counsel that continued opposition is legally possible.

This training should address Freedom of Association laws in the Philippines, management techniques that respect employees' Freedom of Association rights, and strategies for a resolution to the current conflict.

**Lastly, Verité recommends that the factory be placed on a rigorous social compliance performance improvement plan that is monitored quarterly for at least one year.** Verité's comprehensive audit of Chong Won revealed poor performance in meeting a large

number of benchmarks in Wal-Mart's Standards for Suppliers. Verité also noted substantial gaps on management systems that hamper the effective observance of the company's stated policies. All of these factors pose risks to the factory's ability to meet and sustain its commitments both to Wal-Mart and other existing and prospective buyers and its obligations to its workers. Placing the factory on a guided performance improvement program will help to alleviate these risks and provide protection for workers.

## **E. CHANGES IN UNION STATUS RESULTING IN ADDITIONAL RECOMMENDATIONS**

After the submission of Verité's report to Wal-Mart on January 31, 2007, developments occurred that affect the original recommendations. On February 6, 2007, the Regional Department of Labor and Employment ruled in favor of the Care Taker Committee of NMCW's request to cancel the certificate of registration of the NMCW and to make the Care Taker Committee the sole legally recognized union at the factory. The ruling came after a petition by the Care Taker Committee of NMCW-Independent calling for the cancellation of the certificate of registration of Nagkakaisang Manggagawa ng Chong Won (NMCW-Independent). Verite notes the irregularity of a caretaker union requesting the de-registration of the union for which it is caretaker.

Verité's review of the petition filed by the Care Taker Committee notes that the stated basis for the Care Taker Union's petition (1) contradicts information received by Verite from workers and (2) assumes that the termination of union leaders and other strikers was legal even though the Chong Won management's illegal strike case has yet to be decided.

The DOLE ruling alters the context for Verité's previously-discussed recommendations to Wal-Mart.

As a refinement of the previous recommendations, Verité recommends that:

- ☑ Should the Bureau of Labor Relations reverse the DOLE's decision and reinstate the original union's certificate of registration, Chong Won Fashion, Inc.'s explicit recognition of this decision and the cessation of further legal appeals must be required as a condition of further orders from Wal-Mart.
- ☑ If the certificate of registration for Nagkakaisang Manggagawa ng Chong Won is upheld, buyers must require Chong Won to negotiate with the union and the original recommendations stand.
- ☑ If the Care Taker Committee is judged to be the sole worker representative body, Wal-Mart will need to carefully consider its options for using its leverage in order that workers' rights to Freedom of Association are respected. The Care Taker Committee, as it currently stands, undermines the workers' rights to Freedom of Association and Collective Bargaining.<sup>4</sup>
- ☑ Previous recommendations to reinstate workers, proceed with conflict resolution, require management to undergo freedom of association training, institute a

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<sup>4</sup> Verité does not recommend negotiation of a CBA with the Care Taker Committee. We are adding this clarification to our original recommendations due to continued delays in the resolution of the DOLE's decertification case.

remediation plan and withdraw the illegal strike case should not be delayed pending resolution of current or future legal cases.