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Court orders NC Labor Department to give petitioners a 2nd shot at possible COVID rules

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North Carolina farmworkers, poultry processing workers and their advocates gathered in front of an altar to honor the workers who died of COVID-19 and to demand the state enforce safety standards to protect them, on Nov. 6, 2020, in Raleigh, N.C. BY CASEY TOTH ◊

A Wake County Superior Court judge has ordered the North Carolina Department of Labor to consider a revised petition that calls for a permanent set of COVID-19 workplace safety standards for workers who bear the brunt of the pandemic.

The ruling is a minor step in favor of the immigrant and worker advocacy groups who initially filed the petition last October, but it doesn't guarantee that the DOL will adopt any of the proposed protections.

After it received a rulemaking petition for worker protections , Superior Court Judge G. Bryan Collins ruled, the department rejected it without reviewing it first as the department's policy requires.

The petitioners, advocating primarily for agricultural workers on farms and meat processing plants, filed a court complaint last December in response.

The DOL now has until Sep. 6 to return the petition, pointing out any deficiencies or errors. If a revised petition is filed, the judge ruled, the DOL may then decide whether to accept the petition, which would begin a lengthy rulemaking process, or reject it again with stated reasons.

"We're going to keep pushing even though it's a slow, frustrating process," Clermont Ripley of the North Carolina Justice Center, who was part of the legal team that first filed the petition, told The News & Observer.

Then-Labor Commissioner Cherie Berry, a Republican, responded to the petition at the time with a letter arguing that COVID-19 was not a serious workplace threat that required regulatory action from her department, The News & Observer previously reported.

Berry was succeeded in January by Josh Dobson, also a Republican.

“Judge Collins’ ruling found that the department violated its administrative policy for handling the rulemaking petition, but he did not issue a ruling regarding whether the department is required to adopt additional rules,” Dobson said in a statement to The N&O.

The department will comply with the ruling’s order, Dobson said.

A LONG PROCESS

“The judge is saying that’s what the (DOL) should have done in the first place instead of denying the petition outright,” Ripley said. “It’s not an efficient way to get protections in place for workers ... it’s been 10 months and the need for protections is still there. There’s not a guarantee that by the time this process ends, COVID is going to be over.”

The ruling comes 10 months after the petition was filed by the Lawyers’ Committee for Civil Rights Under Law, the North Carolina Justice Center and the Southern Poverty Law Center. It was done on behalf of several groups of the N.C. Farmworker Advocacy Network.

This coalition began sounding the alarm when the pandemic arrived in North Carolina about a lack of workplace protections among largely Black and Latino immigrant workplaces.

A June analysis of state death records by McClatchy found that Black and Latino workers in blue collar industries like food processing died of COVID-19 in disproportionate numbers.

“This ruling is an important step to ensure the safety and wellbeing of workers, especially with the threat from the Delta variant growing every day,” said Julia Solórzano, a staff attorney with the SPLC, in a news release. “But it is just a step. The COVID-19 pandemic has laid bare the deep inequities essential workers on the front lines (face), who are often disproportionately Black and Brown and immigrants.”