

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**In re: American Federation of Labor and
Congress of Industrial Organizations
and United Food and Commercial Workers
International Union,**

No. 07-1001

Petitioners.

**PETITIONERS' RESPONSE TO THE MOTION OF THE
SECRETARY OF LABOR TO HOLD CASE IN ABEYANCE**

The Secretary of Labor has filed a motion requesting that the Court hold this case in abeyance pending publication in November 2007 of a final rule on employer payment for personal protective equipment (PPE).

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the United Food and Commercial Workers International Union (UFCW) filed this action on January 3, 2007, seeking an order requiring the Secretary of Labor to issue a final rule on employer payment for PPE within 60 days of the court's order. The rule in question was first proposed by the Secretary of Labor in March 1999, but has since languished.

Petitioners believe their petition demonstrates that the Secretary has unreasonably delayed completion of the PPE rule, and that a final rule could be issued in less than the eight months the Secretary says is needed to finish the rule. However, in view of the Secretary's firm commitment to completing the PPE rulemaking and issuing the final PPE rule in November 2007, petitioners do not object to the Court issuing an order holding this case in abeyance pending issuance of the final PPE rule. Our agreement with the Secretary's request to hold this case in abeyance is based on our understanding that: (1) the Secretary will issue a final rule on employer payment for PPE in November 2007, absent unforeseen circumstances; (2) the Secretary will promptly notify this Court and petitioners if it appears she will be unable to meet the November date; and (3) petitioners retain the right promptly to seek judicial remedies if they learn that publication of the final rule may be delayed beyond November 2007. This framework, we believe, mirrors that followed by this Court in *International Union, UAW v. Donovan*, 756 F.2d 162, 164 (D.C. Cir. 1985), a case involving allegations of unreasonable delay in the Secretary of Labor's issuance of a rule on workplace exposure to formaldehyde.

Respectfully submitted,



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March 15, 2007

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CERTIFICATE OF SERVICE

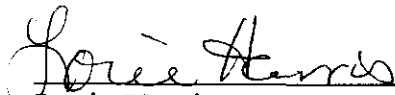
I, Lorie Harris, certify that on this 15th day of March, 2007, I caused a copy of this Response to the Motion of the Secretary of Labor to Hold Case in Abeyance to be served by hand delivery as follows:

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