

**BEFORE THE SAFETY AND HEALTH REVIEW BOARD**

**OF NORTH CAROLINA**

COMMISSIONER OF LABOR OF  
THE STATE OF NORTH CAROLINA,

COMPLAINANT,

DOCKET NO. OSHANC 93-2820

v.

**ORDER**

SUMTER BUILDERS, INC.,

RESPONDENT.

THIS PETITION for review and motion to stay the order of Chairman J.B. Kelly was considered by the North Carolina Safety and Health Review Board on February 18, 1994.

**FINDINGS OF FACT**

1. On December 7, 1993, the Chairman of the Review Board granted the Respondent's Motion to conduct discovery, with certain limitations and restrictions.
2. The order held that N.C. Gen. Stat. §95-136(e)(1) does not prohibit the discovery of witness names and statements as part of NC-OSHA enforcement proceedings.
3. The order further held that only narrowly tailored discovery that allows the parties to refine issues and facilitate the factfinder should be allowed; that use of the discovered material should be restricted to enforcement proceedings and to a limited number of persons; and that discovery should only be allowed following an approved protective order, designed to guard employees against retaliation.
4. On December 28, 1993, the complainant filed its petition with the Review Board. The petition urges that the Chairman's December 7, 1993 order erred as a matter of law: by interpreting N.C. Gen Stat. §95-136(e)(1) to permit the release of witness names and statements; and by permitting the discovery subsequent to interpreting the statute.

**CONCLUSION OF LAW**

The December 7, 1993 order regarded a procedural matter of evidence and is not required to be reviewed by the full Review Board.

**REASONS**

"The issuance of subpoenas, orders to take depositions, orders requiring interrogatories and other procedural matters of evidence issued by the chairman shall not be subject to review." N.C. Gen. Stat. §95-135(c). The Review Board's Rules of Procedure do not provide for appeals of the Chairman's orders regarding procedural matters of evidence. Precedent case law supports the denial of the petition for review. Weeks Construction Co., 3 NCOSHD 977, 980 (RB 1990); Ultra Systems. Western Constructors, Inc., 5 NCOSHD , OSHANC 93-2533 (RB 1993).

**ORDER**

THEREFORE, it is **ORDERED** that the complainant's motion be **DENIED**.

This the 9th day of December 1994.

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KENNETH K. KISER, MEMBER

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HUGH M. WILSON, MEMBER