

**BEFORE THE NORTH CAROLINA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
RALEIGH, NORTH CAROLINA**

COMMISSIONER OF LABOR OF)	
THE STATE OF NORTH CAROLINA,)	DOCKET NO. OSHANC NO: 2024-6635
)	INSPECTION NO.: 318273042
COMPLAINANT,)	CSHO ID: S0709
)	
v.)	
)	
BARNES FARMING CORP.)	
<i>and its successors,</i>)	
RESPONDENT.)	

FILED

JAN 17 2025

NC OSH Review Commission

**ORDER ON OBJECTION TO SUBPOENA / MOTION TO REVOKE AND/OR QUASH
SUBPOENA AND MOTION TO COMPEL COMPLIANCE WITH SUBPOENA**

This matter is before the undersigned on third-party Restoration NewsMedia, LLC's ("Restoration") Objection to Subpoena and Motion to Quash and/or Revoke Subpoena and Respondent Barnes Farming Corp.'s ("Barnes" or "Respondent") Response in Opposition and Motion to Compel Compliance with Subpoena. Restoration submitted a Reply brief. Barnes has filed a motion for leave to file a Surreply, attaching the proposed Surreply as an exhibit. The Commission's Rules do not explicitly provide for Replies or Surreplies and, generally, these are disfavored. However, since Barnes' response to Restoration's original motion included an additional motion to compel, the undersigned will allow the additional briefing submitted by the litigants and has reviewed those documents before preparing this Order.

Relevant Procedural History

On September 5, 2023 twenty-nine year-old Jose Arturo Gonzalez Mendoza, an employee of Respondent Barnes Farming, died while harvesting sweet potatoes at Respondent's Spring Hope, NC worksite. On March 4, 2024 Complainant Commissioner of Labor issued one willful serious citation and one serious citation pursuant to N.C. Gen. Stat. §95-129(1).

On March 19, 2024 Restoration NewsMedia, LLC d/b/a *The Enterprise* published an article, authored by journalist Hannah Whitley Camarena, headlined "Barnes Farming to Appeal 187k in Labor Fines." The article quoted or attributed certain facts to Barnes Farming's CEO Johnny Barnes, Casa Azul de Wilson's crowdfunding campaign website, The North Carolina Department of Labor's March 2024 citations, a May 2020 settlement agreement between NC DOL "regulators" and Barnes Farming, Barnes Farming attorney Marie Scott, and, N.C. Department of Labor Communications Director, Erin Wilson. Wilson's statement, quoted from an email sent to Restoration, was the following:

The penalties are in no way designed to make up for the loss of life.

By law, the civil money penalties collected by the (NCDOL) are not receipts of the department, but rather must be remitted to the Civil Penalty and Forfeiture Fund, which then distributes the monies to the public school system.

On or around December 3, 2024 Respondent Barnes Farming served, via certified mail, a subpoena upon Restoration NewsMedia, LLC. The subpoena seeks production of documents reflecting communication on "the cause of death of Jose Arturo Gonzalez Mendoza." Resp. Ex. 7. Barnes Farming seeks documents related to the cause of Mr. Mendoza's death and involving communication between: (1) NC OSHA and Restoration; (2) Restoration and NC DOL; (3)

Restoration and any Compliance Officer [of the Division of NC OSH]; and (4) Restoration and employees, former employees or contractors of Barnes Farming.

On December 6, 2024 Restoration filed its Objection to the subpoena and Motion to Quash and/or Revoke the subpoena. Respondent's Response and Motion to Compel were filed December 13, 2024, followed by Restoration's Reply on December 30, 2024 and Barnes' Motion for Leave to file Surreply, with proposed Surreply attached, on January 8, 2025.

Legal Standard

North Carolina law provides that journalists have "a qualified privilege against disclosure in any legal proceeding any confidential or nonconfidential information, document, or item obtained or prepared while acting as a journalist." N.C. Gen. Stat. §8-53.11(b). In order to overcome this qualified privilege, Respondent is required to show that the documents or testimony it seeks to compel:

- (1) Is [are] relevant and material to the proper administration of the legal proceeding for which the testimony or production is sought;
- (2) Cannot be obtained from alternate sources; and
- (3) Is [are] essential to the maintenance of a claim or defense of the person on whose behalf the testimony or production is sought.

Id., Sec. (c).

Analysis

The litigants' respective motions can be decided on the basis of the threshold criteria stated in N.C. Gen. Stat. §8-53.11(c)(1), relevance and materiality. Respondent's response to Restoration's objection to the subpoena is focused solely on the quotation from NC DOL

Communications Director Erin Wilson. Respondent contends that Ms. Wilson's communication is "relevant" to the calculation of the penalty assessed by the North Carolina Department of Labor.

First, Respondent is required to make a showing that the information sought is material *and* relevant. A material fact is one that is "significant or essential to the issue or matter at hand." Black's Law Dictionary (10th Ed. 2012). Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." N.C. R. Evid., Rule 401.

Respondent makes no attempt to show that Ms. Wilson possessed any *material* information about the investigation or citations at issue in this case. Respondent does not seem to have any understanding about the role of a Communications Director in an organization. At the North Carolina Department of Labor, the Communications Director "oversees the department's social media platforms, media inquiries, website content, and the production of the department's free statewide news publication, the Labor Ledger."¹

Ms. Wilson's quotation is an explanation of what the law requires, stated in a general and non-technical way. See N.C. Gen. Stat. §95-138(c); N.C. Gen. Stat. §115-457.2. She is not quoted as saying anything specific about the investigation of, or the citations resulting from, the death of Mr. Mendoza. Indeed, as the Communications Director, one would NOT expect Ms. Wilson to have any knowledge of what was or was not investigated or the factors used for calculating penalties, in general, let alone how they were calculated in this particular case.²

¹ <https://www.labor.nc.gov/about-ncdol/leadership/erin-wilson#:~:text=Erin%20Wilson%20serves%20as%20the,news%20publication%2C%20the%20Labor%20Ledger>.

² Using a Communication Information Officer as a source is equivalent to using the non-attorney spokesperson in a law firm's paid television advertisement as a source: both are authorized to

Likewise, the Communication Director's statement of existing law as to the *purpose of penalties* and the *disposition of funds collected* from penalties assessed is not relevant to how the N.C. Agricultural Health and Safety Division *calculated penalties* in this case.

Second, the subpoena issued to Restoration was not designed to elicit any information on penalty calculations. Respondent's subpoena requested communication about "**the cause of death of Jose Arturo Gonzalez Mendoza**" from NC OSHA, NC OSHA's compliance officers, and, Respondent's employees, former employees and/or contractors. Other than the quotation attributed to Ms. Wilson, there are no facts in the article that are attributed to communication from NC OSHA or its compliance officers. The majority of the facts contained in the article are attributed to Respondent's CEO and his attorney. The facts in the article attributed to NC DOL are from documents which the Respondent already has (the citations and the May 2020 settlement agreement). Even if there were facts in the article attributable to NC OSHA or its compliance officers, it is implausible that any communication about the cause of Mr. Mendoza's death would provide Respondent with any information regarding how penalties in this case were calculated. In short, Respondent has made no showing that it seeks material and relevant information, particularly where the information it argues is "relevant" would not be within the scope of the subpoena that was served upon Restoration.

The undersigned finds that a hearing is not required to resolve this matter. Respondent's request for a hearing on the subpoena it issued to Restoration is DENIED. The motion of Restoration NewsMedia, LLC d/b/a *The Enterprise* To Revoke the subpoena issued by Respondent Barnes Farming Corporation is ALLOWED. The motion of Respondent Barnes

_____ speak on behalf of their respective organizations and are bound by legal and ethical rules to make truthful statements which are attributed to the organization but neither has specific information about active case files being handled by other employees of the organization.

Farming Corporation To Compel production of documents from Restoration NewsMedia LLC is
DENIED.

SO ORDERED, this the 17th day of January 2025.

Mary-Ann Leon

Mary-Ann Leon
Hearing Examiner
maleon@leonlaw.org

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date served a copy of the foregoing ORDER upon:

MICHAEL J TADYCH
ASHLEY N FOX
STEVENS MARTIN VAUGHN & TADYCH PLLC
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TRAVIS W VANCE
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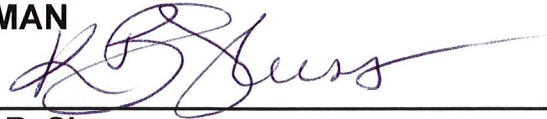
By depositing a copy of the same in the United States Mail, first class, postage prepaid at Raleigh, North Carolina, and upon:

NC DEPARTMENT OF LABOR
LEGAL AFFAIRS DIVISION
1101 MAIL SERVICE CENTER
RALEIGH, NC 27699-1101

via email.

THIS THE 21 DAY OF January 2025.

PAUL E. SMITH
CHAIRMAN



Karissa B. Sluss
Docket Administrator
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Health Review Commission
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