

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.)	
)	ORDER ON RESPONDENT'S MOTION
)	TO COMPEL DEPOSITION PURSUANT
BARNES FARMING CORP.)	TO N.C. R. CIV. P. 30(b)(6)
<i>and its successors,</i>)	
RESPONDENT.)	

This matter is before the undersigned on Respondent's Motion to Compel Complainant to produce a witness for deposition pursuant to N.C. Rule of Civil Procedure 30(b)(6). Respondent's request for a Rule 30(b)(6) deposition was made following a prehearing conference held in this matter on October 2, 2024 where oral arguments were heard pertaining to subpoenas served by Respondent upon non-parties. See Order on Motions to Revoke Subpoenas filed contemporaneously with this Order. Following that conference, a Docket Memorandum summarizing findings and verbal orders made by the undersigned was created. That memorandum stated, in pertinent part:

Respondent will make its best efforts to obtain information concerning Requests No. 1 - No. 6 of each of the subpoenas by making a request in accordance with Commission Rule .0404 to conduct a deposition using the procedures described in Rule 30(b)(6) of the North Carolina Rules of Civil Procedure. Both Respondent and Complainant retain their obligations and rights with respect to the conduct of any such deposition in accordance with Commission Rule .0404 and NCRCP Rule 30(b)(6).

Respondent's Motion to Compel is DENIED for the following reasons:

(1) Respondent did not make a request to proceed with discovery "in accordance with Commission Rule .0404." The instruction given by the undersigned plainly stated that Respondent should make a request in which it justified the need to conduct discovery in accordance with the Commission Rules. Instead of doing this, on October 16, 2024 Respondent sent a request to Complainant to conduct a deposition and sent a list of forty-four proposed topics for examination.

(2) Even if its Motion to Compel were treated as a request for discovery under Commission Rule .0404, Respondent has not made a showing of good cause necessity required to permit use of discovery that may require Respondent to reveal information otherwise protected from disclosure by N.C. Gen. Stat. § 95-136(e) and N.C. Gen. Stat. §95-136(e1). See, *Comm'r v. Lennar Carolinas, LLC*, No. OSHANC 2020-6131, Order on Respondent's Motion to Leave to Request Production, *5, Dec. 13, 2021, Wetsch, ALJ presiding. Respondent's justification for a deposition is nothing more than an attempt to cross-examine Complainant's witness regarding the factual findings contained in the Compliance Officer's investigative report. For instance, in its argument in support of its motion Respondent states that a deposition is essential to learn:

- *What qualifications did CSHO Ramirez have to make these conclusions about the cause of death?*
- *Did CSHO Ramirez consult with medical professionals or experts before drawing her conclusions?*
- *Was CSHO Ramirez aware of any underlying health conditions of Mr. Gonzalez that may have contributed to his death? If so, what did CSHO Ramirez know and when did she know it?*

Resp. Mot. to Compel, p 7. These questions are appropriate for cross-examination during the hearing and/or may be addressed in Requests for Admission, as permitted under the Commission's rules. Respondent makes no argument as to why a Rule 30(b)(6) deposition is needed to uncover this information. Respondent states that its proposed questions are "brief and incomplete" examples of information that it believes necessitates additional discovery. Respondent's request, by its own admission, fails to make a thorough and complete justification for conducting a deposition.

(3) Respondent's proposed deposition topics are exceedingly overbroad. Not only would the numerosity of its proposed topics require several days of deposition testimony, Respondent has gone far beyond the concerns expressed at the prehearing conference which prompted the undersigned's instruction that Respondent be permitted an opportunity to justify a deposition. A review of the topics proposed suggests that no more than nine of the forty-four topics proposed could arguably relate to the concerns expressed by Respondent's counsel on October 2, 2024.

(4) Respondent's contention that it has made its "best efforts" to obtain the information via other means also does not serve as adequate justification to permit a deposition. It is apparent that Respondent's attempt to use North Carolina public records statutes have thus far not been successful due to Respondent's own conduct. Where the initial request produced more than 47,000 emails and Respondent's counsel declined to offer more narrowly defined search parameters, the undersigned cannot agree that the Respondent has made its "best efforts" to use public records' laws to obtain information Respondent claims is needed. Compl. Mem. of Law Opp. Motion to Compel, Ex. A, Aff. of Jill Cramer.

For the reasons stated herein, Respondent's Motion to Compel Complainant to produce witnesses for a deposition to be conducted pursuant to N.C. R. Civ. P. 30(b)(6) is DENIED. Furthermore, to the extent that Respondent's Motion may be construed as a request under Commission Rule .0404 to pursue discovery, that request is also DENIED. Finally, Respondent has filed a Motion for Leave to File a Reply to Complainant's Memorandum in Opposition to this Motion. With a minor exception, Respondent's motion for leave does not identify new arguments made by the Complainant to which Respondent has not had an opportunity to brief.¹ The Motion for Leave to File a Reply is DENIED.

SO ORDERED, this the 30th day of December 2024.

Mary-Ann Leon

Mary-Ann Leon
Hearing Examiner
maleon@leonlaw.org

¹ The minor exception is an issue of timeliness raised by Complainant. The Undersigned's order did not consider timeliness of Respondent's request as a grounds for this decision.

CERTIFICATE OF SERVICE

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

TRAVIS W VANCE
FISHER & PHILLIPS
227 WEST TRADE ST STE 2020
CHARLOTTE, NC 28202

By depositing a copy of the same in the United States Mail, by certified mail, return receipt requested, postage prepaid at Raleigh, North Carolina, and upon:

JONATHAN D JONES
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH NC 27602

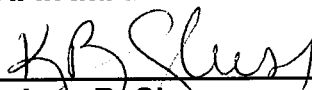
By depositing a copy of the same in the United States Mail, first class, postage prepaid at Raleigh, North Carolina, and upon:

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

via email.

THIS THE 30 DAY OF December 2024.

PAUL E. SMITH
CHAIRMAN



Karissa B. Sluss
Docket Administrator
NC Occupational Safety &
Health Review Commission
1101 Mail Service Center
Raleigh, NC 27699-1101
TEL.: (984) 389-4132
NCOSHRC@oshrc.labor.nc.gov