

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DONNA BUSCHE, an individual,

 Plaintiff,

 v.

URS ENERGY AND CONSTRUCTION, INC.,
an Ohio corporation, and BECHTEL
NATIONAL, INC., a Nevada
corporation,

 Defendants.

CASE NO. CV-13-5016-EFS

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION FOR PROTECTIVE ORDER**

Before the Court, without oral argument, is Plaintiff Donna Busche's Motion for Protective Order, ECF No. 20. Ms. Busche asks the Court to enter a protective order specifying that she need not respond to Defendant URS Energy and Construction, Inc.'s ("URS") Requests for Admission (RFA) Nos. 1-7 because they 1) serve only to harass, oppress, and embarrass Ms. Busche; 2) do not seek information relevant to any claim or defense in this litigation; and 3) are not likely to lead to the discovery of admissible evidence. After conferring with counsel for URS, the parties were unable to reach agreement as to these RFAs; Plaintiff therefore filed the instant motion. URS opposes the motion. After reviewing the record and relevant authority, the Court is fully informed. For the reasons set forth below, the Court grants in part and denies in part Ms. Busche's motion.

1 **A. Background**

2 In this lawsuit, Ms. Busche alleges she was retaliated against
3 by URS management for reporting technical and safety issues at the
4 Hanford Tank Waste Treatment and Immobilization Plant ("WTP"). She
5 claims URS management retaliated against her by 1) reorganizing the
6 management structure so as to strip her of decision-making authority,
7 as well as, make it unnecessary for her to attend meetings and
8 communicate with key managers and DOE personnel, and 2) engaging in
9 intimidation tactics to persuade her to change her position on
10 technical and safety issues. Although Ms. Busche continues to work at
11 URS, her pay and seniority have allegedly been damaged by URS
12 management's intentional manipulation of her responsibilities.
13 Accordingly, she seeks back pay and front pay in relation to her lost
14 potential earnings, as well as emotional distress damages.

15 In hopes of discovering information that would assist it in
16 defending against Mrs. Busche's claims, URS propounded thirteen RFAs
17 on Ms. Busche. ECF No. 20-1, Ex. 1. Ms. Busche answered the RFAs.
18 ECF No. 20-1, Ex. 2. In her response to the first seven RFAs, Ms.
19 Busche objects to certain terms as vague and to the relevance of the
20 requested information; she ultimately denied RFA Nos. 1-7.
21 Thereafter, Ms. Busche filed the instant Motion for Protective Order,
22 ECF No. 20, in regard to RFA Nos. 1-7, which state:

23 REQUEST FOR ADMISSION NO. 1: Admit that, on or about July
24 2, 2010, you entered the WTP office that was previously
25 occupied by Dr. Walter Tamosaitis and placed
26 documents/papers into boxes.

1 REQUEST FOR ADMISSION NO. 2: Admit that after boxing the
2 documents/papers described in Request for Admission No. 1,
you removed them from the WTP site.

3 REQUEST FOR ADMISSION NO. 3: Admit that you did not examine
4 or review the nature or substance of the documents/papers
described in Request for Admission No. 1 prior to placing
5 them into boxes.

6 REQUEST FOR ADMISSION NO. 4: Admit that you provided or
7 allowed Dr. Tamosaitis access to the documents/papers
described in Request for Admission No. 1.

8 REQUEST FOR ADMISSION NO. 5: Admit that you have copied,
9 forwarded, or otherwise transmitted WTP
10 documents/information to drives, servers, or other
electronic storage media is/are not part of the WTP's
11 computer system.

12 REQUEST FOR ADMISSION NO. 6: Admit that you have, maintain,
13 have had, or have maintained "out of state backups" or
14 other archive(s) of WTP documents/information, outside of
the WTP's computer system.

15 REQUEST FOR ADMISSION NO. 7: Admit that you have collected,
16 created, or maintained a file, notes, or other collection
17 of documents, papers, or other information regarding any
WTP personnel.

18 URS contends the RFAs seek information relevant to challenge Ms.
19 Busche's claims and to support its after-acquired-evidence defense.

20 **B. Standard**

21 Civil litigants may engage in discovery to seek relevant, non-
22 privileged information. Fed. R. Civ. P. 26(b)(1). A litigant,
23 however, may seek a protective order to protect that litigant from
"annoyance, embarrassment, oppression, or undue burden or expense."
24 *Id.* at 26(c)(1).

25 **C. Analysis**

26 At this time, the Court finds Ms. Busche established a need for
a protective order in regard to RFA Nos. 1-4. URS failed to identify

1 how the requested admissions are relevant to Ms. Busche's claims of
2 retaliation regarding her disclosure of technical and safety issues at
3 the WTP. Dr. Walter Tamosaitis is not a party in this lawsuit, and
4 there is no explanation by URS as to why the suspected
5 documents/papers in Dr. Tamosaitis' former office that were placed
6 into boxes and removed from the site has any bearing on Mrs. Busche's
7 retaliation claims. URS submits that RFA Nos. 1-4 support its after-
8 acquired evidence argument; however, URS fails to explain how this
9 doctrine applies given that Ms. Busche is still employed by URS. See
10 *Brown v. Yellow Transp., Inc.*, No. 08-C-5908, 2009 WL 3270791 (N.D.
11 Ill. Oct. 29, 2009) (declining to apply after-acquired-evidence
12 doctrine in a case where all but plaintiff were current employees);
13 see also *O'Day v. McDonnell Douglas Helicopter Co.*, 79 F.3d 756, 761
14 (9th Cir. 1996) (stating in the context of a lawsuit brought by a
15 former employee, "An employer can avoid backpay and other remedies by
16 coming forward with after-acquired evidence of an employee's
17 misconduct, but only if it can prove by a preponderance of the
18 evidence that it would have fired the employee for that misconduct").
19 The motion is granted in this regard.

20 In regard to RFA Nos. 5-7, the Court finds they seek relevant
21 information. Whether Ms. Busche copied, forwarded, or maintained WTP
22 documents or information; maintained archives of WTP documents and
23 information; or collected information regarding WTP personnel, outside
24 of the WTP's computer systems, will provide information relevant to
25 the discovery process in this litigation. Mrs. Busche's answers to
26 RFA Nos. 5-7 will assist defense counsel in ascertaining what WTP-

1 related information Ms. Busche has already and will assist counsel in
2 structuring document discovery-requests and production. The motion is
3 denied in this regard.

4 **D. Conclusion**

5 For the above-given reasons, **IT IS HEREBY ORDERED:** Ms. Busche's
6 Motion for Protective Order, **ECF No. 20**, is **GRANTED IN PART** (RFA Nos.
7 1-4) **AND DENIED IN PART** (RFA Nos. 5-7).

8 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
9 Order and provide copies to all counsel.

10 **DATED** this 15th day of October 2013.

11 s/ Edward F. Shea

12

EDWARD F. SHEA

13 Senior United States District Judge
14
15
16
17
18
19
20
21
22
23
24
25
26