

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

KAREN PETRO :
 :
 v. : C.A. No. 09-213S
 :
 TOWN OF WEST WARWICK, :
 et al. :

MEMORANDUM AND ORDER

Pending before me for determination (28 U.S.C. §636(b)(1)(A); LR Cv 72(a)) is the Town’s “Motion Pursuant to Rule 26(b)(2)(C) for a Limitation Order Concerning the 30(b)(6) Deposition Notice or in the Alternative for a Protective Order.”¹ (Document No. 36). Plaintiff Objects. (Document No. 38). A hearing was held on June 11, 2010. For the reasons summarized below, the Town’s Motion is DENIED.

This is a civil rights action brought against the Town and six of its police officers. Plaintiff, the Administratrix of the Estate of Mark Jackson, alleges that Mr. Jackson’s rights were violated when he was arrested without cause and died shortly thereafter in police custody. On or about May 17, 2010, Plaintiff served a Notice on the Town to depose its designee(s) under Fed. R. Civ. P. 30(b)(6). (Document No. 39 at pp. 23-28). The Notice requested that the Town designate one or more persons to testify about information known or reasonably available to it regarding thirty-nine (39) discrete subjects.

The Town makes a proportionality argument under Fed. R. Civ. P. 26(b)(2)(C)(iii) that “most of the categories are, at best, marginally relevant and that it will be burdensome and expensive for

¹ The Town devotes only one sentence of its brief (Document No. 36 1 at p. 3) to Fed. R. Civ. P. 26(c) and, at the hearing, focused its argument solely on Fed. R. Civ. P. 26(b)(2)(C)(iii) and effectively abandoned its alternative request for a protective order under Fed. R. Civ. P. 26(c).

the Town to comply.” (Document No. 36-1 at p. 1). Plaintiff counters that she is entitled to depose the Town through its designee(s) under Fed. R. Civ. P. 30(b)(6) and that the designated topics are directly relevant to her claims. As to the number of designated topics (39), Plaintiff contends that the individual topics are narrowly stated to meet the requirement of the Rule that the matters for examination must be described “with reasonable particularity.” Fed. R. Civ. P. 30(b)(6).

Rule 26(b)(2)(C)(iii), Fed. R. Civ. P., provides that the Court must limit the extent of discovery if it determines that “the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties’ resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.” The advisory committee notes further explanation that this provision was intended to:

address the problem of discovery that is disproportionate to the individual lawsuit as measured by such matters as its nature and complexity, the importance of the issues at stake in a case seeking damages, the limitations on a financially weak litigant to withstand extensive opposition to a discovery program or to respond to discovery requests, and the significance of the substantive issues, as measured in philosophic, social, or institutional terms. Thus the rule recognizes that many cases in public policy spheres, such as employment practices, free speech, and other matters, may have importance far beyond the monetary amount involved. The court must apply the standards in an even-handed manner that will prevent use of discovery to wage a war of attrition or as a device to coerce a party, whether financially weak or affluent.

Applying this proportionality standard, the Town has not made a sufficient showing to warrant the limitations it seeks. The Town is a party to this case and is subject to the requirements of Fed. R. Civ. P. 30(b)(6). Plaintiff has described the matters for examination with “reasonable particularity” and has shown that they fall within the broad discovery parameters of Fed. R. Civ. P. 26(b)(1). In response, the Town has not specifically articulated the alleged burden and expense of

preparing one or more designees to testify regarding information “known or reasonably available” to the Town on such matters.

Nineteen of the thirty-nine items (11-21, 25, 28-29, 31-33, 38-39) deal with areas of training and policy. At the hearing, the Town conceded that these items presented its “weakest” arguments and argues that the requested information “can be conveyed through production and interrogatory responses in a much easier and less expensive manner.” (Document No. 36-1 at p. 5). While that may be true from the Town’s perspective, the discovery mechanism of Rule 30(b)(6) is available to Plaintiff under the discovery rules to ascertain the Town’s “position” on certain topics, and the Town has not made a sufficient showing to deprive Plaintiff of this mechanism. See U.S. E.E.O.C. v. Caesars Entm’t, Inc., 237 F.R.D. 428, 435 (D. Nev. 2006) (denying protective order precluding Rule 30(b)(6) deposition, in part, because it would deprive part of its “choice of discovery methods”).

Of the remaining twenty items, sixteen² (1-10, 23, 30, 34-37) seek the Town’s “position” as to the events which occurred on the night of Mr. Jackson’s death and the actions of the officers involved. The Town asserts that it “is not an individual and as such, unless the Town designates one of the actual officers in attendance, it will require an individual to read all of the current depositions and refer to those deposition transcripts when testifying.” (Document No. 36-1 at p. 3). The Town is a separate party from the individual officers sued in this case, and it is obligated under Fed. R. Civ. P. 30(b)(6) to designate one or more persons who are reasonably prepared to testify about information “known or reasonably available” to the Town regarding the matters identified. See United States v. J.M. Taylor, 166 F.R.D. 356, 361 (M.D.N.C. 1996) (designee must be prepared to

² The final four items (22, 24, 26 27) seek testimony on very narrow topics which do not present any legitimate claims of burden or expense warranting discussion.

testify “to the extent matters are reasonably available, whether from documents, past employees, or other sources”). A “Rule 30(b)(6) deponent does not give his own personal opinions but instead presents the corporation’s ‘position’ on the topic.” Richardson v. Rock City Mech. Co., LLC, No. 3-09-0092, 2010 WL 711830 at *6 (M.D. Tenn. Feb. 24, 2010) (finding no authority for position that a party is precluded from noticing a Rule 30(b)(6) deposition on topics to which fact witnesses could testify or have testified).

Here, since the Town and the individual defendants are represented by the same defense counsel, they will likely be on the same page as to the events of the night in question and the propriety of the officers’ actions. Plaintiff is, however, entitled to know, prior to trial, if the Town disputes a co-defendant’s version of the events, or believes that a co-defendant’s actions on the night in question were not in compliance with Town policies. Although there will obviously be some burden to the Town in producing a properly prepared deponent or deponents, the Town has simply not shown that such burden will be disproportionate in this case applying the standard set forth in Fed. R. Civ. P. 26(b)(2)(C)(iii).

Accordingly, the Town’s Motion for a “Limitation Order” (Document No. 36) is DENIED. The Town shall serve its Rule 30(b)(6) designation on Plaintiff by July 2, 2010. Plaintiff is granted leave to conduct the Rule 30(b)(6) deposition(s) after the discovery closing date but before July 31, 2010.

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
June 16, 2010