UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

Case No. 5:03-cv-150

and

Hon. Wendell A. Miles

JEFF L. CARTER,

Plaintiff-Intervenor,

v

ROBERT BOSCH CORPORATION,

Defendant.
_____/

OPINION AND ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Plaintiff the Equal Employment Opportunity Commission ("EEOC") filed this action against defendant Robert Bosch Corporation ("Bosch" or "the company"), alleging that Bosch violated Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e. The EEOC's claim is that Bosch discriminated against a former employee, on the basis of his religion, by requiring him to work overtime on his Sabbath day and terminating him after he accumulated unexcused absences by refusing to work the scheduled overtime. The former employee, Jeff Carter, has been granted leave to intervene as a plaintiff in the action. The matter is currently before the court a motion by Bosch for summary judgment (docket no. 27). Both the EEOC and Carter have opposed the motion.

For the reasons to follow, the court GRANTS the motion.

I

Jeff Carter, who became employed by Bosch in July, 1997, is a member of the Old Path Church of God, Inc. The church observes a Sabbath from sundown Fridays until sundown Saturdays. From the beginning of his employment until January, 2002, Carter worked in Bosch's foundry on either the first or third shift (Monday through Friday, 7:00 a.m. to 3:00 p.m. or Sunday through Thursday, 11:00 p.m. to 7:00 a.m., respectively), positions which presented no difficulties for him in observing his Sabbath. According to Carter, one of his supervisors in the foundry accommodated his desire not to work his Sabbath by finding volunteers to cover Carter's overtime shifts (11:00 p.m. Friday to 7:00 a.m. Saturday).

During the time that Carter worked for Bosch, the company had in effect a collective bargaining agreement ("CBA") with Local 383 of the International Union of Automobile Workers of America ("the Union"). In early January, 2002, Carter, who had always worked in the company's foundry, was "bumped" from his shift by another employee having more seniority under the CBA. For the first time, Carter was required to work second shift, consisting of the hours from 3:00 p.m. to 11:00 p.m. Monday through Friday. After some initial difficulties, the Union was ultimately to negotiate on Carter's behalf for an accommodation with Bosch which required Carter to "bid off" second shift, but in the meantime permitting Carter to trade shifts with another associate on Fridays. In April, 2002, Carter successfully bid on a third shift position in the company's machine shop, requiring him to leave the foundry, where he had always worked. This third shift position allowed Carter to observe his Sabbath without difficulty, which he did until July, 2002.

However, in July, 2002, Bosch's machine shop began operating at "100%" capacity. There is no dispute that this meant that the machine shop operated 24 hours a day, seven days a week, requiring mandatory overtime. It was at this time that Carter's observance of his Sabbath began to conflict with Bosch's overtime work requirement; it is undisputed that Carter became obligated to work on a number of Saturdays.

The Union's CBA with Bosch contained a provision requiring "equalization of overtime." In essence, this provision required the company, to the extent practicable, to equalize overtime within each job, department, and pay group, unless – and this is an important *unless* – the Union and company agreed otherwise. This provision also required that the employee in an overtime group with the lowest number of overtime hours on a shift would be scheduled to work, qualifications permitting. In other words, employees with the least number of accumulated overtime hours had to be given overtime before their co-workers could again be required by the company to work overtime. The CBA contained provisions for the posting of substitute overtime sign-up lists to reduce mandatory overtime and to help equalize "out of class" overtime. These provisions required an employee to complete a form provided by the company in order to "volunteer" for "out of class" overtime in another department. EEOC's Brief in Opposition, Exhibit 6 (Article XVI of CBA), at 48-56.

Beginning in July, 2002, Carter alleges, he attempted to exercise options available to him under the CBA in order to avoid Saturday overtime. This included taking what the CBA denoted "Paid Absence Allowance" time off (or "PAAs"), consisting of a total of 64 hours, 40 of which could be taken without prior approval by the company. At some point, the Union became involved in seeking to reach an accommodation with Bosch which would enable Carter to avoid Saturday overtime. However, the Union did not reach an agreement with Bosch. On September

16, 2002, Bosch fired Carter for accumulating four unexcused absences, three of which resulted from Carter's refusal to work overtime on Saturdays while the machine shop was operating at 100% capacity.

Carter subsequently filed a charge of discrimination with the EEOC. On September 29, 2003, the EEOC filed this action, alleging that Bosch had violated Carter's rights under Title VII by failing to provide him with a reasonable accommodation of his known sincerely-held religious beliefs and by terminating him because his beliefs conflicted with an employment requirement. Discovery in the action is now complete, and the company's motion is now ripe for decision.

II

In its motion, Bosch argues that unless and until the Supreme Court reverses its decisions in Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60, 107 S.Ct. 367 (1986) and Trans World Airlines, Inc. v. Hardison, 432 U.S. 63, 97 S.Ct. 2264 (1977), neither the EEOC nor Carter has a viable claim against the company for religious discrimination under Title VII.

Summary judgment is proper where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). In evaluating a motion for summary judgment, the court must determine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52 (1986). The party moving for summary judgment bears the burden of establishing the non-existence of any genuine issue of material fact and may satisfy this burden by "'showing'--that is, pointing out to the district court--that there is an

absence of evidence to support the nonmoving party's case." Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). While inferences drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion, "[w]hen the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). Only factual disputes which may have an effect on the outcome of a lawsuit under the applicable substantive law are "material." Anderson, 477 U.S. at 248.

Title VII makes it unlawful for an employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's . . . religion[.]" 42 U.S.C. § 2000e-2(a)(1). Under the statute,

> The term 'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

42 U.S.C. § 2000e(j).[1]

According to Sixth Circuit case law,

> The analysis of any religious accommodation case begins with the question of whether the employee has established a prima facie case of religious discrimination. Such a case is established when an employee shows that: (1) he holds a sincere religious belief that conflicts with an employment requirement; (2) he has informed the employer about the conflicts; and (3) he was discharged or disciplined for failing to comply with the conflicting employment requirement.

Smith v. Pyro Mining Co., 827 F.2d 1081, 1085 (6th Cir. 1987) (citation omitted). Once the

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[1]As the Supreme Court has observed, the "reasonable accommodation duty" was incorporated "somewhat awkwardly" into Title VII in 1972, through the addition of the definition of "religion." Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60, 63 n.1, 107 S.Ct. 367, 369 n.1 (1986).

plaintiff has established a *prima facie* case, "[t]he burden then shifts to the employer to (1) conclusively rebut one or more elements of the plaintiff's prima facie case, (2) show that it offered a reasonable accommodation, or (3) show that it was unable reasonably to accommodate the employee's religious needs without undue hardship." Thomas v. National Ass'n of Letter Carriers, 225 F.3d 1149, 1156 (10th Cir. 2000) (footnote omitted).

Once an employer has offered a single reasonable accommodation, it has fulfilled its obligation under Title VII. McGuire v. General Motors Corp., 956 F.2d 607, 609 (6th Cir. 1992). The employer is not required to choose the accommodation favored by the employee, or any particular accommodation for that matter; instead, "[b]y its very terms [Title VII] directs that any reasonable accommodation by the employer is sufficient to meet its accommodation obligation." Ansonia, 479 U.S. at 68, 107 S.Ct. at 372. "Thus, where the employer has already reasonably accommodated the employee's religious needs, the statutory inquiry is at an end. The employer need not further show that each of the employee's alternative accommodations would result in undue hardship." Id.; see Thomas, 225 F.3d at 1156 n.7 ("The employer does not have to demonstrate that the particular accommodation requested by the employee would result in an undue hardship"). The employer is not required "to consider and preclude an infinite number of possible accommodations." Id., 225 F.3d at 1156.

Bosch does not dispute that the EEOC and Carter have established a prima facie case. Bosch also does not contend that it was unable reasonably to accommodate Carter's observance of his Saturday Sabbath without undue hardship. Therefore, the only disputed aspect of the case for purposes of summary judgment is whether Bosch has shown that it offered Carter a reasonable accommodation. "The reasonableness of an employer's attempt to accommodate is determined on a case-by-case basis." Cooper v. Oak Rubber Co., 15 F.3d 1375, 1378 (6th Cir.

1994). However, according to the EEOC's own guidelines clarifying the obligation imposed by Title VII, the use of voluntary substitutes and "swaps" is one means of accommodating a conflict between work schedules and religious practices. 29 C.F.R. § 1605.2(d)(i). Specifically, these guidelines provide that

> Reasonable accommodation without undue hardship is generally possible where a voluntary substitute with substantially similar qualifications is available. One means of substitution is the voluntary swap. In a number of cases, the securing of a substitute has been left entirely up to the individual seeking the accommodation. The Commission believes that the obligation to accommodate requires that employers and labor organizations facilitate the securing of a voluntary substitute with substantially similar qualifications. Some means of doing this which employers and labor organizations should consider are: to publicize policies regarding accommodation and voluntary substitution; to promote an atmosphere in which such substitutions are favorably regarded; to provide a central file, bulletin board or other means for matching voluntary substitutes with positions for which substitutes are needed.

29 C.F.R. § 1605.2(d)(i). The EEOC has conceded in this case, as it apparently must, that "voluntary swapping" of shifts is a reasonable accommodation. EEOC's Brief in Opposition, at 14.

As noted above, Bosch's position is that the Supreme Court's decisions in Ansonia and Hardison control here. In Ansonia, the Court held that "an employer has met its obligation under [42 U.S.C. § 2000e(j)] when it demonstrates that it offered a reasonable accommodation to the employee." 479 U.S. at 69, 107 S.Ct. at 372 (footnote omitted). In so holding, the Court noted that a portion of the EEOC's guidelines on religious discrimination which require the employer to choose an accommodation alternative which "least disadvantages an individual's employment opportunities" is "simply inconsistent with the statute." 479 U.S. at 69 n.6, 107 S.Ct. at 372 n.6 (quoting 29 C.F.R. § 1605.2(c)(2)(ii)). According to the Court, "[b]y its very terms the statute directs that any reasonable accommodation by the employer is sufficient to meet its

accommodation obligation." 479 U.S. at 68, 107 S.Ct. at 372. The Court concluded by remanding the case in view of "insufficient factual findings as to the manner in which the collective-bargaining agreements have been interpreted," although noting that an accommodation requiring the plaintiff to take unpaid leave as permitted by the collective bargaining agreement "would generally be a reasonable one." 479 U.S. at 70, 107 S.Ct. at 373.

Ansonia therefore makes it clear that an employer need offer only one reasonable accommodation to fulfill its statutory obligation under Title VII. Earlier, in Hardison, the Court made it clear that employers covered by a collective bargaining agreement on a different footing than employers who are not bound by such an agreement. The issue in Hardison was virtually identical to that presented here: "the extent of the employer's obligation under Title VII to accommodate an employee whose religious beliefs prohibit him from working on Saturdays." 432 U.S. at 66, 97 S.Ct. at 2268. In that case, the department in which the plaintiff worked operated 24 hours per day, 365 days per year. Whenever an employee's job in that department was not filled, another employee would have to be shifted from another department, or a supervisor would have to cover the job, even if this caused the work in other areas to suffer. The collective bargaining agreement gave the most senior employees the first choice of job and shift assignments, and the most junior employees were required to work when the union steward was unable to find enough people willing to work at a particular time or in a particular time to fill the employer's needs. 432 U.S. at 66-67, 97 S.Ct. at 2268.

When the plaintiff in Hardison informed his department manager that his religion required that he refrain from working from sunset on Friday until sunset on Saturday, the manager agreed that the union steward should seek a job swap for plaintiff or a change of days off. However, the union was not willing to violate the collective bargaining agreement's

seniority provisions, and plaintiff had insufficient seniority to bid for a shift having Saturdays off. 432 U.S. at 68, 97 S.Ct. at 2269. In addition, the union steward reported that "he was unable to work out scheduling changes and that he understood that no one was willing to swap days with plaintiff." 432 U.S. at 78, 97 S.Ct. at 2273-2274. When the employer and the union were unable to reach an accommodation, plaintiff refused to report for work on Saturdays, and was ultimately discharged for insubordination.

The Court held that because collective bargaining "lies at the core of our national labor policy," which – like the duty to accommodate religious needs – is a matter of statute, the duty to accommodate does not require an employer "to take steps inconsistent with" an otherwise valid collective bargaining agreement. 432 U.S. at 80, 97 S.Ct. at 2274. According to the Court, because there were no volunteers to work Saturdays in place of the plaintiff, to give the plaintiff Saturdays off the employer "would have had to deprive another employee of his shift preference at least in part because he did not adhere to a religion that observed the Saturday Sabbath." 432 U.S. at 81, 97 S.Ct. at 2275. However, the Court concluded,

> Title VII does not contemplate such unequal treatment. The repeated, unequivocal emphasis of both the language and the legislative history of Title VII is on eliminating discrimination in employment, and such discrimination is proscribed when it is directed against majorities as well as minorities. . . . Indeed, the foundation of [plaintiff]'s claim is that [the employer] and [the union] engaged in religious discrimination in violation of § 703(a)(1) [42 U.S.C. § 2000e-2(a)(1)] when they failed to arrange for him to have Saturdays off. It would be anomalous to conclude that by 'reasonable accommodation' Congress meant that an employer must deny the shift and job preference of some employees, as well as deprive them of their contractual rights, in order to accommodate or prefer the religious needs of others, and we conclude that Title VII does not require an employer to go that far.

432 U.S. at 81, 97 S.Ct. at 2275. The Court held that the employer made reasonable efforts to accommodate by leaving to the union steward the task of finding someone who was willing to

work for the plaintiff. 432 U.S. at 77-78, 97 S.Ct. at 2273.

In this case, the evidence clearly shows that Bosch informally discussed with the Union the possibility of allowing Carter to trade shifts with another associate on Fridays, an arrangement which had been in place when Carter worked in the foundry.[2] Indeed, on July 29, 2002, after the machine shop began operating at 100% capacity requiring mandatory overtime but before Carter had been charged with any unexcused absences in that position, Benson James of Bosch's human resource department inquired by e-mail of Sharene Tyler, one of the Union representatives, whether Carter had "sought out another person to make an arrangement similar to the one he had in the foundry." Appendix to EEOC's Supplemental Brief in Opposition, Exhibit 28. According to James, he was following up on a previous conversation with Tyler by asking her whether they might be able to work out an arrangement for Carter to trade shifts, as had been done in the foundry. Id., Exhibit 17 (Deposition of Benson James), at 39-40, 45, 47-49.

However, according to Tyler, the Union steward could not find anyone to work Carter's Saturday overtime. Id., Exhibit 23 (Deposition of Sharene Tyler) ("Tyler Dep."), at 41, 60. Tyler

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[2]This arrangement was memorialized an a "Memorandum of Agreement" ("MOA") signed by all the parties, including the Union, dated March 18, 2002. EEOC's Brief in Opposition, Exhibit 5. Importantly, the MOA placed the obligation on the Union to "designate any voluntary associates" to take Carter's Sabbath shifts, with the specification that the volunteers had to be "qualified to completely perform the duties of the job, as well as Mr. Carter being qualified to completely perform the duties of the job of the other voluntary associate." Id., ¶ 5.

However, by its terms, the MOA only resolved a grievance which Carter had filed while he was still working second shift in the foundry. EEOC's Brief in Opposition, Exhibit 4. According to Andre Holmes, a member of the Union's bargaining committee, both Bosch and the Union agreed that Carter's new job on a different shift in another part of the company's plant (the machine shop) involving mandatory overtime presented a "different" situation, rendering the MOA no longer applicable. Appendix to EEOC's Supplemental Brief in Opposition, Exhibit 21 (Deposition of Andre Holmes), at 32. According to Benson James, the Union was objecting in general to the amount of overtime employees in the machine shop were being required to work on all shifts in the department. Appendix to EEOC's Supplemental Brief in Opposition, Exhibit 17 (Deposition of Benson James), at 77-78.

also testified that Carter even tried to help her to formulate a list of persons who would be willing to work as his Sabbath replacement, but Carter couldn't find anyone who was willing to help him. Id. at 47-49. Tyler further testified that they even attempted to find "out of class" replacements for Carter, but employees did not want to volunteer because they did not like to work for Carter's supervisor, Sandra Nedoba. Id., at 50. Although Carter testified that Union bargaining committee member Andre Holmes told him that "he had a list" of employees who might be willing or able to work (it's not clear which, or if both), Appendix to EEOC's Supplemental Brief in Opposition, Exhibit 18 (Deposition of Jeff Carter), at 131-132, apparently the Union did not itself bother to present this supposedly valid list to Bosch before Carter was fired for missing work on his Sabbath multiple times. Holmes himself testified that he personally never tried to find anyone to work Carter's overtime between July and September, 2002. Id., Exhibit 21 (Deposition of Andre Holmes), at 63.[3]

Carter does state, in his affidavit, that he asked his supervisor, Sandra Nedoba, whether he could "swap shifts with any volunteers," expressly mentioning the MOA that had been negotiated in the foundry. EEOC's Brief in Opposition, Exhibit 2 (Declaration of Jeff Carter), ¶ 10. Carter was not certain of the date of this conversation, stating that it could have occurred

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[3]Holmes' April 14, 2004 testimony is consistent in this regard with his affidavit which the EEOC filed with its original Brief in Opposition. According to Holmes' earlier affidavit, dated January 9, 2004, in which he stated that although the Union "was willing to assist in the development of qualified volunteers from 'out of class'," employees, the Union did not actually produce such a list until after Carter had been fired and the Union was negotiating his return to work, and even then the negotiations pertained to Carter's return to a position *in the foundry*, not the machine shop. EEOC's Brief in Opposition, Exhibit 3 (Declaration of Andre Holmes) ("Holmes Aff."), at 4, ¶s 9-10; see id., Exhibits 30, 31 (Union Proposal and Draft Memorandum of Agreement, respectively, providing for Carter's return to work in the foundry after his discharge). In his affidavit, Holmes confirmed that although the negotiations for Carter's return were for other reasons unsuccessful, "Bosch was willing to accept this list" of volunteers. Holmes Aff. at 4, ¶ 10.

"[i]n late July or early August, 2002[.]" Id. Not surprisingly, Nedoba replied in the negative, and, according to Carter, informed him that "the swapping arrangement [Carter] had in the Foundry will not be allowed in the Machine Shop." Id. However, what is clear is that Nedoba and Carter lacked the authority to directly negotiate with each other to formulate an arrangement for Carter's excusal from Saturday overtime; instead, the company had to negotiate through the Union, as Carter's exclusive bargaining representative. See, e.g., National Labor Relations Bd. v. Allis-Chalmers Mfg. Co., 388 U.S. 175, 180, 87 S.Ct. 2001, 2006 (1967) (national labor policy "extinguishes the individual employee's power to order his own relations with his employer and creates a power vested in the chosen representative to act in the interests of all employees"); Virts v. Consolidated Freightways Corp. of Delaware, 285 F.3d 508, 519 (6th Cir. 2002) (because employees were represented by labor organization, employer was prohibited from direct dealing with employees to solicit voluntary swaps of runs); see also Clarett v. National Football League, 369 F.3d 124, 138 (2d Cir. 2004) (because football players were unionized, labor law prohibited player from negotiating directly the terms and conditions of his employment directly with any potential employer). In any case, what neither the EEOC nor Carter explains is how they could have formulated a list of employees willing to work overtime in the machine shop, when the department was in a 100% capacity situation and overtime was already mandatory for other employees in addition to Carter.

The EEOC at one point dismisses the issue of accommodation through use of volunteers, arguing that "James would not consider allowing the use of the swapping arrangement (volunteer trades) . . . in the machine Shop as an accommodation for Carter." EEOC's Brief in Opposition, at 7. In support of this argument, made in its initial brief filed before the completion of discovery, the EEOC cites to the affidavit of Sharene Tyler, who states, "The Union requested,

but James did not agree, to the institution of volunteer swaps." Id., Exhibit 8 (Declaration of Sharene Tyler), ¶ 2. However, when her deposition was subsequently taken, Tyler admitted that Benson James "said we can get volunteers from out of class." EEOC's Supplemental Brief in Opposition, Exhibit 23 (Deposition of Sharene Tyler) ("Tyler Dep."), at 77. In its Supplemental Brief in Opposition, the EEOC apparently realizes that there is evidence contradicting its earlier position that use of volunteers was denied, for the EEOC argues that "conflicting testimony between Carter and Nedoba raises an issue of fact as to whether Carter was denied the request to trade shifts by his direct supervisor." Id. at 10. However, once again, this evidence of supposed direct discussions between Carter and Nedoba ignores the legal requirement that Bosch negotiate with the Union on the issue of relieving an employee from the burden imposed by the contractual requirement of equalization of overtime.[4]

The EEOC skirts over the issue of the lack of available volunteers to work overtime for Carter in the machine shop – blaming it on the company – and instead focuses its arguments on what it contends was a failure by Bosch to schedule formal negotiations with the Union to discuss the issue of "swapping." EEOC's Supplemental Brief in Opposition, at 11. The EEOC also argues, relying on Tyler's testimony, that James told the Union that "voluntary swapping

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[4]What the EEOC also apparently fails to realize is that the issue of limited shift "swaps" negotiated between employees presented a different question than the procurement of volunteers from a list formulated by the Union and the company. Sharene Tyler testified that these were different practices. Tyler Dep. at 50. There is evidence that Bosch permitted the practice of employees "swapping" shifts with each other; for example, an employee assigned to work a particular time could find another employee to work for him. However, this would have been a week-to-week measure, virtually amounting to no accommodation at all. See Equal Employment Opportunity Comm'n v. Arlington Transit Mix, Inc., 957 F.2d 219, 222 (6th Cir. 1991) (company's adoption of "week-to-week, wait-and-see posture . . . amounted to no accommodation at all"). What Bosch could not do, absent an agreement with the Union, was to simply excuse an employee from working overtime and proceed to require another employee to perform in his co-worker's place.

was not an option and denied her request to negotiate a swapping [agreement] for the Machine Shop." Id. at 12. However, a review of this cited testimony reveals that Tyler admitted that James told her "the union and [Carter] needed to find someone to cover him[.]" Tyler Dep. at 129. If no formal meeting was held on the question, it was because no volunteers were found to work for Carter in the machine shop on his Sabbath. Tyler admitted not only that she instructed the Union steward to make sure that an "out of class" volunteer list was posted, but also that the steward "took the list down and went to each individual that was there." Tyler Dep. at 127-128. It is clear, based on this testimony, that no one was willing to sign the volunteer list to work overtime for Carter on Saturdays in the machine shop. Reply Brief Supporting Bosch's Motion for Summary Judgment, Excerpt from Tyler Dep. at 42-44, 76-77. Under the controlling Supreme Court authority of Hardison, Bosch cannot be held liable because no one was willing to volunteer. 432 U.S. at 81, 97 S.Ct. at 2275.

In its Supplemental Brief in Opposition, the EEOC argues that Bosch should ALSO have initiated formal negotiations with the Union to pursue other options for accommodation, including allowing Carter to use his remaining PAA days. However, even if this could be considered a reasonable accommodation – and there are serious doubts whether it could be, insofar as this would have been a week-to-week measure which would soon be exhausted[5] – Bosch was not required to offer more than one reasonable accommodation.

In sum, the evidence shows that Bosch offered the option of using volunteers to work

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[5]The EEOC does not adequately address why Carter's use of his remaining PAA days would have been a reasonable accommodation if there was still no one either willing or available to work overtime for Carter in the event that he was granted permission to use these PAAs to avoid Saturday overtime. This would have still left Bosch with an absence to fill during those times when mandatory overtime was required to keep the department running at 100% capacity.

overtime for Carter on his Sabbath; that there were no volunteers; and that the use of volunteers is, as a matter of law, a reasonable accommodation, even where the employee's collective bargaining representative cannot find volunteers willing or able to volunteer. Under the circumstances, Bosch is entitled to summary judgment in its favor.

Conclusion

For the foregoing reasons, the court GRANTS the motion for summary judgment. Judgment will be entered accordingly.

So ordered this 21st day of October, 2004.

/s/ Wendell A. Miles
Wendell A. Miles
Senior U.S. District Judge