EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

REGIONAL GUIDELINES

ACCOMMODATION TO EMPLOYEES' RELIGIOUS NEEDS

The Civil Rights Act of 1964, as amended in 1972, prohibits employment discrimination by federal agencies, including the Postal Service, based on religion as well as race, color, sex, age or national origin. 42 U.S.C. 2000e-16. "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 practice without undue hardship on the conduct of the employer's business." 42 U.S.C. 2000e(j). The Civil Service Commission, which has the statutory authority to issue regulations binding on the Postal Service and other federal agencies to enforce the anti-discrimination provisions of 42 U.S.C. 2000e-16, has directed that agencies shall:

> Make reasonable accommodations to the religious needs of applicants and employees, including the needs of those who observe the Sabbath on other than Sunday, when those accommodations can be made (by substitution of another qualified employee, by a grant of leave, a change of a tour of duty, or other means) without undue hardship on the business of the agency. If an agency cannot accommodate an employee or applicant, it has a duty in a complaint arising under this subpart to demonstrate its inability to do so . . .
> (5 C.F.R. 713.204(g))

In seeking to apply this general concept to actual situations, there is no apparent mechanical test for determining the circumstances in which a requested accommodation may properly be rejected because it will create undue hardship on the conduct of Postal Service business. Rather, the exercise of informed judgment on a case-by-case basis seems necessary. Following are some general guidelines which may be of assistance in handling particular situations that may arise.

(1) Determine first whether there is a persuasive basis for

denying the employee's request for accommodation on the ground that it is not the result of an honestly held religious belief. Although this factor would be considered, it must be recognized that, in most instances, there is either no reasonable basis, or probably an inadequate basis, for questioning the genuineness of a particular employee's asserted religious convictions.

(2) Ascertain the precise actions that would be required to accommodate the employee's religious needs. In doing so, consider the broadest range of alternatives. Experience to date has indicated that the majority of the requests for accommodation have involved refusals by employees to work on days they designate as their Sabbath. Other requests have involved, or may involve, such matters as dress (for example, wearing a skullcap or a fez), appearance (for example, having a beard or long hair), refusals to work on religious holidays, or requests to attend religious meetings or conventions. In some circumstances, all that is necessary to accommodate the employee is the waiver of a relatively minor uniform regulation or a slight shift in scheduled hours. In other circumstances, thought must be given to more radical alternatives, such as shifting the employee to another tour, another job, or even another installation. The mere fact that such shifts ordinarily have not been permitted is not a sufficient reason to reject that type of action summarily, particularly where it will suffice to accommodate an employee's religious beliefs

The critical question is whether there is any rational basis for making accommodation possible, and that question must be answered with reference to the Postal Service as a whole and not merely upon consideration of a particular installation. Thus, if a small installation is unable to accommodate the religious needs of a Sabbatarian, but a much larger neighboring installation can, the Postal Service will not be excused from its duty to accommodate merely because the local installation head did not have independent authority to effect a transfer. The matter must be brought to the attention of those officials at the appropriate management level who have such authority. In short, where an accommodation cannot be made at the installation level, it is essential that reasonable efforts to accommodate the employee be undertaken at the sectional center, district, and regional levels.

(3) If an accommodation cannot be worked out by local and regional officials which satisfies the employee, the reasons therefore are to be clearly established and documented. The relevant case file should contain copies of all correspondence and memoranda of all discussions with the employee which were involved in the effort to reach a satisfactory understanding. The file should state, in detail and with precision, the

reasons why the accommodation requested by the employee would create "undue hardship on the business of the agency." In this regard, mere inconvenience will not be deemed to satisfy the "undue hardship" test. Indeed, any accommodation is likely to cause some inconvenience to the employer and create a degree of resentment among other employees. Therefore the showing of more substantial adverse impact must be made in order to provide reasonable support for a refusal to accommodate.

(4) Where the primary bar to accommodating an employee is a Postal Service regulation or the provisions of a collective bargaining agreement, consideration should be given to obtaining a waiver of the regulation from the appropriate higher level postal authority or a waiver of the collective bargaining provision from the appropriate union officials. Although local union officials should be consulted as to their views regarding a possible waiver, no final commitment should be made without approval of the Regional Director, Employee and Labor Relations. Requests for such approval should be included in the memorandum report required by item (6) below.

The most difficult situations to resolve will likely be those in which waiver of a regulation or the provisions of a collective bargaining agreement would have an adverse impact on other employees, as, for example, by infringing on their seniority rights. The law is still unsettled as to whether adverse affect on the seniority rights of other employees provide an employer with a substantial and demonstrable basis for refusing to accommodate an employee's religious needs. The Supreme Court has agreed to review a case which presents that issue - TWA v. Hardison, 45 L. Week 3359 (Nov. 15, 1976) - but a decision is still some months away. However, in the case of Parker Seal Co. v. Cummins, 45 L. Week 4009 (Nov. 2, 1976), the Supreme Court has left in affect, for the present, an opinion by the U. S. Court of Appeals for the Sixth Circuit which held that a company violated Title VII of the 1964 Civil Rights Act, as amended, by discharging a foreman who refused to work on Saturday because of his religious convictions. The company had argued that it had accommodated the foreman until other employees complained about the extra burden such accommodation had imposed on them, and that it had discontinued its practice of permitting the foreman to avoid Saturday work only as a result of those complaints. The Court of Appeals concluded, however, that complaints by other employees were not a sufficient basis to relieve the company of its obligations to accommodate. On review, the Supreme Court affirmed the Sixth Circuit, but did so by a 4-4 vote and without written opinion. Justice Stevens, who had disqualified himself from participating in the Parker Seal case because of a prior

connection with one of the parties, presumably will participate in the Hardison case, which, hopefully, will produce a clear majority view to clarify the issue.

(5) In order to comply with the Privacy Act, 5 U.S.C. Section 552a(e)(7), when an employee requests an accommodation, the local official should secure a statement authorizing the Postal Service to maintain those records that are reasonably required. For example, such a statement might read:

> Recognizing the provision contained in the Privacy Act, 5 U.S.C. Section 552a(e)(7), which with certain exceptions, prohibits any records from being maintained describing how any individual exercises First Amendment rights, I hereby expressly authorize the Postal Service to maintain whatever records shall be reasonably required to accommodate my religious beliefs.

(6) Report, by memorandum, to the Director, Office of Equal Employment Opportunity, all requests for religious accommodation. The memorandum should state the nature of the request, the efforts made to achieve an accommodation, and, either the nature of the accommodation arrived at, or the reasons why a satisfactory accommodation could not be arrived at. Such information should permit Headquarters Employee and Labor Relations to assess the scope of the problem and provide specific guidance as needed.

M Y Conway 5/9/77 54A

ACCOMMODATION TO EMPLOYEES' RELIGIOUS NEEDS

The Civil Rights Act of 1964, as amended in 1972, and various Court decisions to date, places certain obligations on an Employer to reasonably accommodate an employee's or prospective employee's religious belief, provided there is no undue hardship on the conduct of the Employer's business. The law is still unsettled as to precisely what an Employer must do in order to fulfill its obligation to "reasonably accommodate an employee's request." In light of this and the extremely complex legal issues involved, when an employee or applicant for employment asserts his or her religious beliefs and this precludes him or her from working at any particular time, the installation head should, through appropriate channels, immediately request the advice of the Regional Director for Employee and Labor Relations. No action should be taken on the employee's or prospective employee's request without direction from the Region.

Employee Relations Department

ATTACHMENT #6

(2) SENIORITY CANNOT BE IGNORED TO ACCOMMODATE RELIGIOUS OBSERVANCES. ACCOMMODATIONS CAN BE MADE BUT NOT INCONSISTENT WITH CONTRACT.

Since the publication of Postal Bulletin, May 19, 1977, the Supreme Court has issued an opinion interpreting the Civil Rights Act of 1964, as amended. This decision clarifies the problem covered by the Postal Bulletin.

The Supreme Court on June 16, 1977, in a case, which has come to be known as the Hardison case, decided that where an employer had entered into a collective bargaining contract containing seniority provisions, the seniority provisions would prevail. Hardison was a member of a religious organization known as the Worldwide Church of God. One of the tenets of that religion is that one must observe Sabbath by refraining from performing any work from sunset on Friday until sunset on Saturday (the religion also proscribes work on certain specified religious holidays). Hardison refused an assignment to work on Saturdays. He was employed by TWA which had a collective bargaining agreement with the Machinists. Section 703a(1) of the Civil Rights Act of 1964, Title VII, 42 U.S.C. 2000e 2(a)(1) makes it an unlawful employment practice for an employer to discriminate against an employee, or a prospective employee, on the basis of his or her religion. The Act itself also provides that an employer short of "undue hardship" make "reasonable accommodations" to the religious needs of its employees. The issue in this case was to determine the extent of the employer's obligation to accommodate an employee whose religious beliefs prohibited him from working on Saturdays where there existed a collective bargaining agreement which included seniority provisions.

The Court spelled out its interpretation quite clearly in the following language:

> "Hardison and the EEOC insist that the statutory obligation to accommodate religious needs takes precedence over both the collective bargaining contract and the seniority rights of TWA's other employees. We agree that neither a collective bargaining contract nor a seniority system may be employed to violate the statute, but we do not believe that the duty to accommodate requires TWA to take steps inconsistent with the otherwise valid agreement. Collective bargaining, aimed at effecting workable and enforceable agreements between management and labor, lies at the core of our national labor policy, and seniority provisions are universally included in these contracts. Without a clear and express indication from Congress, we cannot agree with Hardison and the EEOC that an agreed-upon seniority system must give way when necessary to accommodate religious observances."

How will this decision affect the APWU? The answer now is clear. The seniority provisions of the collective bargaining agreement would prevail.

Donald M. Murtha