



**STATE OF NEW JERSEY**

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of S.S., Green Brook  
Regional Center, Department of  
Human Services

Discrimination Appeal

CSC Docket No. 2016-2610

**ISSUED: FEBRUARY 14, 2020** (HS)

S.S., a Crew Supervisor Building Maintenance Workers<sup>1</sup> with Green Brook Regional Center (GBRC), Department of Human Services, appeals the determination of the Assistant Commissioner, which found that the appellant failed to present sufficient evidence to support a finding that he had been subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

The appellant, then serving in the title of Residential Services Worker, filed a complaint with the Office of Equal Employment Opportunity (EEO) in August 2015 alleging discrimination based on religion.<sup>2</sup> Specifically, he reported that GBRC subjected him to disparate treatment in his request for Sundays off as a religious accommodation. In response, the EEO conducted an investigation, during which more than 20 documents were reviewed, and found that GBRC denied the request because it would have violated the provisions of the International Federation of Professional and Technical Engineers (IFPTE) contract. Accordingly, the EEO did not substantiate a violation of the State Policy.

On appeal to the Civil Service Commission (Commission), the appellant claims that the changes to the IFPTE contract occurred several months after his January 2015 request for a religious accommodation was submitted and that

<sup>1</sup> The appellant was appointed to this title effective December 24, 2016.

<sup>2</sup> Additionally, the appellant filed a grievance in August 2015 alleging discrimination based on religion. He further filed a discrimination complaint in October 2015 with the United States Equal Employment Opportunity Commission alleging religious discrimination, which was dismissed.

because of his union position, GBRC purposely delayed meeting with him or making a determination on his request until December 2015 to ensure that the new IFPTE contract provisions were in effect in order to justify denial of his request. Prior to January 2015, according to the appellant, he had always had Saturdays and Sundays or only Sundays off. He states that GBRC asked him in or about February or March 2015 to provide documents to supplement his request, which he provided. The appellant states that from the date of submission of his request to the dates of filing of his EEO complaint and grievance, no one at GBRC met with him, despite countless requests, to discuss how a religious accommodation could be made or how providing a religious accommodation would create an undue hardship. The appellant claims that during that time, calls to the Human Resources (HR) Office were met with broken promises to discuss the matter. The appellant states that in or about July or August 2015, the provisions of the IFPTE contract were changed without the input or vote of the union members in response to a request from GBRC to permanently change the work schedule for IFPTE employees. He states that the changes to the contract now require less senior employees to work every weekend, which has never been required of any IFPTE employee for as long as the appellant has worked at GBRC and, to the best of his knowledge, even before. The appellant argues that it is notable that GBRC's request was made after there had been several contentious meetings between himself in his union capacity and management to provide adequate staffing during each shift. He requests that the Commission compel production of the documents reviewed by the EEO and maintains that his request for a religious accommodation should be granted.

In response, the EEO maintains that its investigation did not reveal that any changes were made to the IFPTE contract either before or after the appellant submitted his accommodation request. Rather, the investigation revealed that in order to eliminate unequal staffing patterns and excessive overtime, GBRC and the unions collaborated to develop a balanced schedule based on the existing provisions of the IFPTE contract, specifically Article 9, concerning seniority, and Appendix 1, "Transfer, Reassignment and Shift or Schedule Changes," which references job classification seniority of employees requesting shift or schedule changes. According to the EEO, GBRC called in employees by seniority to choose a schedule of days off. Since the appellant was the least senior of all employees on the evening shift in the Housekeeping Department, his assigned days off were Tuesday and Wednesday. The EEO also contends that the appellant was aware of GBRC's staffing issues since, in his appeal, he references his meetings with management about adequate staffing. The EEO maintains that the appellant submitted no evidence, and the investigation did not reveal, that his union position was a determining factor in the delay of his accommodation request. Rather, the investigation revealed there were other religious accommodation requests that were also under review as GBRC was attempting to resolve its fiscal and operational issues.

The EEO states that the investigation revealed that the HR Manager met with the appellant on December 7, 2015 to discuss his request for Sundays off for religious observance and alternative accommodations. The appellant was informed that all opportunities for days-off changes must be posted in accordance with the IFPTE contract and would be awarded to the most senior employee who applies. The HR Manager informed him that GBRC could not approve his request for Sundays off since days off for religious observance cannot supersede the IFPTE contract. The EEO explains that under the New Jersey Law Against Discrimination (LAD), an employer is required to make a bona fide effort to accommodate an employee's religious observance unless such accommodation would incur an undue hardship for the employer. In the appellant's case, GBRC could not approve his preferred accommodation without violating the IFPTE contract and creating undue hardship for itself. The appellant's request for an accommodation of every Sunday off until retirement would have superseded the IFPTE contract and would have required GBRC to violate the seniority provision found therein in order to accommodate him, depriving other IFPTE employees with more seniority of their rights under the IFPTE contract. GBRC's violation of the seniority provision or a violation of any of the provisions of the IFPTE contract, according to the EEO, would constitute undue hardship under the LAD. The EEO also maintains that the documents it reviewed should not be released in this case to preserve their confidentiality.

In reply, the appellant contends that the EEO's response should be considered untimely and disregarded. Turning to the merits, the appellant contends that considering the significant amount of time that elapsed between his request for a religious accommodation and GBRC's determination, it can reasonably be inferred that he was discriminated against based on his religion. In addition, the appellant reiterates his claim that changes were made to the IFPTE contract based on GBRC's request to revise the schedules of IFPTE employees to address operational needs. However, the appellant further contends that it is of no consequence whether the provisions of the IFPTE contract were modified or not because the provisions of the LAD and/or Title VII of the federal Civil Rights Act of 1964 (Title VII) supersede the provisions of any union contract. In the appellant's view, this conclusion is supported in part based on the inherent meaning of a "religious accommodation" as a convenient arrangement, settlement or compromise that eliminates the conflict between the employee's work obligations and religious beliefs and practices. The appellant argues that he was not merely requesting a shift or schedule change but rather was requesting an accommodation so that he could observe his Sabbath. In the appellant's view, short of a demonstration of undue hardship by GBRC identified by an actual monetary or administrative expense, a reasonable religious accommodation should have been granted.

The appellant maintains that the agreement to change the work schedule according to seniority was made long after he requested a religious accommodation

and for several months prior to the appellant being assigned Tuesday and Wednesday as his days off, he and other IFPTE employees worked a one-weekend-on, one-weekend-off schedule. He states that contrary to countless requests to hire more permanent employees to adequately staff each shift, GBRC has employed and continues to employ Temporary Employment Service (TES) employees with less seniority than the IFPTE employees who work primarily Monday through Friday with weekends and holidays off until they have reached 944 hours, at which time they are let go. According to the appellant, despite GBRC's changes to the shift schedule, the fiscal and operational needs of GBRC have not been resolved because each shift is still understaffed, requiring IFPTE employees to work significant overtime hours under arduous conditions. The appellant argues that it is notable that GBRC's stated reasons for hiring TES employees was to have them work primarily on weekends and holidays to assure adequate staffing on each shift and reduce overtime.

In reply, the EEO states that the delay in its response to the appellant's appeal was reasonable in that it received additional relevant evidence in the course of responding to the appeal, which required time for review and incorporation into its response. Therefore, the EEO requests that the Commission accept its response. Turning to the merits, the EEO argues that the appellant's claim that GBRC's delay in making a determination on his request for a religious accommodation is evidence of discrimination is not dispositive. It states that the investigation revealed that in or about April 2015, the appellant was among several employees scheduled to meet with the HR Manager to discuss their respective pending religious accommodation requests and other employment issues. At that time, GBRC was collaborating with the unions on developing employee schedules to balance GBRC's staffing, operational and overtime concerns. However, the appellant informed the HR Office that he was unable to attend the scheduled appointment on April 24, 2015 because he would be off work on that date, and, according to the EEO, there is no evidence that the appellant requested an alternate meeting date. Therefore, the EEO maintains that the appellant has not met his burden of proof that GBRC subjected him to discriminatory treatment by delaying the determination of his accommodation request.

The EEO reiterates that its investigation did not reveal that any changes were made to the IFPTE contract. The investigation revealed that GBRC determined that its fiscal and operational concerns resulted, in part, from having too many employees assigned the same days off. Thus, to resolve those issues, GBRC collaborated with the unions to revise and develop balanced staffing schedules based on the existing seniority provisions of the IFPTE contract. However, the revision of the employee staffing schedules did not constitute a change to, or violation of, the existing provisions of the contract and was necessary to address GBRC's staffing and overtime concerns in a legitimate non-discriminatory manner. The EEO maintains that under the LAD and Title VII, while GBRC is

required to reasonably accommodate employees' sincerely held religious observance or practice, it is not required to grant an accommodation that would pose undue hardship on its business. *See e.g., N.J.S.A. 10:5-12q.*<sup>3</sup> The investigation revealed that during the process of balancing the staffing schedules, GBRC met with the staff, in order of seniority, to select their regular days off. Most senior staff selected the more preferred days of Friday and Saturday or Sunday and Monday as their days off. However, since the appellant had the least seniority of his evening shift, his assigned days off were Tuesday and Wednesday. The EEO maintains that the appellant had an opportunity to apply for an opening/day off that would not require him to work on his Sabbath.

The EEO maintains that the appellant's contention that the agreement to change the work schedules based on seniority was made after he requested a religious accommodation does not support his claim of religion-based discrimination. The investigation revealed that once GBRC and the respective unions agreed to assign days off by seniority, the every-other-weekend-off schedule was eliminated. In addition, all previously approved religious accommodations, as well as pending requests for religious accommodations, were reviewed according to the same legitimate non-discriminatory seniority standard in determining employees' days off. Therefore, according to the EEO, even if GBRC had approved the appellant's request in January 2015 for Sundays off, his religious accommodation would have been rescinded during the revision of the days-off schedule, and it is unlikely that his day off would have been Sunday since he had the least seniority of his unit.

In reply, the appellant claims that other employees, who had religious accommodation at the time of his request, were not made to wait several months before their requests were considered and/or granted. He maintains that the EEO failed to consider the past practices of GBRC in considering said requests for religious accommodation. With respect to his inability to attend the scheduled April 24, 2015 meeting, the appellant maintains that he did make attempts to reschedule but was unsuccessful. Although the appellant now concedes that no changes were made to the IFPTE contract, he asserts that the union never agreed with GBRC to assign employees days off according to seniority and that the decision to assign days off based on seniority is not a provision of the contract but was a unilateral decision by GBRC. The appellant also claims that GBRC has not implemented a schedule he proposed to management. The appellant asserts that GBRC did not meet with staff

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<sup>3</sup> *N.J.S.A. 10:5-12q(3)(a)* provides that for purposes of a reasonable accommodation of an employee's religious observance or practice, "undue hardship" means:

an accommodation requiring unreasonable expense or difficulty, unreasonable interference with the safe or efficient operation of the workplace or a violation of a bona fide seniority system or a violation of any provision of a bona fide collective bargaining agreement.

to select their regular days off but rather unilaterally decided to modify the work schedule and that there was no opportunity to apply for a day-off change. The appellant claims that GBRC never asserted in correspondence to him that there would be an undue hardship if his request were granted. He contends that a review of the IFPTE contract revealed no language requiring the shifts of employees to be determined based on seniority. The appellant argues that if GBRC were truly trying to address its operational needs in good faith, it would have provided for more employees to be working on Tuesdays and Thursdays rather than eliminating the every-other-weekend-off schedule, revoking and denying religious accommodations based on schedule revisions and implementing a new schedule that the appellant maintains does not resolve the asserted operational problems.

In reply, the EEO states that its investigation revealed that in approximately February 2015, GBRC developed a balanced schedule, subject to the Chief Executive Officer's approval, to address its fiscal and operational issues and planned to meet with employees in seniority order to review regular days off availability based on the balanced schedule. By that time, GBRC had determined the seniority status of the Housekeeping employees, and the appellant had the least seniority of his unit. The EEO states that GBRC scheduled the appellant, along with other employees, to meet with HR personnel on April 24, 2015 to review their religious accommodation requests and other employment matters. However, the appellant informed HR personnel that he was unable to attend the scheduled appointment. Nevertheless, the EEO maintains, given that the schedule changes were based on seniority, the appellant does not indicate how a meeting with GBRC would have identified a reasonable religious accommodation of "every Sunday to retirement" for him as the employee with the least seniority of his unit. Furthermore, the EEO contends that since GBRC assigned days off according to seniority as provided for in the IFPTE contract, the contract has precedence over GBRC's past practices for religious accommodations. Therefore, the EEO maintains that it was not required to investigate GBRC's past practices that were superseded by the contract.

The EEO maintains that the appellant's assertions that days off by seniority is not a provision of the IFPTE contract are not factual. In this regard, the EEO notes that it previously specifically referred to Article 9 and Appendix 1 of the contract, which permitted GBRC to make employee schedule changes based on seniority. As such, GBRC assigned employee days off in accordance with provisions of the contract, which was not a unilateral decision by GBRC to modify employee work schedules. Furthermore, the EEO states that its investigation revealed that union representatives worked with GBRC to ensure that the schedule changes were made according to seniority. In addition, the EEO maintains that GBRC was under no obligation to implement proposed new schedules submitted to GBRC by the appellant and other union personnel. Additionally, the EEO states that on December 7, 2015, GBRC discussed with the appellant, and noted in his denial

letter of the same date, that his request for days off for religious observance could not supersede the IFPTE contract and, therefore, his requests for Sundays off could not be approved. Although GBRC's letter did not plainly state that approving his request for religious accommodation would incur undue hardship, it informed him that his request for days off for religious observance could not supersede the IFPTE contract, which, in the EEO's view, is undue hardship in essence.

It is noted that GBRC has advised that the appellant's current days off are Sunday and Monday.

## CONCLUSION

Initially, it is noted that the appellant contends that the EEO provided an untimely response. However, there is no jurisdictional statutory timeline within which a party is required to respond to an appeal. *See e.g., In the Matter of Michael Compton* (MSB, decided May 18, 2005). In addition, in order for the Commission to make a reasoned decision in a matter, it must review a complete record. *See e.g., In the Matter of James Burke* (MSB, decided June 22, 2005). Moreover, the appellant had the opportunity to reply. As such, there is no basis to disregard the EEO's response.

It is also noted that the appellant has requested access to the documents reviewed by the EEO in relation to the instant matter. In light of the detailed submissions received from the parties, particularly the thorough and detailed summary of the investigation provided by the EEO in the course of responding to this appeal, the Commission does not find it necessary to compel production of the documents in this matter. The Commission is satisfied that the appellant has had a full opportunity to present evidence and arguments on his behalf, and the Commission has a complete record before it upon which to render a fair decision on the merits of the appellant's complaint. *See In the Matter of Juliann LoStocco, Department of Law and Public Safety*, Docket No. A-0702-03T5 (App. Div. October 17, 2005); *In the Matter of Salvatore Maggio* (MSB, decided March 24, 2004).

It is a violation of the State Policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories. *See N.J.A.C. 4A:7-3.1(a)3*. The protected categories include race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability. *See N.J.A.C. 4A:7-3.1(a)*. The State Policy is a zero tolerance policy. *See N.J.A.C. 4A:7-3.1(a)*. Moreover, the appellant shall have the burden of proof in all discrimination appeals. *See N.J.A.C. 4A:7-3.2(m)4*.

The Commission has conducted a review of the record in this matter and finds that an adequate investigation was conducted and that the investigation failed to establish that the appellant was discriminated against in violation of the State Policy. The EEO appropriately analyzed the available documents in investigating the appellant's complaint and concluded that there was no violation of the State Policy based on the appellant's religion. On appeal, the appellant argues that the amount of time GBRC took to render a decision on his request for a religious accommodation, in itself, is evidence of religious discrimination and that other employees had their accommodation requests handled in a more expeditious fashion. The Commission is not persuaded. Nothing in the record would suggest that GBRC delayed a decision on the appellant's request out of a religious animus. In fact, the record reflects that at the time the appellant's request was pending, GBRC was in the process of attempting to resolve its operational issues and a meeting with the appellant was scheduled to discuss his request. The Commission cannot simply infer religious discrimination based on the time that elapsed between the request and the decision or the manner in which GBRC allegedly handled the accommodation requests of other unnamed employees, without more. As such, the EEO appropriately concluded that the delay in rendering the decision was not dispositive. Further, GBRC's ultimate decision on the appellant's request, that it could not grant the appellant Sundays off as a religious accommodation, was likewise not borne of religious animus. While the Commission should have been provided with the actual standards for a consideration of the appellant's accommodation, the appellant has provided no evidence that GBRC's refusal of an accommodation was incorrect. The appellant's allegation that GBRC's operational issues still have not been resolved despite the schedule changes effected, even if true, does not change the fact that the schedule changes and the denial of the appellant's request were based upon legitimate, non-discriminatory reasons. Although the appellant takes issue with the relative number of permanent and TES employees GBRC has allegedly appointed and how it allegedly utilizes TES employees, he has not provided any evidence that the appointing authority has exercised its discretion in these matters in a religiously discriminatory manner. Moreover, the appellant's days off subsequently changed to Sunday and Monday. Accordingly, the investigation was thorough and impartial, and no substantive basis to disturb the EEO's determination has been presented.<sup>4</sup>

### **ORDER**

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

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<sup>4</sup> While the appellant has suggested in this appeal that the LAD and Title VII have been violated, the Commission must note that it has no jurisdiction to enforce these statutes.



DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 12<sup>TH</sup> DAY OF FEBRUARY, 2020



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