Masthead Logo

DePaul Law Review

Volume 46
Issue 4 *Summer 1997: Symposium - Individual Rights and Reasonable Accommodations under the Americans with Disabilities Act*

Article 8

Eckles v. Consolidated Rail Corp.: Reconciling the ADA with Collective Bargaining Agreements: Is This the Correct Approach?

Condon A. McGlothlen

Gary N. Savine

ECKLES V. CONSOLIDATED RAIL CORP.: RECONCILING THE ADA WITH COLLECTIVE BARGAINING AGREEMENTS: IS THIS THE CORRECT APPROACH?

Condon A. McGlothlen and Gary N. Savine***

INTRODUCTION

The Americans with Disabilities Act ("ADA" or "the Act") was enacted on July 26, 1990, with Title I of the Act taking effect on July 26, 1992.[1] Among the duties imposed on employers and unions by Title I is the duty to provide "reasonable accommodation" to qualified individuals with a disability.[2] The term "reasonable accommodation" is statutorily defined to include:

> (a) making existing facilities used by employees readily accessible to and useable by individuals with disabilities; and
> (b) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.[3]

Since the ADA's enactment, debate has persisted over whether the Act may require an employer to take action contrary to the terms of a collective bargaining agreement in order to provide reasonable accommodation.[4] The statute does not clearly answer this question.

---

* Partner, Seyfarth, Shaw, Fairweather & Geraldson, Chicago, Illinois; B.A., University of Kentucky (1984); J.D., University of Wisconsin-Madison (1987).

This Article is based on a presentation given by Condon McGlothlen on January 31, 1997, at *DePaul Law Review*'s Symposium entitled *Individual Rights and Reasonable Accommodations Under the Americans with Disabilities Act.*

** Associate, Seyfarth, Shaw, Fairweather & Geraldson, Chicago, Illinois; B.A., James Madison College at Michigan State University (1993); J.D., University of Michigan (1996).

1. 42 U.S.C. §§ 12101-12213 (1994). Title I contains the ADA employment provisions. Title II covers state and local governments. Title III contains public accommodation provisions. Title IV contains miscellaneous provisions. This Article focuses on Title I.

2. 42 U.S.C. § 12112(b)(5)(A).

3. *Id.* § 12111(9).

4. *See, e.g.*, Mary K. O'Melveny, *The Americans with Disabilities Act and Collective Bargaining Agreements: Reasonable Accommodation or Irreconcilable Conflicts?*, 82 KY. L.J. 219 (1993-94); Eric H.J. Stahlhut, *Playing the Trump Card: May an Employer Refuse To Reasonably Accommodate under the ADA by Claiming a Collective Bargaining Obligation?*, 9 LAB. LAW. 71

Section 12112(b)(2) of the Act simply states that it is unlawful to "participat[e] in a contractual or other arrangement or relationship that has the effect of subjecting a[n] . . . applicant or employee with a disability to . . . discrimination."[5] While this provision obviously prohibits an employer and union from entering into a collective bargaining agreement which, for instance, restricts the hiring of persons with AIDS or requires that individuals with mental disorders be paid less than other workers, it does not answer the question of whether an employer or union may be required to abridge the collectively bargained seniority rights of other workers in order to accommodate persons with disabilities.

The resultant uncertainty is troublesome for both unions and employers. Unions may fear that employers will use their duty to accommodate under the ADA in order to circumvent their obligations under a collective bargaining agreement. Employers, on the other hand, may worry that if they rely on collective bargaining agreement provisions as a defense to an employee's request for reasonable accommodations, they could subject themselves to liability under the ADA. In other words, the ADA can put both unions and employers in a difficult position because the duty to accommodate sometimes implicates not only the rights of persons with disabilities, but also the balance between those rights and the rights of other bargaining unit employees who are collectively represented by a union.

This Article focuses on the Seventh Circuit's attempt in *Eckles v. Consolidated Rail Corp.*[6] to reconcile the tension between the ADA and collective bargaining agreements negotiated pursuant to the National Labor Relations Act.[7] Part I examines how courts approached the issue prior to *Eckles*. Part II discusses the holding in *Eckles* and how the Seventh Circuit reached its conclusion. Finally, Part III critiques the Seventh Circuit's analysis in *Eckles* and discusses issues raised by the decision.

I. THE APPROACH TAKEN BY OTHER CIRCUITS

Prior to *Eckles*, few courts had spoken directly on whether an employer's duty to provide a "reasonable accommodation" under the ADA could trump the collectively bargained seniority rights of other

(1993); Joanne Jocha Ervin, *Reasonable Accommodation and the Collective Bargaining Agreement Under the Americans with Disabilities Act of 1990*, 1991 DET. C.L. L. REV. 925.

5. 42 U.S.C. § 12112(b)(2).

6. 94 F.3d 1041 (7th Cir. 1996), *cert. denied*, 65 U.S.L.W. 3647 (U.S. Mar. 21, 1997) (No. 96-7525).

7. 29 U.S.C. §§ 151-169 (1994).

workers. Most courts which had addressed the general topic of individual versus collective rights had done so in the nonunion setting or in dictum, and typically in a superficial, conclusory manner. Thus, when the Seventh Circuit was squarely presented with the issue in the collective bargaining context of *Eckles*, case law from other circuits provided minimal guidance.

The Eighth Circuit, for instance, addressed the tension between the ADA and collectively bargained rights in two cases.[8] In neither case was the court's analysis in this regard essential to its holding. In *Wooten v. Farmland Foods*,[9] the court declared that an employer is not required to make accommodations that would violate the rights of other employees.[10] More specifically, the court stated that the employer, Farmland Foods, did not have to breach the collective bargaining agreement or fire other employees in order to transfer the plaintiff to a light-duty position compatible with his doctor-prescribed work restrictions.[11] The court, however, did not explain why it read the duty to accommodate under the ADA to be limited by the rights of other employees. Furthermore, it reached the "accommodation" issue *after* having concluded that the plaintiff was not "disabled" within the meaning of the ADA.[12] Consequently, the court's discussion of what is required of an employer in terms of reasonable accommodation was not essential to its holding because the employer had no duty to accommodate the nondisabled plaintiff.[13]

Similarly, in *Benson v. Northwest Airlines, Inc.*,[14] the Eighth Circuit stated that the employer was not required to assign the plaintiff to a specific position where the assignment would have violated the collectively bargained seniority rights of more senior workers.[15] Moreover, the court stated that if a "vacant" position existed for which the plaintiff was qualified, the plaintiff's right to transfer to that position as a reasonable accommodation would still be subject to collective bar-

8. *See* Benson v. Northwest Airlines, Inc., 62 F.3d 1108 (8th Cir. 1995); Wooten v. Farmland Foods, 58 F.3d 382 (8th Cir. 1995).

9. 58 F.3d 382 (8th Cir. 1995).

10. *Id.* at 386.

11. *Id.* The plaintiff in *Wooten*, a ham boner, alleged that bilateral carpal tunnel syndrome restricted him to light-duty work involving no meat products and no work in a cold environment. *Id.* at 384. His employer maintained that it could not accommodate him with light-duty work compatible with his physical restrictions because all of its light-duty positions were filled and it would not fire other employees to make light-duty work available to him. *Id.*

12. *Id.* at 386.

13. *Id.* at 385-86.

14. 62 F.3d 1108 (8th Cir. 1995).

15. *Id.* at 1114.

gaining agreement limitations.[16] Once again, however, the court's accommodation discussion was cursory dictum because the main issue presented was the factual question of whether a vacant position existed to which the employer could have transferred the plaintiff.[17] Finding a genuine issue of fact in this regard, the Eighth Circuit remanded the case to the district court.[18]

The Fifth Circuit explored the tension between individual and collective rights in two cases arising in the nonunion context.[19] In *Daugherty v. City of El Paso*,[20] the court rejected the plaintiff's argument that his disability entitled him to transfer to a specific position in contravention of a city charter which required that transfer priority be given to full-time employees.[21] In holding that the city did not violate the ADA by denying the transfer, the court made the following noteworthy comment:

> [W]e do not read the ADA as requiring affirmative action in favor of individuals with disabilities, in the sense of requiring that disabled persons be given priority in hiring or reassignment over those who are not disabled. It prohibits employment discrimination against qualified individuals with disabilities, no more and no less.[22]

Thus, the court expressly recognized, even in the nonunion setting, that the rights of other workers may sometimes circumscribe the duty under the ADA to provide reasonable accommodation.

Similarly, in *Turco v. Hoechst Celanese Corp.*,[23] a case involving facts similar to those in *Daugherty*, the Fifth Circuit again recognized the rights of other nonunion workers in defining the scope of an employer's duty to reasonably accommodate a plaintiff's disability.[24] Specifically, the court held that the employer was not required to change the plaintiff's schedule from a rotating shift to a regular day

16. *Id.* The plaintiff in *Benson*, a mechanic, had been diagnosed with a rare neurological disorder that restricted his ability to perform tasks involving extensive and repetitive use of his left arm and shoulder. *Id.* at 1110-11. The plaintiff attempted to transfer into another position that fit his physical abilities but was refused transfer and was subsequently terminated. *Id.* The court's opinion does not make clear whether the transfer was prohibited by a contract provision which prohibited bumping of more senior workers or by a more general seniority provision.

17. *Id.* at 1114-15.

18. *Id.* at 1115.

19. *See* Daugherty v. City of El Paso, 56 F.3d 695 (5th Cir. 1995); Turco v. Hoechst Celanese Corp., 101 F.3d 1090 (5th Cir. 1996) (per curiam).

20. 56 F.3d 695 (5th Cir. 1995).

21. *Id.* at 699-700. The plaintiff in *Daugherty* was a public bus driver who suffered from an insulin-dependent diabetic condition. *Id.* at 696. Because the Department of Transportation regulations prohibited diabetics from operating buses, the City relieved him of his duties. *Id.*

22. *Id.* at 700.

23. 101 F.3d 1090 (5th Cir. 1996) (per curiam).

24. *Id.* at 1094.

shift because to do so would place a heavier burden on other employees occupying similar positions.[25] Moreover, in refusing to require the employer to accommodate the plaintiff by creating a light-duty position compatible with his work restrictions, the court stated: "The law does not require affirmative action in favor of individuals with disabilities. It merely prohibits employment discrimination against qualified individuals with disabilities, no more and no less."[26]

Prior to *Eckles*, only the Tenth Circuit had squarely held that the duty to provide reasonable accommodation under the ADA does not trump the collectively bargained seniority rights of other workers. In *Milton v. Scrivner, Inc.*,[27] the plaintiffs suffered from various on-the-job injuries which prevented them from meeting the employer's new production standards.[28] They argued that the employer was required to accommodate them with reduced production standards, lighter work loads, or the opportunity to bid on other jobs within the company.[29] The court rejected the plaintiffs' arguments, specifically finding that the applicable collective bargaining agreement precluded the plaintiffs from transferring to any other job because they lacked the requisite seniority.[30] Unfortunately, the Tenth Circuit did not make clear why it read the accommodation duty to be limited by the collectively bargained seniority rights of others.

II. THE SEVENTH CIRCUIT'S APPROACH—*ECKLES V. CONSOLIDATED RAIL CORP.*

The facts in *Eckles* bear detailing. Terry Eckles began working for the Consolidated Rail Corporation ("Conrail") in 1992 as a yardmaster at its rail yard in Avon, Indiana.[31] He was covered by a collective bargaining agreement between Conrail and the United Transportation Union ("Union").[32] Eckles' "position required him to work varying shifts, including the third shift (11:00 p.m. to 7:00 a.m.), and to work in a tower office that could be accessed only by climbing two to three

25. *Id.* The plaintiff in *Turco* was a chemical process operator who suffered from an insulin-dependent diabetic condition. *Id.* at 1091. Like the plaintiff in *Daugherty*, Turco was terminated because his condition made it difficult for him to concentrate on his work, which posed a danger to both the plaintiff and his co-workers. *Id.* at 1092.

26. *Id.* at 1094 (quoting *Daugherty*, 56 F.3d at 700).

27. 53 F.3d 1118 (10th Cir. 1995).

28. *Id.* at 1120.

29. *Id.* at 1124.

30. *Id.* at 1124-25.

31. Eckles v. Consolidated Rail Corp., 94 F.3d 1041, 1043 (7th Cir. 1996), *cert. denied*, 65 U.S.L.W. 3647 (U.S. Mar. 21, 1997) (No. 96-7525).

32. *Id.*

flights of open, outdoor, metal stairs."[33] In May 1992, after having experienced a seizure, Eckles was diagnosed with epilepsy.[34] His doctor released him to return to work with the following restrictions: (1) "he should not work at heights because of the possibility of having a seizure and falling"; and (2) "he should not work the night shift because of the need for a regular sleep schedule."[35]

Eckles requested that Conrail invoke Rule 2-H-1 of the collective bargaining agreement and transfer him to a position that fit his work restrictions.[36] Rule 2-H-1 stated that Conrail and the Union could enter into a written agreement which would accommodate the job limitations of a disabled employee by allowing that employee to displace (or "bump") a more senior employee.[37] In July 1992, Conrail and the Union agreed that Eckles could take another employee's second shift position at Hawthorne Yard in Indianapolis, where the office was located on the ground level.[38] The displaced employee was more senior than Eckles by more than thirty slots.[39] The Union later rescinded its agreement under Rule 2-H-1, however, and Eckles was bumped from the Hawthorne position by a more senior employee in November.[40]

Eckles thereafter went on involuntary sick leave until 1993.[41] When he returned, the Union refused to grant him special placement under Rule 2-H-1.[42] In October 1993, Eckles successfully bid on a position

---

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.* at 1044.

37. *Id.* Rule 2-H-1 specifically provided in relevant part:

> (a) Subject to agreement, in writing, between the Manager-Labor Relations and Division Chairman, a disabled employee covered by this Agreement may be placed . . . in a position occupied by another employee, without regard to seniority, provided that such an employee is capable of performing the duties required.
>
> . . .
>
> (c) A position in which a disabled employee has been placed by agreement under paragraph (a) hereof shall not be subject to the seniority . . . provisions of this Agreement, except that a disabled employee so assigned may be displaced by a senior qualified employee if there is no other position covered by this Agreement to which such senior employee can exercise seniority.

Id. at 1044 n.2.

38. *Id.* at 1044.

39. *Id.* Although not explicitly stated, it appears that rail yard employees at Avon and Indianapolis were covered by the same collective bargaining agreement. *Id.* at 1043-44. A single seniority roster covered yardmasters at both locations. *Id.*

40. *Id.* at 1044.

41. *Id.*

42. *Id.* Prior to Eckles' sick leave, Conrail had asked the Union to agree to a special placement at Hawthorne in order to accommodate Eckles' condition. *Id.* It is unclear, however, whether Conrail again asked the Union to consent to this placement after Eckles had returned to work.

at Hawthorne.[43] However, because he held the position due to his seniority and not under Rule 2-H-1, he was not protected against being bumped by a more senior employee.[44]

Eckles subsequently sued both Conrail and the Union under the ADA, claiming that they had failed to reasonably accommodate his disability by not giving him a Hawthorne yardmaster position.[45] The district court granted summary judgment for both defendants, reasoning that the duty to accommodate did not require the defendants to violate the bona fide seniority rights of other employees under the applicable collective bargaining agreement.[46] Eckles appealed the district court's ruling to the U.S. Court of Appeals for the Seventh Circuit.

On appeal, the Seventh Circuit described the issue as whether "reasonable accommodation" requires "that a disabled individual be given special job placement and job protection (from bumping) in violation of a bona fide seniority system" under a collective bargaining agreement.[47] "This poses a conflict not so much between the rights of the disabled individual and his employer and union," the court wrote, "but between the rights of the disabled individual and those of his coworkers."[48]

The court held that the ADA cannot be construed to require an employer to accommodate a disabled employee by compromising the collectively bargained seniority rights of other workers.[49] The court reached this conclusion by analyzing the statutory definition of "reasonable accommodation," the ADA's legislative history, and case law under both Title VII and the Rehabilitation Act.[50]

The court first emphasized that the ADA expressly defines "reasonable accommodation" to include "reassignment to a *vacant* posi-

---

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.* at 1045-46. The court stressed the existence of a bona fide seniority system—"one that was created for legitimate purposes, rather than for the purpose of discrimination." *Id.* at 1046 n.7.

48. *Id.* at 1046.

49. *Id.* at 1051. It should be noted that the court expressly limited its holding to contractual seniority rights and stated that the holding ought not to be construed as a "general finding that all provisions found in collective bargaining agreements are immune from limitation by the duty under the ADA to reasonably accommodate." *Id.* at 1052.

50. *Id.* at 1047-51; *see* Rehabilitation Act, 29 U.S.C. §§ 701-797b (1994); Civil Rights Act of 1964, 42 U.S.C. § 2000e (1994); 29 C.F.R. § 1613.704 (Rehabilitation Act regulations addressing "reasonable accommodation").

tion."[51] This language, the court reasoned, foreclosed Eckles' argument that reasonable accommodation requires the bumping of more senior employees.[52] The court stated:

> [U]nder a seniority system like that in place at Conrail, few positions are ever truly "vacant," in the sense of being unfilled. Rather, positions held by less senior employees are open to be bid upon and acquired by more senior employees, provided the bidding employee can meet the qualifications for the desired job. Within such a framework a "vacant position" would essentially be one that an employee could acquire with his seniority and for which he could meet the job requirements.[53]

Therefore, Eckles' requested accommodation would entail more than simply a "reassignment to a vacant position."[54]

The court later noted that the legislative history of the ADA strongly supports the position that a "reasonable accommodation" does not require a reassignment which conflicts with the collectively bargained seniority rights of other workers.[55] The court specifically pointed to the reports of the House and Senate Committees principally responsible for crafting the ADA.[56] Both committee reports emphasize that reassignment need only be to a vacant position and that "'bumping' another employee out of a position to create a vacancy is not required."[57] Moreover, the court noted, the committee reports state that reassignment would not be appropriate where the disabled employee is not qualified for the position sought because he does not meet either the established physical criteria or the required seniority minimum.[58] Consequently, the court concluded that reasonable ac-

---

51. *Eckles*, 94 F.3d at 1047 (emphasis added); *see* Americans with Disabilities Act, 42 U.S.C. § 12111(9) (1994).

52. *Eckles*, 94 F.3d at 1047.

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.* at 1047-50; *see* H.R. REP. No. 101-485, pt. 2, at 63 (1990), *reprinted in* 1990 U.S.C.C.A.N. 303, 345; S. REP. No. 101-116, at 32 (1989).

57. *Eckles*, 94 F.3d at 1049 (quoting H.R. REP. No. 101-485, pt. 2, at 63 and S. REP. No. 101-116, at 32).

58. *Id.* at 1050. Notably, however, neither committee report states unequivocally that a disabled employee's lack of seniority would bar reassignment as an accommodation. More specifically, both reports provide in relevant part:

> The collective bargaining agreement could be relevant . . . in determining whether a given accommodation is reasonable. For example, if a collective bargaining agreement reserves certain jobs for employees with a given amount of seniority, *it may be considered as a factor* in determining whether it is a reasonable accommodation to assign an employee with a disability without seniority to the job.

H.R. REP. No. 101-485, pt. 2, at 63; S. REP. No. 101-116, at 32 (emphasis added).

commodation does not require the violation of collectively bargained seniority rights.[59]

The court also noted that case law interpreting the Rehabilitation Act and Title VII conflicted with Eckles' interpretation of "reasonable accommodation."[60] As used in the ADA "reasonable accommodation" was borrowed from regulations issued by the Equal Employment Opportunity Commission ("EEOC") under the Rehabilitation Act.[61] Courts, however, have unanimously rejected the contention that "'reasonable accommodation' under the Rehabilitation Act requires reassignment of a disabled employee in violation of a bona fide seniority system."[62] The Seventh Circuit noted, "a virtual *per se* rule has emerged that such reassignment is not required under the Rehabilitation Act's duty to reasonably accommodate."[63] As the court saw it, Congress drafted the ADA against a uniform backdrop of Rehabilitation Act holdings that "reasonable accommodation" does not require compromising the seniority rights of other employees.[64]

The court further noted that in the Title VII context, the term "reasonable accommodation" has been interpreted the same way.[65] Title VII requires an employer to "'reasonably accommodate' the religious observances and practices of its employees, up to the point of 'undue hardship on the conduct of the employer's business.'"[66] The *Eckles* court noted that in *Trans World Airlines v. Hardison*,[67] the U.S. Supreme Court rejected the contention that this duty requires an employer to violate a valid seniority system, citing the importance of collective bargaining and the protected status of employee seniority rights under the federal labor laws.[68] "Without a *clear and express indication from Congress*," the Supreme Court wrote, "we cannot agree . . . that an agreed-upon seniority system must give way when necessary to accommodate religious observances."[69] The Seventh Cir-

59. *Eckles*, 94 F.3d at 1050-52.

60. *Id.* at 1047-48.

61. *Id.* at 1047; *see* 29 C.F.R. § 1613.704 (1997).

62. *Eckles*, 94 F.3d at 1047.

63. *Id.* In support, the court cited to *Tyler v. Runyon*, 70 F.3d 458, 468 (7th Cir. 1995); *Mason v. Frank*, 32 F.3d 315, 319-20 (8th Cir. 1994); *Shea v. Tisch*, 870 F.2d 786, 789-90 (1st Cir. 1989) (per curiam); *Carter v. Tisch*, 822 F.2d 465, 467-69 (4th Cir. 1987); *Jasany v. United States Postal Service*, 755 F.2d 1244, 1251-52 (6th Cir. 1985); and *Daubert v. United States Postal Service*, 733 F.2d 1367, 1370 (10th Cir. 1984). *Eckles*, 94 F.3d at 1047-48.

64. *Eckles*, 94 F.3d at 1048.

65. *Id.*

66. *Id.* (quoting 42 U.S.C. § 2000e(j) (1994)).

67. 432 U.S. 63, 79 (1977).

68. *Eckles*, 94 F.3d at 1048 (quoting *Hardison*, 432 U.S. at 79).

69. *Id.* (quoting *Hardison*, 432 U.S. at 79). Furthermore, the Supreme Court noted: "Collective bargaining, aimed at effecting workable and enforceable agreements between management

cuit reasoned in *Eckles* that, because the language in the ADA similarly fails to evidence such clear congressional intent, the Act cannot be interpreted as requiring accommodations which would infringe upon other employees' seniority rights.[70]

Finally, the Seventh Circuit noted that Rule 2-H-1 of Conrail's collective bargaining agreement did not affect reasonable accommodation requirements.[71] The court rejected the argument that the duty to reasonably accommodate imposes on employers and unions a duty to negotiate a "variance" from collectively bargained seniority rules when the only effective accommodation would violate those rules.[72]

III. Is *ECKLES* THE CORRECT APPROACH?[73]

The Seventh Circuit's resolution of the conflict between an employer's duty to reasonably accommodate under the ADA and the collectively bargained rights of other workers, although correct in principle, is analytically flawed in some significant respects. The court correctly refused to read the ADA as requiring generally employers to accommodate disabled employees by compromising the collectively bargained seniority rights of other workers. The court appears to have erred, however, by not recognizing that Rule 2-H-1 in the collective bargaining agreement between Conrail and the Union modified the seniority rights of bargaining unit employees. Moreover, the court's holding is based in part on the religious accommodation analysis under Title VII—an approach rejected by Congress in enacting the ADA.[74]

---

and labor, lies at the core of our national labor policy, and seniority provisions are universally included in these contracts." *Id.* (quoting *Hardison*, 432 U.S. at 79).

70. *Id.*

71. *Id.* at 1050. As noted above, Rule 2-H-1 provided that upon written agreement by Conrail and the Union, a disabled employee may be allowed to bump a more senior employee to accommodate the disabled employee's work restrictions. *See supra* note 37 (quoting Rule 2-H-1 in pertinent part).

72. *Eckles*, 94 F.3d at 1051 n.18.

73. Since the Seventh Circuit decided *Eckles*, at least three district courts have followed the Seventh Circuit's lead and held that the duty to reasonably accommodate under the ADA does *not* require an employer to compromise the collectively bargained rights of other employees. *See, e.g.*, Daigre v. Jefferson Parish Sch. Bd., No. Civ. A96-0856, 1997 WL 16621 (E.D. La. Jan. 16, 1997) (holding that the ADA did not require the employer to grant a job transfer in violation of the collectively bargained, bona fide transfer rights of more senior employees); Taylor v. Food World, Inc., 946 F. Supp. 937 (N.D. Ala. 1996) (ruling that the employer was not required to provide a job transfer contrary to the competitive bidding provisions of the collective bargaining agreement); Collins v. Yellow Freight Sys., Inc., 942 F. Supp. 449 (W.D. Mo. 1996) (holding that the ADA did not require the employer to assign the plaintiff to a modified work program where such assignment would violate the collective bargaining agreement provision limiting program participation to temporarily disabled employees).

74. *See infra* notes 77-78 and accompanying text.

Before critiquing *Eckles*, however, it should be noted that the Seventh Circuit's decision is by far the most thorough judicial discussion of the interplay between the ADA and collectively bargained seniority systems. Moreover, the court's holding that collectively bargained seniority rights cannot be sacrificed for the sake of reasonable accommodation is consistent with the ADA's underlying purpose. As noted by the Fifth Circuit in *Daugherty* and *Turco*, the ADA does not require "affirmative action," in the sense that disabled persons have priority over nondisabled persons in hiring, reassignment, or other terms and conditions of employment.[75] Rather, the Act requires that disabled employees be accommodated so as to put them on an equal footing with their nondisabled co-workers. For an employer's accommodation duty to take precedence over the seniority rights of nondisabled employees would be to give disabled employees an advantage over nondisabled employees in competition for job assignments, promotions, insulation from layoffs, etcetera. Although *Eckles* does not discuss this equal opportunity/no affirmative action point, the point is implicit in *Eckles*' well-founded concern for the seniority rights of nondisabled co-workers.

With regard to such rights, however, the court's analysis effectively ignores Rule 2-H-1, which appears on its face to have modified the seniority rights of all bargaining unit employees. As previously noted, Rule 2-H-1 allowed Conrail and the Union to agree to assign a disabled employee to a position occupied by another employee, without regard to seniority, in order to provide reasonable accommodation.[76] Noting that the rule *permits* (rather than requires) the company and union to agree to such reassignments, the court declined to read this provision as requiring a non-seniority-based assignment. This treatment of Rule 2-H-1 is analytically flawed. A seniority system is a creature of contract: the rights bestowed by a labor contract are only as broad as the contract provides. By expressly authorizing Conrail and the Union to accommodate disabled persons by assigning them to positions held by more senior employees, Rule 2-H-1 in effect limited the seniority rights of all employees. Put another way, Rule 2-H-1 made all employees' seniority rights contingent on Conrail's and the Union's right (as parties to the labor contract) to agree to a non-seniority-based assignment as a reasonable accommodation.

---

75. Daugherty v. City of El Paso, 56 F.3d 695, 700 (5th Cir. 1995); Turco v. Hoechst Celanese Corp., 101 F.3d 1090, 1094 (5th Cir. 1996); *see also supra* notes 23-26 and accompanying text (discussing the holding in *Turco*); *supra* notes 20-22 and accompanying text (discussing the holding in *Daugherty*).

76. *See supra* note 37 and accompanying text (quoting relevant parts of Rule 2-H-1).

The court's reasoning in *Eckles* appears further flawed to the extent it relies on a religious accommodation analysis under Title VII as a guidepost for deciding what is a "reasonable accommodation" or an "undue hardship" under the ADA. In crafting the ADA, Congress plainly rejected Title VII's "more than a *de minimis* cost" standard for defining undue hardship—the standard endorsed by the Supreme Court in *Trans World Airlines v. Hardison*.[77] Yet the Seventh Circuit cites *Hardison* as if it were at least persuasive in construing the ADA.[78] The court's analysis in this regard is a surprising deviation from congressional intent.

Lastly, the court in *Eckles* failed to indicate whether its holding applies equally in the nonunion context.[79] Many nonunion employers follow seniority rules in filling vacancies and determining which employees to lay off. The Seventh Circuit's failure to address whether seniority rights in the nonunion setting trump the duty to accommodate leaves many of the nation's employers wondering what is meant by "reasonable accommodation."

CONCLUSION

In sum, despite its thorough discussion of collectively bargained seniority rights and the duty to accommodate, the Seventh Circuit in *Eckles* failed to resolve the tension between individual and collective rights under the ADA once and for all. Even so, *Eckles* clearly signals to employers and unions that they may reject proposed accommodations which would abridge the collectively bargained seniority rights of nondisabled employees. Indeed, *Eckles* signals that this is the case notwithstanding labor contract language authorizing the parties to agree to accommodations without regard to seniority. Whether *Eckles*' analysis is correct in this latter regard is academic, at least in the Seventh Circuit, for *Eckles* is the law. What is still unclear in the Seventh Circuit after *Eckles* is the extent to which nonunion employers may refuse proposed accommodations which would contravene seniority-based employment systems. If such a system is "bona fide," that is, not adopted for a discriminatory purpose, and if it is consistently applied, then it follows as a matter of logic that accommodations vio-

77. H.R. REP. No. 101-485, pt. 2, at 68 (1990), *reprinted in* 1990 U.S.C.C.A.N. 303, 345; S. REP. No. 101-116, at 36 (1989); *see* Trans World Airlines v. Hardison, 432 U.S. 63, 65 (1977).

78. Eckles v. Consolidated Rail Corp., 94 F.3d 1041, 1048-49 (7th Cir. 1996), *cert denied*, 65 U.S.L.W. 3647 (U.S. Mar. 21, 1997) (No. 96-7525).

79. Such failure is understandable; courts should only rule on the questions presented. Still, some guidance regarding the interplay between nonunion seniority systems and the ADA would have been helpful for nonunion employers.

lating seniority are not "reasonable" and, therefore, not required. Whether this follows from *Eckles* as a matter of law, however, remains to be seen.