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English test contested at trial

Attorney alleges discrimination by Fresno employer.

A decade ago, more than two dozen Hispanic and Southeast Asian women lost their jobs at a Fresno manufacturing plant because they performed poorly on a skills test that was only offered in English.

On this, there is no disagreement.

At issue is whether the plant's managers discriminated against the employees by offering a test that didn't fairly assess their job skills, and then targeting them for dismissal after they failed to register a perfect score on the exam.

Opening arguments in the case took place Thursday in U.S. District Court in Fresno, with both sides giving jurors an overview on their versions of the events.

San Francisco attorney Christopher Ho, one of three lawyers representing the 23 plaintiffs -- out of an original 25 -- told jurors that NIBCO Inc., an Indiana-based irrigation systems manufacturer, offered a test that "had to do with the language [the women] spoke, but nothing to do with job performance."

But Fresno attorney William Haesy, who is representing NIBCO, said the exam was necessary because the plant was inefficient and the lack of a common language was a barrier to communication.

"The plant was dysfunctional, it was outdated and it needed to be fixed," he told jurors. It all started in 1995, when NIBCO bought Pepco Water Conservation Products.

A few months later, it bought R.M. Wade and Co.

Haesy said problems soon began as NIBCO combined the operations of the two plants, which made irrigation products.

Raw materials were incorrectly mixed, leading to contamination, he said. Work time was lost when bilingual employees had to be pulled from their jobs to translate for managers or other employees when speaking to those who lacked English skills.

Human Relations had trouble communicating important information to employees, many of whom spoke Spanish or a Southeast Asian language such as Lao or Hmong. Inventory records were inaccurate, he said. Safety training had to be conducted because there were too many on-the-job injuries.

To top it off, Haesy said, the plant was losing millions.

So managers decided to make employees prove they had the knowledge and skills so they could work with new technologies that were being installed, work more safely and communicate with managers.

The company gave tests that required a sixth-grade reading level, Haahes said. As financial losses continued to mount, layoffs came in 1998. Those who did not pass the tests were the first to lose their jobs.

But Ho had a different take on the series of events.

He said many of the women were longtime Wade employees who were never prevented from doing their jobs because of their limited English skills.

Even after NIBCO's arrival, he told jurors, many of the plaintiffs continued to receive merit-pay increases and good job reviews.

After the company continued to lose money, he said, it announced the tests. Study materials were only in English, 100% was the required passing score, and employees were only given two chances to pass.

Those that didn't pass were first in line to be laid off.

Ho didn't dispute that NIBCO can lay off employees, but he said the women's rights were violated because the company didn't judge them on job performance, seniority and other measures commonly used in business.

Instead, the barometer was their English-language skills.

He also noted that in 1999, R.M. Wade bought the plant back -- and rehired many who had lost their jobs. Wade no longer owns the plant.

The trial could last up to six weeks.

U.S. District Judge Oliver W. Wanger is only hearing testimony in the afternoon, because he is hearing another trial in the morning as he tries to clear a crowded trial docket.

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