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Jurors weigh language in job test

Fresno workers were required to pass exam offered only in English.

A decade ago, a financially struggling Fresno manufacturing plant developed a plan to improve productivity and safety by requiring its workers to pass a test that was offered only in English.

Nine jurors in U.S. District Court in Fresno are weighing whether the test was a valid way to assess job skills or just a means to allow NIBCO Inc. to lay off Hispanic and Southeast Asian workers who knew little or no English.

Tuesday, lawyers gave closing arguments in Judge Oliver Wanger's courtroom that summed up eight weeks of testimony and thousands of pages of documents in the civil trial.

Twenty-three former minimum-wage workers who couldn't pass the test have sued NIBCO, an Indiana-based irrigation-systems manufacturer, for lost wages and emotional distress. If the claims are valid, jurors also could tag NIBCO for punitive damages if they believe the workers' civil rights were violated.

They filed their case nine years ago.

The plaintiffs and their supporters packed the courtroom Tuesday as their lawyer, William J. Smith, told jurors that the plant's managers discriminated against the employees by offering a test that didn't fairly assess their job skills.

The managers knew the test was unfair because the workers spoke Spanish, Lao or Hmong, Smith said. They then targeted the workers for dismissal once they failed to achieve a perfect score on the exam, he said.

"It was an elimination tool," Smith said. "NIBCO totally disregarded the workers' tenure, performance and clean records."

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

"The goal was to have a safe and efficient plant for everyone," Haesy told the panel of four women and five men.

NIBCO purchased Pepco Water Conservation Products and R.M. Wade and Co. in 1995 and combined the operations of the two plants to make irrigation products. Once it took over, NIBCO gave employees pay raises and health, dental and retirement plans -- benefits that they hadn't had before, Haesy said.

Problems soon arose because raw materials were incorrectly mixed, inventory records were inaccurate, and safety training seldom took place, he said. Work time also was lost because the non-English speakers needed translators, he said.

The tests were given in 1997 and 1998. As financial losses continued to mount, layoffs came in 1998. Those who did not pass the tests were the first to lose their jobs, Smith said.

Giving workers exams to test their knowledge or skill is common in the workplace, both sides said. The NIBCO test required a sixth-grade reading level, and workers were given a study sheet and could have gone to school to study English at the company's expense. The workers also had three chances to pass the tests, Hahesy said.

But Smith said the NIBCO test wasn't valid because the workers, many of them longtime employees, worked as machine operators or on the assembly line -- jobs that didn't require them to write memos or reports or be fluent in English. He said plant managers could have used demonstrations or videos in foreign languages to train their non-English speaking employees.

Hahesy said NIBCO lost \$14 million by the time it sold the plant back to R.M. Wade in 1999. He also said, "In California, English is the official language of the state."

But Smith said the law does not justify discrimination just because a company is losing money. English may be the state's official language, but the Valley is filled with people who speak hundreds of languages, and companies have a duty to be fair to all of its employees, he said.

Hahesy said some of the plaintiffs had no reason to sue. One of them was a Hoover High graduate. Another plaintiff frequently read newspapers and magazines, while another plaintiff has taken a written test to become a forklift driver, he said.

Some of the workers also got their jobs back when R.M. Wade re-acquired the plant, Hahesy said.

The reporter can be reached at plopez@fresnobee.com or (559) 441-6434.