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Jury clears Fresno plant at trial

It finds English-only job-skills test was valid way to test workers.

A Fresno manufacturing plant did not discriminate when it laid off workers who couldn't get a perfect score on a skills test that was only offered in English, a federal jury found Wednesday.

The unanimous verdict ended a nine-year legal journey for NIBCO Inc., an Indiana-based irrigation-systems manufacturer. The company's lawyers successfully argued that the test was needed to make the plant safer for workers, and to be more competitive.

The jury found that the exam was "a business necessity" and a valid way to test job skills. They also found that the test did not cause the workers to get laid off, and that there was no better alternative to the test.

"We are very, very disappointed," said Fresno attorney William J. Smith, who represented the workers, 23 Hispanic and Southeast Asian women who spoke little or no English. "We had high hopes that we would win this case."

The minimum-wage workers had sued in 1999, saying plant managers knew they had little grasp of English and wouldn't pass the test.

At Judge Oliver Wanger's invitation after the verdict was read, jurors told attorneys how they came to their decision. They said the workers should have learned English -- especially since NIBCO had offered to pay for the classes.

The jurors also said the company went out of its way to help the workers, giving them a study sheet and three chances to pass the test.

The jury foreman -- Albert Veldstra, a retired Stanislaus County sheriff's deputy -- also said the panel had trouble believing the workers couldn't understand the test, because it required only a sixth-grade reading level.

One of the workers was a Hoover High School graduate, according to testimony. Another frequently read newspapers and magazines. The panel also saw writing samples from some of the workers with correct English, Veldstra said.

As the verdict was read, some of the workers wiped away tears. Others sat in stunned silence. Eight of the nine jurors didn't look at the workers while the judge asked them individually about

the verdict. The lone Mexican-American juror, however, looked straight at the workers and resoundingly said he agreed with the verdict. He declined to comment afterward.

NIBCO had offered to settle. Before the trial began, Smith and fellow attorneys Christopher Ho and Christina Chung from the Legal Aid Society-Employment Law Center in San Francisco turned down a \$1 million settlement offer.

Smith said it wasn't enough.

"There's more than \$2 million invested in this case," he said. "That's like offering pennies when you're spending thousands of dollars. After attorneys' fees, there would be nothing left for the plaintiffs."

But Alice Martin, NIBCO's vice chairman, said the company offered to give the plaintiffs \$1 million and "reasonable fees" to their attorneys.

"We always try to do the right thing for all of our people, including families in Fresno," Martin said. "That's part of the company's core values."

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 turned the part-time employees into full-time ones and gave them raises and health, dental and retirement plans -- benefits that they hadn't had before.

But problems soon arose because raw materials were incorrectly mixed, inventory records were inaccurate, and safety training seldom took place, said NIBCO's lead lawyer, William Hahey of Fresno. He was assisted by Fresno lawyers Michael Helsley and Sara Hedgepeth-Harris.

The skills tests were given in 1997 and 1998. But as financial losses continued to mount, layoffs came in 1998.

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

The plant shut down in 1999 after losing \$14 million. NIBCO still operates 12 manufacturing plants throughout the United States and in Mexico and Poland.

"It's been nine long years," said Tom Eisele, a senior vice president for NIBCO. "We felt we were right, and in the end, we got justice."

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