

# Do Safety Concerns Justify Refusing to Hire Worker with Limited English Proficiency?



## **Situation**

An electrician whose native language is Mandarin Chinese interviews for a job at a utility. During the interview, the supervisor senses that the electrician is having trouble understanding English and asks him to restate a commonly used safety instruction. The electrician refuses or is unable to comply. The supervisor asks the manager at another site where the electrician previously worked about his language issues. The manager says the electrician's foreman on that job spoke Mandarin and the electrician communicated primarily in that language on the job site. The utility doesn't have any Mandarin-speaking employees. Concerned about the electrician's inability to understand and communicate critical safety information in English, the utility decides not to hire the electrician. His union files a grievance.

## **Question**

**Should the union's grievance succeed'**

- A. Yes, because the refusal to hire the electrician was discriminatory.
- B. Yes, because the utility could provide safety information in Mandarin to the electrician.

C. No, because the utility had just cause to refuse to hire the electrician.

D. No, because the electrician's language issues raised legitimate safety concerns.

### **Answer**

**D. Because the utility had reasonable concerns regarding the electrician's ability to understand and communicate safety information in English, its refusal to hire him wasn't improper.**

An employer can properly refuse to hire an applicant if such refusal isn't unreasonable, discriminatory or in bad faith. This hypothetical is based on a real grievance filed by a union when an Ontario utility failed to hire a Mandarin-speaking electrician who had difficulty answering questions in English in the job interview. For example, he simply nodded in response to some questions or answered yes or no to questions for which yes or no wasn't a proper response. He also refused to repeat a safety instruction in English. The utility believed that the electrician's proficiency in English was insufficient to allow him to work safely at the site.

The Labour Relations Board found that in the electrician's prior work experience, he was assigned to work with a Mandarin-speaking sub-foreman. Co-workers said he frequently spoke Mandarin on the job site and spoke very little English. Noting the safety hazards inherent in working with electricity, the Board concluded that the refusal to hire wasn't unreasonable because the utility had legitimate concerns about the electrician's ability to comprehend and communicate critical safety information in English.

### **Why the Wrong Answers are Wrong**

**A is wrong** because refusing to hire an applicant with limited English proficiency isn't necessarily discrimination. A union

or job applicant can successfully challenge a refusal to hire by proving the refusal was discriminatory. And human rights laws bar employers from refusing to hire workers because of certain characteristics, including ethnicity, race or country of origin. Here, the utility didn't refuse to hire the electrician because of his ethnicity or the fact that he spoke Mandarin Chinese. Rather, the utility refused to hire him because of his apparent difficulty understanding and communicating in English, which posed safety hazards to both the electrician and others. Thus, because the utility had legitimate reason to be concerned about the electrician's ability to communicate critical safety information in English, its refusal to hire him wasn't discriminatory.

**B is wrong** because although the utility could provide safety information to the electrician in Mandarin, doing so wouldn't necessarily eliminate the safety risks posed by the language barrier. Workers' inability to understand the predominant language in the workplace, usually English or French, can pose safety hazards. (See, '[Language Barriers Impede Workplace Safety](#).') In this case, the utility had reason to question the electrician's ability to safely work with electricity and communicate with co-workers about safety hazards because of his lack of proficiency in English. Giving the electrician written safety procedures and rules in Mandarin would've helped address the language barrier. But no one else spoke Mandarin. So the electrician would still be unable to ask questions or understand, say, a foreman's verbal instructions or a co-worker's warning about a hazard. Thus, his poor English proficiency justified not hiring him, especially for a safety-sensitive position such as an electrician.

**Insider Says:** For information about training multilingual workers, see '[Safety Training: Does Safety Training and Material Have to Be Multilingual](#)' May 2008, p. 1.

**C is wrong** because it states the wrong standard. Decisions to terminate a worker are subject to a just cause standard. But

when, as in this case, a worker or union challenges an employer's refusal to hire an individual, they must prove that the employer's refusal was unreasonable, discriminatory or made in bad faith. So here, for the union's grievance to succeed, it would have to prove not that the utility had no just cause for refusing to hire the electrician but that it acted unreasonably, in a discriminatory manner or in bad faith when doing so.

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