

IN THE IOWA DISTRICT COURT FOR STORY COUNTY

GERALD F. DETERS,
MIKE D. FITZGERALD, and
LYNN RAHFELDT,

Plaintiffs,

v.

AMERICAN EAGLE PROTECTIVE
SERVICES CORPORATION and
INTERNATIONAL UNION, SECURITY,
POLICE, AND FIRE PROFESSIONALS
OF AMERICA, LOCAL UNION #249

Defendants.

Case No. LACV050099

DEFENDANT SPFPA'S PROPOSED
STATEMENT OF THE CASE, JURY
INSTRUCTIONS, AND VERDICT FORM

Defendant Security, Police and Fire Professionals of America (SPFPA) submits the following proposed Statement of the Case, Jury Instructions, and Verdict Form:

Respectfully submitted,

GREGORY, MOORE, JEAKLE, & BROOKS, P.C.

/s/ Matthew J. Clark

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October 29, 2019

DEFENDANT'S PROPOSED PRELIMINARY JURY INSTRUCTION NO. 1

You may not communicate about this case before reaching your verdict. This includes cell phones and electronic media such as email, text messages, Facebook, Snapchat, LinkedIn, YouTube, Twitter, etc.

Do not do any research or make any investigation about this case on your own. Do not visit or view any place discussed in this case, and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony. Also, do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge. This includes using the Internet to research events or people referenced in the trial.

This case will be tried on evidence presented in the courtroom. If you conduct independent research, you will be relying on matters not presented in court. The parties have a right to have this case decided on the evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we do not know about, then your verdict may be influenced by inaccurate, incomplete or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. All of the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this state and you will have done an injustice. It is very important that you abide by these rules. Failure to follow these instructions may result in the case having to be retried and could result in you being held in contempt and punished.

It is important that we have your full and undivided attention during this trial.

Authority

Iowa Civil Jury Instruction 100.23

PROPOSED PRELIMINARY JURY INSTRUCTION NO. 2

Introduction

Members of the jury, before the lawyers make their opening statements, I give you these preliminary instructions to help you better understand the trial and your role in it. Consider these instructions, together with any oral instructions given to you during the trial and the written final instructions given at the end of the trial, and apply them as a whole to the facts of the case. In considering these instructions, the order in which they are given is not important.

Authority

Comes v. Microsoft, CL 82311 (Polk County 2006) (relevant part of Preliminary Jury Inst. 1)

PROPOSED PRELIMINARY JURY INSTRUCTION NO. 3

Statement of the Case

Members of the Jury: In this case, Plaintiffs Gerald Deters and Lynn Rahfeldt accuse their former union, Security, Police and Fire Professionals of America (SPFPA), of committing age discrimination against them. SPFPA represented them when they worked for American Eagle Protective Services.

SPFPA denies that it committed any age-based discrimination against Deters or Rahfeldt.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will now give you.

Authority

Iowa Civil Jury Instruction 100.1

PROPOSED PRELIMINARY JURY INSTRUCTION NO. 4

Questions by Jurors

When the lawyers have finished asking all of their questions of a witness, you will be allowed to ask the witness questions. You may submit a written question or questions, and I will review them with the attorneys. I will tell you if the rules of evidence do not allow a particular question to be asked. After all of your questions, if there are any, the lawyers may ask more questions. Do not be concerned or embarrassed if your question is not asked; sometimes even the lawyers' questions are not allowed.

Authority

8th Circuit Model Civil Jury Instruction 1.07 (2017)

DEFENDANT'S PROPOSED FINAL JURY INSTRUCTION NO. 1

Duties of Judge and Jury, Instructions as Whole

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices or emotions. It is common to have hidden or implicit thoughts that help us form our opinions. You are making very important decisions in this case. You must evaluate the evidence carefully. You must avoid decisions based on things such as generalizations, gut feelings, prejudices, fears, sympathies, stereotypes, or inward or outward biases. The law demands that you return a just verdict, based solely on the evidence, your reason and common sense, and these instructions. As jurors, your sole duty is to find the truth and do justice.

Authority

Iowa Civil Jury Instruction 100.2

PROPOSED FINAL JURY INSTRUCTION NO. 2

Burden of Proof, Preponderance of Evidence

Whenever a party must prove something, they must do so by the preponderance of the evidence.

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

Authority

Iowa Civil Jury Instruction 100.3

PROPOSED FINAL JURY INSTRUCTION NO. 3

Evidence

You shall base your verdict only upon the evidence and these instructions. Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted (e.g. answers to interrogatories, matters which judicial notice was taken, and etc.).

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

Authority

Iowa Civil Jury Instruction 100.4

PROPOSED FINAL JURY INSTRUCTION NO. 4

Credibility of Witnesses

You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts; and,
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

Authority

Iowa Civil Jury Instruction 100.9

PROPOSED FINAL JURY INSTRUCTION NO. 5

Age Discrimination by SPFPA

Plaintiffs Deters and Rahfeldt claim SPFPA committed age-based discrimination against them. In order to recover on this claim, they must prove all of the following elements by a preponderance of the evidence:

1. That Deters and Rahfeldt were each represented by the labor organization Security, Police and Fire Professionals of America (SPFPA);
2. That Deters and Rahfeldt each suffered an adverse employment action;
3. That SPFPA caused each of Deters and Rahfeldt's adverse employment actions; and
4. That Deters' and Rahfeldt's age was a motivating factor in SPFPA's decision to take adverse action against them.

If Deters and Rahfeldt each fail to prove any of these propositions, then each has failed to prove this claim and is not entitled to damages.

An adverse employment action detrimentally affects the terms, conditions, or privileges of employment.

Authority

Iowa Code § 216.6

DeBoom v. Raining Rose, Inc., 772 N.W.2d 1 (Iowa 2009)

Butler v. Crittenden Co., Ark., 708 F.3d 1044 (8th Cir. 2013)

Estate of Harris v. Papa John's Pizza, 679 N.W.2d 673 (Iowa 2004)

PROPOSED FINAL INSTRUCTION NO. 6

[Same Decision]

If SPFPA would have taken the same course of action regardless of that Plaintiff's age, it did not discriminate against that Plaintiff based on age and you may not return a verdict against SPFPA.

Authority

McQuiston v. City of Clinton, 872 N.W.2d 817 (Iowa 2015)

Eighth Circuit Model Civil Jury Instruction 5.01 (2017)

PROPOSED FINAL INSTRUCTION NO. 7

[Same Decision – Duty of Fair Representation]

You may not return a verdict for any Plaintiff against SPFPA just because you might disagree with its manner of representation of any Plaintiff. SPFPA can only be liable for age discrimination if it breached its duty of fair representation by acting in an arbitrary, discriminatory, or bad faith manner, because of the Plaintiff's age. A union's negligence, poor judgment, or ineptitude is insufficient to establish a breach of the duty of fair representation.

Authority

Baxter v. United Paperworkers Intl. Union, Local 7370, 140 F.3d 745 (8th Cir. 1998)

Martin v. Local 1513 & Dist. 118 of the Intl. Assn. of Machinists & Aerospace Workers, 859 F.2d 581 (8th Cir. 1988)

Buford v. Runyon, 160 F.3d 1199 (8th Cir. 1998)

PROPOSED FINAL INSTRUCTION NO. 8

If you find in favor of any Plaintiff, you must award such sum as you find by the preponderance of the evidence will fairly and justly compensate him for any damages you find he sustained as a direct result of the discriminatory adverse action. Plaintiffs' claim for damages includes distinct types of damages and you must consider them separately.

First, you must determine the amount of any wages and benefits each Plaintiffs would have earned in his employment if each had not suffered discriminatory adverse action, through the date of the verdict, or, if Plaintiffs' employment would have lawfully ended before the date of the verdict, the date that his employment would have lawfully ended, *minus* the amount of earnings and benefits that he received from other employment during that time.

Second, you must determine the value of Plaintiffs' emotional distress, if any, directly caused by the discriminatory adverse action. Any other allegations that might have been made about any other type of wrongful conduct or anything else that had been mention may not be considered in assessing damages against SPFPA. Emotional distress may include, but is not limited to, mental anguish or loss of enjoyment of life. You should consider the nature, character, and seriousness of the emotional distress Plaintiffs experienced, from the discriminatory adverse action to the date of the verdict. You may not award damages for any emotional distress you find was caused by Plaintiffs' filing of the lawsuit in this case and the litigation of their claims.

You must enter separate amounts for each type of damages in the verdict form and must not include the same items in more than one category. You are also instructed that Plaintiffs have a duty under the law to "mitigate" their damages – that is, to exercise reasonable diligence under the circumstances to minimize their damages. Therefore, if you find by the preponderance of the evidence that any Plaintiff failed to seek out or take advantage of an opportunity that was

reasonably available to him, you must reduce his damages by the amount he reasonably could have avoided if he had sought out or taken advantage of such an opportunity. Throughout your deliberations, you must not engage in any speculation, guess, or conjecture and you must not award damages under this Instruction by way of punishment or through sympathy.

Authority

Eighth Circuit Model Civil Instruction 5.70 (2013) Iowa Civil Jury Instruction 200.12

Iowa Civil Jury Instruction 200.13A

Dutcher v. Randall Foods, 546 N.W.2d 889, 894 (Iowa 1996)

PROPOSED FINAL INSTRUCTION NO. 9

[Foreperson]

Upon retiring, you shall select a foreperson. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may later hesitate to change an announced position even if shown it may be incorrect. Remember you are not partisans or advocates, but are judges – judges of the facts. Your sole interest is to find the truth and do justice.

Authority

Iowa Civil Jury Instruction 100.18

PROPOSED FINAL INSTRUCTION NO. 10

[Juror Notes]

During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them, and may be inaccurate or incomplete.

Upon reaching a verdict, leave the notes in the jury room and they will be destroyed.

Authority

Iowa Civil Jury Instruction 100.21

PROPOSED FINAL INSTRUCTION NO. 11

Return of Verdict – Forms of Verdict

I am giving you a verdict form. During the first six hours of deliberations, excluding meals and recesses outside your jury room, your decision must be unanimous. If you all agree, the verdict must be signed by your foreperson.

After deliberating for six hours from _____ o'clock a.m./p.m., excluding meals or recesses outside your jury room, then it is necessary that only seven of you agree upon the answers to the questions. In that case, the verdict must be signed by all seven jurors who agree.

When you have agreed upon the verdict [and interrogatories] and appropriately signed it, tell the Court Attendant.

Authority

Iowa Civil Jury Instruction 300.1.

Modifications:

1) Modified to include that seven jurors can reach a verdict after six hours of deliberation.

Dated this day of _____, 2019.

JUDGE _____, IN THE SECOND JUDICIAL DISTRICT OF IOWA

IN THE IOWA DISTRICT COURT FOR STORY COUNTY

GERALD F. DETERS,
MIKE D. FITZGERALD, and
LYNN RAHFELDT,

Plaintiffs,

v.

AMERICAN EAGLE PROTECTIVE
SERVICES CORPORATION and
INTERNATIONAL UNION, SECURITY,
POLICE, AND FIRE PROFESSIONALS
OF AMERICA, LOCAL UNION #249

Defendants.

Case No. LACV050099

VERDICT FORM AND
SPECIAL INTERROGATORIES

Your verdict in this case will be determined by your answers to the following questions. Read the questions and notes carefully because they explain the order in which the questions should be answered.

Question No. 1: As defined in Instruction __, did Plaintiff Gerald Deters meet his burden by a preponderance of evidence to prove SPFPA discriminated against him based on his age?

_____ Yes _____ No

Question No. 2: Did SPFPA prove it would have taken the same course of action regardless of Deters' age?

_____ Yes _____ No

Question No. 3: As defined in Instruction __, did Plaintiff Lynn Rahfeldt meet his burden by a preponderance of evidence to prove SPFPA discriminated against him based on his age?

_____ Yes _____ No

Question No. 4: Did SPFPA prove it would have taken the same course of action regardless of Rahfeldt's age?

_____ Yes _____ No

NOTE: Complete the following Question No. 5 only if you answered “Yes” to Question 1 above. If you answered “No” to Question 1 do not answer the next question.

Question No. 5: State the amount of damages, if any, sustained by Deters that were caused by SPFPA’s wrongful conduct as to each of the following items of damage, as defined in instruction _____. If Deters has failed to prove any item of damage, or has failed to prove that any item of damage was caused by SPFPA’s wrongful conduct, enter zero for that item.

Past lost wages: \$_____ (stating the amount or, if none, write the word “none”)

Emotional distress: \$_____ (stating the amount or, if none, write the word “none”)

NOTE: Complete the following Question No. 6 only if you answered “Yes” to Question 3 above. If you answered “No” to Question 3 do not answer the next question; instead, please sign and date the form and inform the bailiff that you have completed your deliberations.

Question No. 6: State the amount of damages, if any, sustained by Rahfeldt that were caused by SPFPA’s wrongful conduct as to each of the following items of damage, as defined in instruction _____. If Rahfeldt has failed to prove any item of damage, or has failed to prove that any item of damage was caused by SPFPA’s wrongful conduct, enter zero for that item.

Past lost wages: \$_____ (stating the amount or, if none, write the word “none”)

Emotional distress: \$_____ (stating the amount or, if none, write the word “none”)

FOREPERSON

Dated: _____, 2019.