stead went directly to the area Equal Employment Office and filed a complaint. Sing's defense was that the policy was only to preserve the atmosphere of the restaurant. He said the Asian waiters were needed to make it more authentic. Sing also added that he hired blacks, whites, and persons of other races for his kitchen help.

Questions

1. Is Sing's defense a good one under the law? Why or why not?
2. Is Sing's defense a good one under the standards of morality? Why or why not?
3. Is this a case of "preferential hiring"? Of "reverse discrimination"?

CASE 3. *Wards Cove Packing Co. v. Atonio*

Two companies operated salmon canneries in remote areas of Alaska, which canneries functioned only during the summer salmon runs. There were two general types of jobs at the canneries: cannery line jobs, which were unskilled positions, and "noncannery" jobs, which were predominantly skilled positions but varied from engineers and bookkeepers to cooks and boat crew members. The cannery workers were predominantly nonwhite, mainly Filipinos, whom the companies hired through a hiring hall agreement with a predominantly Filipino union local in Seattle, and Alaska Natives, hired from villages near the canneries. The noncannery workers were predominantly white and were hired during the winter through the companies' offices in Washington and Oregon. Virtually all of the noncannery jobs paid more than the cannery jobs, and noncannery workers used dormitory and mess hall facilities that were separate from and allegedly superior to those of the cannery workers. A class of nonwhite cannery workers who were or had been employed at the canneries in question brought an action against the companies in the United States District Court for the Western District of Washington, which action charged the companies with employment discrimination on the basis of race in violation of a provision of Title VII of the Civil Rights Act of 1964 (42 USCS 2000e-2(a)). Specifically, it was alleged that the racial stratification of the work force was caused by several of the companies' hiring and promotion practices, including a rehire preference, a lack of objective hiring criteria, the separate hiring channels, and a practice of not promoting from within. . . .

On certiorari, the United States Supreme Court . . . held that (1) racial imbalance in one segment of an employer's work force is not sufficient to establish a prima facie case of disparate impact with respect to the selection of workers for the employer's other positions; (2) in this case, the comparison between the percentage of cannery workers who are nonwhite and the percentage of noncannery workers who are nonwhite did not make out a prima facie disparate-impact case; (3) the plaintiff in such a case bears the burden of isolating and identifying the specific employment practices that are allegedly responsible for any observed statistical disparities; and (4) if the plaintiff establishes a prima facie disparate-impact case, the employer bears the burden of producing evidence of a business justification for its employment practice, but the burden of persuasion on this issue remains with the plaintiff.

Supreme Court of the United States. 490 U.S. 642; 109 S.Ct. 2115; 1989 U.S. Lexis 2794; 104 L.Ed.2d 733; 57 U.S.L.W. 4583; 49 Fair Empl. Prac. Cas. (BNA) 1519; 50 Empl. Prac. Dec. (CCH) P39,021.