UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

93 CIV. 0178

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EVELYN KRUEGER, FRANCIS J. LUPARDO, CARLYLE D. FORDE, WALTER GRABOWSKI, NICHOLAS T. BRUCK, and ALBERT J. DWYER on behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

NEW YORK TELEPHONE COMPANY and NYNEX CORPORATION,

Defendants.

- X

93 Civ. ( )

COMPLAINT - COLLECTIVE AND CLASS ACTION

PLAINTIFFS DEMAND A JURY TRIAL

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Plaintiffs, by their attorneys, Vladeck, Waldman, Elias & Engelhard, P.C. and Gleason, Dunn, Walsh & O'Shea, complaining of defendants New York Telephone Company ("NYTEL") and NYNEX Corporation ("NYNEX"), allege as follows:

PRELIMINARY STATEMENT

1. This action is brought to remedy discrimination in employment on the basis of age, in violation of the Age Discrimination in Employment Act, as amended, 29 U.S.C. § 626 et seq. ("the ADEA") and the New York Human Rights Law, Executive Law § 290 et seq. ("HRL"); and to remedy defendants' interference with the attainment of plaintiffs' rights to pension benefits, in violation of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §1001 et seq. Plaintiffs bring this action on behalf of themselves and all other similarly situated former

employees of NYTEL. Plaintiffs seek injunctive and declaratory relief, compensatory and liquidated damages, and other appropriate legal and equitable relief pursuant to 29 U.S.C. § 626, Executive Law § 296 and 29 U.S.C. § 1132(a) and (g).

2. On December 11, 1992 NYTEL discharged hundreds of employees age forty and older, many of whom had worked for NYTEL for more than twenty years. These discharges resulted from defendants' implementation of the NYNEX Force Management Plan ("FMP"), a reduction in force which was intended to, and did, discriminatorily affect long-term employees forty years or older. Upon information and belief, NYTEL's and NYNEX's discharge of older employees resulted from policies, practices and a corporate culture disfavoring older employees. Implementation of the FMP discriminated against older employees by disproportionately selecting them for discharge, in part through the application of a "two year service" rule, a "two year degree" rule and evaluation practices which, as described below, disfavored older workers.

3. Defendants violated ERISA by terminating the employment of plaintiffs so that they would not become eligible for NYNEX's service pension program -- a pension with valuable accompanying benefits, including full medical insurance coverage, that is far superior to the pension NYTEL employees otherwise receive. Defendants further violated ERISA by depriving those employees who were eligible for their service pension program of

additional benefits to which they otherwise would have become entitled if they had not been discharged.

PARTIES

4. Plaintiff Evelyn Krueger ("Krueger") is a resident of the State of New York and was employed as an outside plant engineer with NYTEL in its Kingston Mid-State Engineering Unit until NYTEL terminated her employment on December 11, 1992, when she was fifty-three years old and had been employed by NYTEL for more than twenty-four years.

5. Plaintiff Francis J. Lupardo ("Lupardo") is a resident of the State of New York and was employed as a power engineer with NYTEL in Long Island, New York until NYTEL terminated his employment on December 11, 1992, when he was fifty-nine years old and had been employed by NYTEL for almost twenty-two years.

6. Plaintiff Carlyle D. Forde ("Forde") is a resident of the State of New Jersey and was employed in NYTEL's Operations Staff in New York City until NYTEL terminated his employment on December 11, 1992, when he was forty-eight years old and had been employed by NYTEL for almost twenty-nine years.

7. Plaintiff Walter Grabowski ("Grabowski") is a resident of the State of New York and was employed in NYTEL's Training Department in New York City until NYTEL terminated his employment on December 11, 1992, when he was forty-five years old and had been employed by NYTEL for over twenty years.

8. Plaintiff Nicholas T. Bruck ("Bruck") is a resident of the State of New York and was employed as a right-of-way and claims manager and engineer in NYTEL's Kingston Mid-State Engineering Unit until NYTEL terminated his employment on December 11, 1992, when he was forty-seven years old and had been employed by NYTEL for twenty-six years.

9. Plaintiff Albert J. Dwyer is a resident of the State of New York and was employed as a manager in the engineering department with NYTEL in Albany, New York until NYTEL terminated his employment on December 11, 1992, when he was forty-five years old and had been employed by NYTEL for twenty-three years.

10. Defendant New York Telephone Company ("NYTEL") is a corporation with its principal place of business in New York City. NYTEL provides local and long distance telephone service to consumers throughout New York State, and has employees and offices throughout the state. NYTEL is a wholly owned subsidiary of defendant NYNEX.

11. Defendant NYNEX Corporation ("NYNEX") has its principal place of business in White Plains, New York and is the parent company of NYTEL and other New York communications and computer service companies.

JURISDICTION AND VENUE

12. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331; the ADEA, 29 U.S.C. § 626(c); ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

13. On November 13, 1992, or thereafter, individual named plaintiffs filed in this District on their own behalf and on behalf of similarly situated individuals timely charges of discrimination against defendants with the Equal Employment Opportunity Commission (the "EEOC"), complaining of the unlawful acts alleged herein. Sixty days have elapsed from the filing with the EEOC of the first charges, and plaintiffs have complied with all statutory prerequisites to the filing of this action.

14. Venue is proper in this District because the unlawful employment practices complained of occurred within the Southern District of New York. Venue is proper under ERISA § 502, 29 U.S.C. § 1132(e)(2) because the employee benefit plans herein are administered in this District, defendants' primary places of business are in this District, and defendants' interference with the attainment of plaintiffs' rights under the employee and welfare benefit plans occurred in this District.

COLLECTIVE AND CLASS ACTION ALLEGATIONS

15. The individual named plaintiffs, who were all older than forty and were all NYTEL employees until they were discharged pursuant to defendants' FMP, bring this action on behalf of

themselves and all other similarly situated former employees who have common claims under the ADEA, HRL and ERISA.

16. With respect to the ADEA claim, this collective action is brought pursuant to the ADEA and the Fair Labor Standards Act, 29 U.S.C. § 216(b), by the individual named plaintiffs on behalf of themselves and all former NYTEL employees age forty and older who were discharged under the FMP or otherwise discriminated against in the implementation of the FMP because of their age and who have given or will give their written consent to be plaintiffs herein pursuant to 29 U.S.C. § 216(b) ("ADEA class"). Written consent is attached hereto for one hundred and forty-five class members as Exhibit A.

17. The HRL claim is brought as a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure. The individual named plaintiffs bring this class action on behalf of themselves and all former NYTEL employees age forty and older who were discharged under the FMP or otherwise discriminated against in the implementation of the FMP because of their age and who have given, or will in the future give, their written consent to being part of the ADEA collective action ("HRL class").

18. The ERISA claim for the denial of pension benefits is brought as a class action pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure. The individual named plaintiffs bring this class action on behalf of themselves and all former NYTEL employees who were, or would have become, eligible for

defendant's service pension but who were discharged under the FMP in order to interfere with their attainment of service pension benefits, or additional pension benefits ("pension class").

19. The number of potential members of the ADEA, HRL, and pension classes is not precisely determined at the present time but can be established through discovery. NYTEL reported in early October 1992 that there were approximately 625 employees put "at risk" by the FMP; upon information and belief, each class consists of over one hundred former NYTEL employees and, therefore, is so numerous that joinder is impracticable.

20. Since all members of the classes have been damaged by the same wrongful acts alleged herein, these acts raise questions of law or fact common to the class which predominate over any questions affecting only individual members of the class. These questions include, but are not limited to:

(a) whether defendants terminated plaintiffs' employment pursuant to a practice of discriminating against employees on the basis of their age;

(b) whether defendants' application of the "two year service" rule and the "two year degree" rule operated in such a manner as to have a discriminatory impact against employees who were forty years old or older;

(c) whether defendants' selection process and criteria used in the FMP discriminated against employees on the basis of their age;

(d) whether defendants' termination of plaintiffs' employment was motivated by an intent to interfere with plaintiffs' attainment of any rights under NYNEX's service pension plan and whether such termination was intended to deprive plaintiffs of a service pension or additional service pension benefits to which they would have otherwise become entitled.

21. The claims of the individual named plaintiffs are typical of the claims of the class and do not conflict with the interests of any other members of the collective action or class. in that all have suffered from the same wrongful acts of defendants.

22. The individual named plaintiffs will fairly and adequately represent the interests of the class. Plaintiffs' attorneys are qualified to pursue this litigation and have extensive experience in class actions.

23. A collective and class action is superior to other methods for the fair and efficient adjudication of this controversy. Upon information and belief, no litigation similar to this action has been commenced. A collective and class action regarding the issues in this case create no problems of manageability.

FACTUAL ALLEGATIONS

Defendants' Implementation of the FMP

24. In or about August-September 1992, NYTEL informed its employees by news bulletin, memoranda and through internal television broadcasts that it would be carrying out a reduction in force that fall. Upon information and belief, this reduction in force at NYTEL was part of a larger plan, the FMP, formulated and implemented by NYNEX which was to effect employees of NYNEX and its subsidiaries, including NYTEL.

25. The FMP implemented by NYTEL was allegedly designed to retain those deemed to be the most appropriate or best managers for the future, while discharging those employees deemed to be less valuable to the business. Under the process, hundreds of employees were selected and put "at risk" for discharge; other employees were "retained" so that their positions would be unaffected; and a third group was designated "eligible for voluntary separation" ("EVS"), but would not be separated from NYTEL unless they volunteered to leave. As part of this process, NYTEL compiled lists of those employees who wished to retire voluntarily and allowed them to retire with a pension and benefit retirement package. For each employee who voluntarily retired, NYTEL would "save" an "at risk" employee who could fill the position of an individual who left voluntarily. The balance of the "at risk" employees were to be discharged at the end of the process on December 11, 1992.

26. In order to select those employees who would be classified "at risk," "retained," or "EVS", NYTEL purportedly evaluated each employee and weighed the employee's performance and qualifications. Upon information and belief, NYTEL first divided the parts of its work force subject to the FMP into more than fifty "banding entities," each of which allegedly included a group of employees at a similar salary level, with similar responsibilities, and in a similar work department or area. Within each banding entity, NYTEL supervisors completed written evaluations of supervisees based on the two criteria of "performance" and "added value to the business." Those evaluations were then analyzed by a "banding team" which assigned a banding number between "1" and "4" to each employee, where "1" was assigned to employees considered most valuable and "4" to persons who would almost surely be included in the "at risk" group.

27. Upon information and belief, NYTEL and NYNEX made a policy decision to exempt certain employees from any part of this banding process so that they would not be placed in an "at risk," "retained" or EVS group. Defendants designated the following groups of employees as "ineligible" for banding:

(a) those employees who had received a promotion with a salary increase in the previous year; and

(b) those employees who had been employed two years or less with NYTEL ("two year service rule").

28. In determining an employee's "added value to the business," defendants applied a policy that gave an employee extra value if he or she had completed a professional job-related degree after January 1990, i.e., in approximately the previous two and one-half years (the "two year degree rule"). This extra value would be credited to the employee's evaluation when the banding team assigned a banding number to that employee.

29. On October 13, 1992, NYTEL informed approximately six hundred and twenty-five of its employees that they were at risk under the FMP. At that time, NYTEL also asked for volunteers who wished to leave the company pursuant to the voluntary separation program. For each individual who volunteered to leave the company, the company "saved" the position of one at risk individual in the same banding entity. If an at risk employee was not informed that he had been "saved" by December 11, 1992, then his or her employment terminated on that day.

30. Upon information and belief, older employees age forty and older were disproportionately selected for the "at risk" group announced on October 13, 1992 and for those discharged on December 11, 1992. Such over-representation of older employees resulted from defendants' discriminatory policies and practices.

31. Upon information and belief, the two year service rule had a disproportionate and discriminatory impact on older employees because most employees with less than two years of service were younger than forty and were automatically deemed

ineligible for the banding process. In contrast, employees with more than two years' seniority were more likely to be over forty, and were banded in a process that could lead to their being designated at risk. Defendants' two year service rule had no substantial business necessity which justified its application in the FMP.

32. Defendants' granting of automatic exemptions to younger employees was a part of their discriminatory policies against older employees. Upon information and belief, defendants knew and intended that implementation of the two year service rule would disproportionately affect older employees.

33. Upon information and belief, the two year degree rule also had a disproportionate and discriminatory impact on older employees because those employees who had received a degree within the two years prior to the FMP were generally employees who were younger than forty. Such extra value for a recent degree gave those younger employees greater added value in their evaluations and a discriminatory advantage in the banding process. Defendants' two year degree rule had no substantial business necessity which justified its application in the FMP.

34. Defendants' granting of extra value to younger employees who had recent degrees was a part of defendants' discriminatory policies against older employees. Upon information and belief, defendants knew and intended that giving greater value to recent degrees would make older individuals disproportionately

ineligible for favorable treatment, and would thus discriminate against older employees.

35. Upon information and belief, application of the two year service rule and the two year degree rule had a discriminatory impact on every member of this collective action and played a part in their selection for discharge under the FMP.

36. Upon information and belief, the two year service rule and the two year degree rule are examples of defendants' attitude toward older employees and their encouragement of a corporate culture that, as described below, generally held older workers in low esteem. Upon information and belief, NYNEX and NYTEL encouraged its managers to take a less favorable view of the contributions of its older workers.

37. Upon information and belief, defendants NYNEX and NYTEL encouraged NYTEL's managers to manipulate the banding criteria and apply the criteria in a discriminatory manner and evaluate employees' performance so that older employees would be adversely affected. In such a manner, defendant NYTEL selected more older employees for banding groups "3" and "4" and thus assured that these older employees would be "at risk."

38. Many of the plaintiffs in this action petitioned their managers at NYTEL to provide them with increased training opportunities in newly developing technical areas. Plaintiffs were repeatedly told by their managers that new NYTEL employees had priority in taking the technical classes and training sessions

offered by NYTEL, or they would be repeatedly enrolled in the classes only to have NYTEL cancel their classes. In many instances, plaintiffs were denied such training opportunities on the basis of their age.

39. In September 1992, NYTEL's senior management made a televised presentation explaining the FMP process to those employees who were at risk. At that presentation, Alana Kennedy, NYTEL's Director of Human Resources, explained that the FMP "was for people with long time in a business." In a second televised presentation on October 16, 1992, NYTEL's President Dick Jalkut told employees that management wanted to build a "new" New York Telephone Company. On another occasion, Executive Vice President Robert Thrasher told a group of employees that the only reason unionized workers "fifty years or older" took NYTEL management jobs was so that they "don't have to carry tools." Other members of NYTEL's management made similar comments showing NYTEL's discriminatory intent and reflecting the attitudes conveyed by its senior management, including but not limited to, the following:

(a) a district engineer told a group of employees in early 1991 that it was time for most of them to retire because NYTEL needed "new energy" and "new blood"; he later told a class member in September 1992 that new hires were exempted from the banding process because the company needed "new blood;"

(b) a manager told a meeting that the FMP would be designed toward eliminating all the "old Bell heads"; that same

manager also stated that "old brains are drained," and that NYTEL wanted "new clear-headed" people;

(c) another manager told an employee that he was an "old soldier," and that everyone understood that the older an employee was and the more years he or she had worked with the company, the less potential he or she had;

(d) a district manager explained to his employees in 1991 that half of them wouldn't be employed at NYTEL in a year because he had been informed by NYTEL management that the company was on a "youth movement";

(e) during the FMP process, NYTEL managers repeatedly asked an older employee about his age and inquired why he wasn't taking the early retirement; this employee was told by his district manager that NYTEL's philosophy was that it would be better to designate employees near retirement as "at risk" so that other younger people would be less hurt by FMP and that the company philosophy was that he should retire so as to save a younger person's job.

(f) a district manager told one of his employees that he wanted to rotate her back into the field and bring in new instructors because he wanted "new blood;"

(g) in 1988, an employee who was hired in his mid-thirties. when he was hired by NYTEL was told that NYTEL wanted to hire him because it had an older work force, was looking for "new

blood," and expected that the older employees would retire on their own in the next few years;

(h) a human resources manager explained NYNEX's goals for the turn of the century to a group of employees and said that there were too many older employees at NYNEX, that NYNEX had the oldest population of any company in the Bell system, and that should be corrected in the future;

(i) a district level manager told an employee in his area that NYTEL would, in the next few years, terminate the employment of all its non-support staff employees who did not possess a college degree. Upon information and belief, implementation of such a rule would disproportionately affect NYTEL's older employees.

40. Upon information and belief, NYTEL's human resources department prepared a compilation of named employees, for use in the FMP, which included identification of "at risk" employees with their ages specified. Upon information and belief, it was NYTEL's previous practice not to include an employee's age on documents related to employment actions.

Employee Benefits for NYTEL Employees

41. NYTEL, on its own and through NYNEX offers important benefits to its employees as part of their total compensation packages, including medical insurance, life insurance, disability insurance, and a "service pension." NYNEX has a company pension

plan, the NYNEX Management Pension Plan (the "service pension plan" or "plan"), by which it offers a "service pension" to NYTEL employees (and employees of its other subsidiaries) based on a combination of years of service with the NYNEX subsidiary ("net credited service" or "NCS") and each employee's age. Upon information and belief, this service pension significantly increases the total value of the vested pension benefit, and also entitles a former employee to full medical insurance coverage and life insurance.

42. Under the NYNEX plan, an employee becomes eligible for a service pension and accompanying benefits when he or she (a) has a NCS of twenty-five years and is fifty years old, or; (b) has a NCS of twenty years and is fifty-five years old, or; (c) has a NCS of ten years and is sixty-five years old, or (d) has thirty years of net credited service, regardless of age. Under NYNEX's service pension plan, there is a reduction in pension benefits for those employees who retire or take their pension before they reach certain specified ages.

The FMP's Effect on Plaintiffs' Pension Benefits

43. Defendants' termination of the employment of many older employees dramatically affected their pensions. Defendants discharged plaintiffs as part of a plan to interfere with plaintiffs' attainment of their service pension and other pension benefits that they would have become entitled to under the plan.

Many of the discharged employees needed to complete only a few more years of service in order to become service pension eligible. Upon information and belief, defendants deliberately discharged a disproportionate number of individuals who were close to service pension eligibility in order to avoid liability for the service pension and accompanying benefits, such as medical insurance.

44. Upon information and belief, even those employees who were eligible for a service pension at the time of their discharge were thereby penalized, because they received a reduced pension before they had reached a specified age and because they were not permitted to continue working to accrue additional pension credit.

45. On November 19, 1992, NYNEX's Board of Directors altered its eligibility criteria for a service pension for those employees subject to the FMP by also making an individual whose combination of age and NCS equaled or exceeded 75 eligible for a service pension and the associated benefits (the "rule of 75"). With this modification in policy, more employees subject to the FMP and in the "at risk" group became eligible for a service pension. Upon information and belief, defendants altered the pension eligibility criteria for those employees subject to the FMP in response to complaints by class members and in order to obfuscate defendants' illegal conduct in violation of ERISA and to discourage further complaints.

Discharge of the Named Plaintiffs

46. Plaintiff Krueger had been employed by NYTEL for twenty-four years when defendants discharged her; her performance throughout her employment with NYTEL was excellent. At the time of her discharge, Krueger was an outside plant engineer in the Kingston area. In her 1991 performance review, Krueger's supervisor complimented her efforts in reducing customer trouble reports and noted that her customer service performance had improved significantly; she had done an "outstanding job" in teamwork and had received several written commendations. From the mid-1980's to 1990, Krueger received an extra merit award performance bonus or higher than normal annual progression increases in her salary. In the last several years, Krueger repeatedly requested additional training in newly developing technical areas from NYTEL, but after registering for such classes, NYTEL repeatedly cancelled them. On one occasion she was told by a supervisor that she should cancel her registration for a training class.

47. At the time that defendants notified her that she was "at risk," Krueger was not eligible for a service pension or medical benefits under NYNEX's service pension plan. Krueger did become eligible for a service pension under the "rule of 75" after NYNEX changed its eligibility requirements on November 19, 1992; but her pension will be reduced because her discharge forced her to take it earlier than she otherwise would have, and she will lose

additional pension rights to which she would have become entitled had she continued to work for NYTEL.

48. Plaintiff Lupardo had been employed by NYTEL for almost twenty-two years when NYTEL discharged him; his performance throughout his employment with NYTEL was excellent. At the time of his discharge, Lupardo was employed as a subject matter expert and power engineer. In 1990 Lupardo's supervisor wrote that Lupardo was the top performer in the power group and the only experienced power planner for Long Island. In December 1991, Lupardo exceeded more than half of his performance goals and met his other two goals. In that year, his supervisor wrote that Lupardo had done most of the power planning for Long Island, that his planning was "exceptional," and that his contributions to the company were "just outstanding." Lupardo's supervisor identified Lupardo as ready for promotion in 1990 and 1991; he later wrote that he was "more than happy" with Lupardo's performance for the first half of 1992. At the time that defendants notified him that he was "at risk," Lupardo was eligible for a service pension and medical benefits under NYNEX's service pension plan; however, Lupardo's discharge interfered with his attainment of additional pension rights to which he would have become entitled.

49. Plaintiff Forde had been employed by NYTEL for almost twenty-nine years when NYTEL discharged him; his performance as a staff director in NYTEL's Operations Department was excellent. In his 1991 evaluation, Forde exceeded his performance objectives

in several categories; it was the best performance evaluation that Forde had received during his NYTEL career. In the middle of 1992, Forde's supervisor nominated him for a NYTEL Presidential Award on the basis of his high level performance in improving service and reducing costs. After receiving a high performance review and then being banded as "at risk" pursuant to the FMP, Forde spoke with Alana Kennedy of Human Resources and asked her to review his banding rating and designation as "at risk." Kennedy agreed to review his banding information, and told Forde that his situation was "not so bad" since he had qualified for a reduced service pension. Kennedy never communicated with Forde thereafter.

50. At the time that defendants notified Forde that he was "at risk," Forde was eligible for a service pension and medical benefits under NYNEX's service pension plan, but his pension will be discounted because his discharge forced him to take his pension early and he will lose additional pension rights to which he would have become entitled.

51. Plaintiff Grabowski had been employed by NYTEL for over twenty years when defendants discharged him; his performance throughout his employment with NYTEL was excellent. In his 1991 evaluation, Grabowski was praised by his supervisor for his ability to train and instruct people, and he exceeded expectations in two performance categories and met expectations in two others. In early 1992, Grabowski's supervisors and peers chose him to be recognized for extraordinary effort in the fourth quarter of 1991,

and he received an award payment. At the time that defendants notified him that he was "at risk," Grabowski was not eligible for a service pension or medical benefits under NYNEX's service pension plan, nor did he become eligible under the November modifications to the plan. Grabowski would have been eligible for a service pension in approximately five years.

52. Plaintiff Bruck had been employed by NYTEL for over twenty-six years as a right of way and claims manager when defendants discharged him; his performance throughout his employment with NYTEL was excellent. In his 1991 evaluation, Bruck exceeded his performance objectives in two categories and met them in all other categories. In his 1991 performance review, Bruck's supervisor wrote that he maintained a "high level of proficiency;" Bruck had a high level of enthusiasm and dedication and demonstrated the ability to recognize problem areas. At the time that defendants notified him that he was "at risk," Bruck was not eligible for a service pension or medical benefits under NYNEX's service pension plan, nor did he become eligible under the November modifications to the plan. Bruck would have been eligible for a service pension in approximately four years. In the last several years, Bruck repeatedly requested additional training in newly developing technical areas from NYTEL but was told that NYTEL was unable to provide him with such training opportunities.

53. Plaintiff Dwyer had been employed by NYTEL for twenty-three years when NYTEL discharged him; his performance

throughout his employment with NYTEL was excellent. Prior to 1991, Dwyer spent his entire career in Network Services, was one of the top rated supervisors in that area, and received an extra merit award performance bonus in every year from 1986-1990. In 1991, upon the urging of his managers, Dwyer transferred to a new job in the Engineering Department requiring some different skills and knowledge. Despite the fact that Dwyer was transferred to a new position less than two years prior to the date of FMP, he was not deemed "ineligible" for the FMP, as were other younger employees with less than two years of service with NYTEL.

54. At the time that defendants notified him that he was "at risk," Dwyer was not eligible for a service pension or medical benefits under NYNEX's service pension plan, nor did he become eligible under defendant NYNEX's November modifications to the plan. Dwyer would have ben eligible for a service pension in approximately five years.

FIRST CAUSE OF ACTION

Violation of the ADEA

55. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 54 above.

56. Defendants have violated the ADEA by discriminating against plaintiffs because of their age in the terms and conditions of their employment, as described above.

57. Defendants willfully violated the ADEA by discriminating on the basis of age knowingly or with reckless disregard of the law.

SECOND CAUSE OF ACTION

Violation of the Human Rights Law

58. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 54 above.

59. Defendants have violated the New York Human Rights Law, N. Y. Exec. Law § 290 et seq. by discriminating against plaintiffs because of their age in the terms and conditions of their employment, as described above.

THIRD CAUSE OF ACTION

Violation of ERISA With Respect to Employee Pension Benefit Plan

60. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 54 above, as if fully stated herein.

61. Defendants have violated § 510 of ERISA, 29 U.S.C. § 1140, by interfering with the attainment of plaintiffs' rights to defendants' service pension plan benefits and additional pension benefits to which plaintiffs would have been entitled absent defendants' decision to terminate plaintiffs' employment.

WHEREFORE, plaintiffs request that this Court enter judgment:

(a) Certifying the Second and Third Causes of Action as a class action under Rule 23 of the Federal Rules of Civil Procedure;

(b) Declaring the acts and practices complained of to be in violation of the ADEA, the Human Rights Law, and ERISA;

(b) Enjoining and restraining defendants from any further violations of the ADEA, the Human Rights Law, and ERISA;

(c) Directing defendant to take such affirmative steps as are necessary to ensure that the effects of its unlawful employment practices are eliminated;

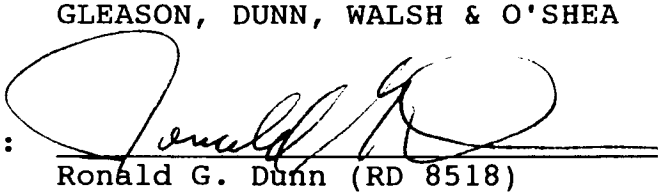
(d) Directing defendants to place plaintiffs in the positions they would have been in but for the discriminatory and wrongful treatment of them, and making them whole for all earnings, compensation and benefits they would have received but for defendants' discriminatory and otherwise wrongful actions, including, but not limited to, wages, supplements, bonuses, service pension, severance benefits, medical insurance, life insurance, and other lost benefits;

(e) Awarding plaintiffs any and all amounts owing to them that have been withheld in violation of the ADEA, the Human Rights Law, and ERISA, together with interest thereon;

(f) Awarding plaintiffs liquidated damages pursuant to the ADEA;

(g) Awarding plaintiffs compensatory damages, including damages for pain and suffering and emotional distress;

GLEASON, DUNN, WALSH & O'SHEA

By: 

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(h) Awarding plaintiffs the costs of this action, together with reasonable attorneys' fees; and

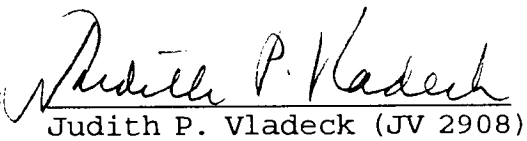
(i) Granting such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, plaintiffs hereby demand a trial by jury in this action of all issues so triable.

Dated: New York, New York
January 13, 1993

VLADECK, WALDMAN, ELIAS &
ENGELHARD, P.C.

By: 
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