

VALLI KANE & VAGNINI, LLP

Attorneys for Plaintiffs

600 OLD COUNTRY ROAD, STE. 519

GARDEN CITY, NY 11530

(516) 203-7180

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

**JAMES SWEENEY, GERALD HILL, GARY
DONNELLY, VIRGINIA SWEENEY, ALAN JACOBY,
EDWIN ACOSTA, EDWARD PRIOR,
GARRY KENNEY, JEANIE LEKOSKI,
TIMOTHY MULVIHILL, JOSE MERCADO,
ON BEHALF OF THEMSELVES AND
ALL OTHERS SIMILARLY SITUATED,**

Plaintiffs,

v.

AMENDED COMPLAINT

Jury Trial Demanded

**UNITED STATES POSTAL SERVICE,
JOHN E. POTTER, POSTMASTER GENERAL,**

08 CV 04417 (LDW)(ARL)

Defendants.

Plaintiffs named above, for and on behalf of themselves and other persons similarly situated/all Opt-In Plaintiffs (collectively referred to hereinafter as "Plaintiffs"), by and through their attorneys, VALLI KANE & VAGNINI, LLP, bring this action for damages and other legal and equitable relief from the Defendants' violation of the laws prohibiting age discrimination and retaliation for complaints about the same against the United States Postal Service and the Postmaster General ("Defendants"):

INTRODUCTION

1. This is a collective and individual action brought by Plaintiffs challenging acts committed by Defendants amounting to discrimination based on age and retaliation for complaints of age

discrimination related to the disparate treatment of older employees with regard to the terms and conditions of employment. Defendants' acts of discrimination, harassment, and retaliation are in violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621 et. seq. ("ADEA").

Plaintiff V. Sweeney has also endured violations of the Rehabilitation Act of 1973, 29 U.S.C. § 791 et. seq..

2. Furthermore, Plaintiffs challenge policies and practices set forth by Defendants which, despite the appearance of neutrality, have a disparate impact on older employees or are used disparately to target, harass, and discipline older employees. Such policies and practices are in violation of the ADEA.

JURISDICTION AND VENUE

3. This action is brought under the ADEA, 29 U.S.C. § 216(b) on behalf of the Plaintiffs named above and all persons similarly situated who choose to opt-in under procedures applicable to age discrimination claims. Declaratory relief is sought under 28 U.S.C. § 2201.

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, which confers original jurisdiction upon this Court for actions arising under the laws of the United States, and pursuant to 28 U.S.C. §§ 1343(3) and 1343(4), which confer original jurisdiction upon this Court in a civil action to recover damages or to secure equitable relief (i) under any Act of Congress providing for the protection of civil rights; (ii) under the Declaratory Judgment Statute, 28 U.S.C. § 2201; (iii) under 29 U.S.C. § 201 et. seq.

5. Venue is proper in this Court pursuant to 42 U.S.C. § 2000e-5(f)(3), in as much as this judicial district lies in a State in which the unlawful employment practices occurred. Venue is

also proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) and (c), in that Defendants maintain offices, conduct business and reside in this district.

6. All conditions precedent to the filing of this lawsuit have been met. Plaintiffs brought numerous EEO and EEOC claims, including a class action which included all members of the class of older employees and those who were retaliated against. Additionally, Plaintiffs made complaints on a regular basis to their supervisors.

7. The following Smithtown Employees brought EEO and EEOC charges which have been withdrawn in order to bring the present action:

- a. **Gary Donnelly v. United States Postal Service**
EEOC Hearing No.: 520-2008-00128X
Agency No.: 4A-117-0117-07
- b. **Alan Jacoby v. United States Postal Service**
EEOC Charge No.: 520-2008-00224X
Agency No.: 4A-117-0140-07
- c. **Edward Prior v. United States Postal Service**
EEOC Charge No.: 520-2007-00464
Agency No.: 4A-117-0031-07
- d. **Edwin Acosta v. United States Postal Service**
EEOC Charge No.: 520-2008-02778
Agency No.: 4A-117-0102-07
Agency No.: 4A-117-0013-08
- e. **Gerard Hill v. United States Postal Service**
EEOC Hearing No.: 520-2008-00040X
Agency No.: 4A-117-0037-07
- f. **Garry Kenney v. United States Postal Service**
EEOC Charge No.: 520-2008-00195X
Agency No.: 4A-117-0133-07
- g. **Virginia Sweeney v. United States Postal Service**
EEOC Charge No.: 520-2008-00386X
Agency No.: 4A-117-0097-07

Agency No.: 4A-117-0023-08

Agency No.: 4A-117-0057-08

h. Tim Mulvihill v. United States Postal Service

Agency No.: 4A-117-0047-08

i. Gerry Hill et. al. v. United States Postal Service

(This is a Class Action claim)

EEOC Charge No.: 520-2007-00356X

Agency No.: 4A-117-0037-07

8. A letter has been sent to the EEO and EEOC agency offices apprising them of the Plaintiffs' intention to bring a suit and to withdraw their agency claims.

PARTIES

9. Plaintiff James Sweeney is a resident of Suffolk County and was born on October 2, 1954. Plaintiff J. Sweeney filed a claim of discrimination and retaliation with the EEO and subsequently the EEOC. These claims are addressed by this Complaint.

10. Plaintiff Gerard Hill is a resident of Suffolk County and was born on July 30, 1959. Plaintiff Hill filed a claim of discrimination and retaliation with the EEO and subsequently the EEOC. Plaintiff Hill, in addition to his individual claims, filed a class charge on behalf of himself and all others who are similarly situated. These claims are addressed by this Complaint.

11. Plaintiff Gary Donnelly is a resident of Suffolk County and was born on April 2, 1949. Plaintiff Donnelly filed a claim of discrimination with the EEO and subsequently the EEOC. These claims are addressed by this Complaint.

12. Plaintiff Virginia Sweeney is a resident of Suffolk County and was born on November 19, 1953. Plaintiff V. Sweeney filed claims of discrimination and retaliation with the EEO and subsequently the EEOC. These claims are addressed by this Complaint.

13. Plaintiff Alan Jacoby is a resident of Suffolk County and was born on October 8, 1958. Plaintiff Jacoby filed a claim of discrimination and retaliation with the EEO and subsequently the EEOC. These claims are addressed by this Complaint.

14. Plaintiff Edwin Acosta is a resident of Suffolk County and was born on November 4, 1947. Plaintiff Acosta filed claims of discrimination and retaliation with the EEO and subsequently the EEOC. These claims are addressed by this Complaint.

15. Plaintiff Edward Prior is a resident of Suffolk County and was born on September 24, 1945. Plaintiff Prior filed a claim of discrimination and retaliation with the EEO and subsequently the EEOC. These claims are addressed by this Complaint.

16. Plaintiff Garry Kenney is a resident of Suffolk County and was born on July 6, 1954. Plaintiff Kenney filed a claim of discrimination and retaliation with the EEO and subsequently the EEOC. These claims are addressed by this Complaint.

17. Plaintiff Jeanie Lekoski is a resident of Suffolk County and was born on February 21, 1958. Plaintiff Lekoski has claims of discrimination and retaliation which are addressed by this Complaint.

18. Plaintiff Timothy Mulvihill is a resident of Suffolk County and was born on May 10, 1957. Plaintiff Mulvihill filed a claim of discrimination and retaliation with the EEO and subsequently the EEOC. These claims are addressed by this Complaint.

19. Plaintiff Jose Mercado is a resident of Suffolk County and was born on March 13, 1969. Plaintiff Mercado has claims of retaliation relating to complaints he made against the discriminatory actions taken against employees over 40 in age. He participated in the filing of an EEO claim which was filed as a class action and which was the administrative basis for this Complaint.

20. Defendant United States Postal Service is an employer under the ADEA and has offices located at 25 Route 111, Smithtown, New York.

21. Defendant John E. Potter is the Postmaster General for the United States Postal Service.

COLLECTIVE ACTION ALLEGATIONS

22. Plaintiffs seek to maintain this suit as a collective action pursuant to 29 U.S.C. § 216(b) on behalf of themselves as well as those in the following classes of persons:

All persons 40 years of age or older who worked as USPS Letter Carriers or any other similarly titled position at any time during the statutory period who give their consent in writing to become party plaintiffs (“Over 40 Class”).

All persons who engaged in a protected activity relating to claims of age discrimination and were subjected to an adverse employment action as a result (“Retaliation Class”).

23. Plaintiffs and other members of the Over 40 Class are similarly situated because, *inter alia*, they have all had similar job duties; performed similar tasks; been subjected to the same discriminatory policies, procedures and actions as described herein.

24. Plaintiffs and other members of the Retaliation Class are similarly situated because, *inter alia*, they have engaged in protected activities relating to age discrimination such as submitting verbal and written complaints to various employer representatives and agents; filing formal and informal EEO complaints; filing charges of discrimination with the EEOC; and lodging complaints with their union officials. The Retaliation Class has been subjected to adverse employment action as a result of such protected activity.

25. The treatment Plaintiffs have been subjected to includes, and continues to include, but is not limited to, meticulous oversight, constant criticism, unjustified write-ups and suspensions, persistent changing of requirements and processes, accusations and verbal chastising with no reason and failure to follow union contract requirements with the specific intent to harass and degrade older employees.

26. Defendants have known that Plaintiffs and other members of the Over 40 and Retaliation Classes have been subjected to ongoing age discrimination and retaliation. Nonetheless, Defendants have operated under a scheme to harass, intimidate and manage out members of the Over 40 and Retaliation Classes.

27. Furthermore, Defendants have initiated written and unwritten policies, which despite appearing neutral on their face, have a disparate impact on members of the Over 40 Class.

28. Defendants' conduct, as alleged herein, was willful and has caused significant damage to Plaintiffs and other members of the Over 40 and Retaliation Classes.

BACKGROUND FACTS

29. For a period of time from 2004 until 2006, there was no permanent Post Master at the Smithtown location.

30. Upon information and belief, the Smithtown Postal Office is known as the “Old Office” because it houses a disproportionately high amount of workers over the age of 40.

31. In or about 2006, Frank Capozzoli (“Capozzoli”) was selected to become Smithtown’s new Post Master in the Smithtown Post Office.

32. After Capozzoli was brought in as the Post Master a series of changes occurred within the Smithtown Post Office that focused on creating cause to terminate older employees as well as creating an environment designed to force older employees to retire.

33. Plaintiffs have been both targets of attempted terminations as well as targets of attempts to force them into retirement.

34. Under Capozzoli, carriers’ routes were reassigned to make the routes “more efficient.” The new routes, however, were not logically drawn and many older employees were given longer routes without being scheduled the proper amount of time to complete their duties.

35. Immediately following these reassignments, an army of supervisors from all over Long Island came to the Smithtown Post Office with the mission of finding problems with older employees.

36. Rather than operating under the Union Agreement and United States Post Office protocol, these supervisors were given free reign to determine what constituted an offense and even created a new system of punishment called Pre-Discipline Interviews (“PDI”) which was never explained to the employees prior to its implementation.

37. These newly empowered supervisors quickly became adept at finding the most mundane and ludicrous reasons for issuing their new form of discipline against older employees, including the Representative Plaintiffs.

38. Many of the older carriers were issued PDIs, letters of warning and even seven and fourteen day suspensions for such “mistakes” as the following:

- a. not holding as much mail as the supervisor could while sorting;
- b. tapping mail in order to see the address through a window envelope;
- c. looking at where the carrier was placing the mail while sorting;
- d. speaking with other employees;
- e. making verbal jokes (not for the manner or content of the joke but for simply making the joke);
- f. having to use two hands to put mail into overly filled sorting boxes;
- g. having magazines in the work area;
- h. not scanning or not noticing a failed scan for progress scans along the route;
- i. not placing mail into a mailbox while picking up the new mail with a single hand in a single motion;
- j. going ten miles under the speed limit while driving around a sharp curve; and
- k. being unable to return to the Post Office on time due to traffic, weather conditions and/or increased mail volume.

39. Other policies were instituted to harass the older employees including the “Golden Hour” which was the first hour a Plaintiff arrived to work had to be spent at their desk. Despite whether there was work to be done, a Plaintiff would not be allowed to leave their desk for any reason, even to use the rest room.

40. Following the appointment of Mr. Capozzoli as Post Master, Plaintiffs no longer enjoyed coming to due to how the older workers were being treated; they felt completely helpless. Plaintiffs witnessed and experienced the same harassment day after day for no apparent reason other than their age and/or in retaliation for complaining about the discriminatory treatment. Even when not the specific targets of the harassment, Plaintiffs feel they are also being targeted simply because they are older and the individuals being targeted are all older employees.

41. Any employee who spoke out against this treatment of themselves or others was retaliated against by being subjected to the same harassment and hostility.

42. These policies, at a minimum, had a disparate impact on the Defendants’ older workforce; however, upon information and belief, they were designed specifically to have an adverse affect on the older employees.

43. Supervisors insulted and degraded the older employees. Many older employees had problems with stress and blood pressure as a result of the systematic and constant harassment. Others have been diagnosed with psychological disorders and have had to take leave in order to regain their sanity.

INDIVIDUAL AND REPRESENTATIVE PLAINTIFFS' FACTS

James Sweeney

44. Plaintiff Sweeney began his employment at the Smithtown Post Office in August of 1985.

45. During the first twenty years or more of his employment Plaintiff Sweeney had no problems with management nor did they have a problem with his performance.

46. Throughout his entire tenure with the Post Office he worked efficiently and did an excellent job on his route.

47. In or about January of 2006, Plaintiff Sweeney began to encounter a number of situations where he was specifically harassed by these "supervisors" who had been trucked in to create the hostile work environment aimed at forcing Plaintiff and other, older employees to retire.

48. On September 28, 2006, supervisor Mike Bovenzi rearranged cases in the office in such a way that impeded the carriers' entry into the office and created a safety hazard because there was only one narrow opening for them to enter or exit the area near their desks.

49. Soon after arriving at work, Plaintiff Sweeney observed the safety hazard and notified Mr. Bovenzi about the safety hazard and returned to his desk. Mr. Bovenzi followed Plaintiff Sweeney back to his desk, told him to "shut up" and sent him home. Mr. Bovenzi had created the situation in order to lure Plaintiff Sweeney into a confrontation which could be turned into a disciplinary action.

50. On one occasion, Plaintiff Sweeney was told to come in on his day off. He informed his supervisor that he could not come in that day, and as a result he was issued a PDI.

51. On another occasion, Plaintiff Sweeney, while on his mail route in a customer's driveway, was approached by Post Master Frank Capozolli and Supervisor Steve Terzulli, one on each side of Plaintiff Sweeney's vehicle. The customer Plaintiff Sweeney had just served witnessed this and asked, "Are you okay?" Plaintiff Sweeney was told not to respond to the customer. Terzulli took the keys to Plaintiff Sweeney's vehicle and went through his coat that was located in the vehicle, a bag containing some of Plaintiff Sweeney's personal items, and the rest of the vehicle.

52. Terzulli yelled out, "he's all clean boss" to Capozolli and within earshot of the customer. This was done for the purpose of harassing Plaintiff Sweeney because of his age. Younger employees were not subjected to this type of harassment and illegal search.

53. Plaintiff Sweeney and other, older carriers had supervisors ride along with them in their trucks on their routes. The carriers were ordered to "hand anything a customer gives you to [the supervisor]." This "inspection" was a clear violation of the union contract because often times the supervisor never even filed the requisite form. Additionally, this meant that there was no paper trail to evidence the increased focus on older employees. Rather, these supervisors were simply along for the ride in order to harass the older employees in the hopes of eventually causing them to either retire or building a case against them for discipline or termination. Often, despite not having filed the proper form to inspect the route, the supervisor would issue discipline, thus providing some evidence for the improper inspection.

54. On October 19, 2007, Plaintiff Sweeney was given a 7-Day Suspension for disrespect, failure to follow directions and creating a disturbance. The suspension cited the following infractions which are not, nor have they ever been, grounds for suspension:

- a. 9/19 – missing a DPS (Delivery Point Sequence) scan;
- b. 9/27 – singing;
- c. 9/28 – talking;
- d. 10/5 – casing the DPS (one supervisor told Plaintiff Sweeney to “case the DPS” for a particular location, where you look at each letter individually instead of as a bundle because there were problems bundling for this particular location; another supervisor then wrote him up for “casing the DPS”).

55. From about December 6, 2006 to January 31, 2007, Plaintiff Sweeney subsequently received numerous PDI's for various reasons. These reasons were always deminimus, similar in nature to those set forth in paragraph 53 above, and often were created by the supervisors in order to find a reason to discipline Plaintiff Sweeney.

56. Plaintiff Sweeney was given a notice of removal on February 2, 2007. The union grieved his dismissal and he was ultimately reinstated as the notice of removal was completely unwarranted. Upon his return, Plaintiff Sweeney was again continuously subjected to harassment and hostility which created a hostile work environment.

57. Plaintiff Sweeney continued receiving PDI's after his return to work in April 2007. These PDIs were again for a variety of nonsensical reasons. He was issued a fourteen day suspension on May 10, 2007 for failure to follow directions by not returning on time. Plaintiff Sweeney did not return on time as a result of his longer and improperly measured route as well as the amount of mail which was being delivered that day, circumstances within the control of his superiors. Supervisors entirely ignored these reasons and instead again attempted to terminate Plaintiff Sweeney despite not having valid grounds to do so.

58. Plaintiff Sweeney was also issued a seven day suspension on May 31, 2007 for using his sick time.

59. On or about June 4, 2007, after enduring two separate unwarranted inspections without being given the proper notice under the union contract, Plaintiff Sweeney was issued another Letter of Removal for "failure to follow" and not "cradling" (holding his mail to management's satisfaction).

60. Cradling is the method of holding mail in your arm while sorting it. The union agreement has a basic requirement for sorting time; however there is no provision requiring employees to hold the mail a particular way while sorting it.

61. Plaintiff Sweeney was not accused of sorting slower than required, but only for the way he was holding the mail. As a result of the baseless charges brought against him, Plaintiff was reinstated after once again having to grieve a removal.

62. Continuing into 2007, Plaintiff Sweeney was issued PDIs for calling in sick, reporting a problem with the ERMS system (the system that receives call-ins by employees), and for not bringing his mail down to take on his route in the order that the supervisor deemed appropriate.

63. Plaintiff Sweeney has been issued three fourteen day suspensions in 2008, one for using his leave, one for not being polite after getting hit with a hamper of branches, and another for telling an employee not to speak with him about anal sex.

64. During this entire period, Plaintiff Sweeney seldom, if ever, witnessed younger employees receive the scrutiny and discipline that he and other older employees received.

65. Plaintiff Sweeney has filed numerous internal EEO complaints and an EEOC complaint against the Post Office for these actions which has spurred additional retaliation against him. Many of the actions above were taken in retaliation for his having filed these complaints. While it may be difficult to distinguish which is in retaliation for his complaints and which are simply because of his age, these two motivations are the only two reasons that can possibly be proffered for this systematic discrimination. Prior to this policy being enacted Plaintiff Sweeney had not received any such discipline from the Post Office.

66. In and around December of 2008, Matt Bertsch confronted and antagonized Plaintiff Sweeney on several occasions because he had stopped for a "comfort stop," a right under the union contract. Mr. Bertsch ignored this and berated Plaintiff Sweeney. This type of treatment continues and is discriminatory and/or in retaliation for Plaintiff Sweeney's complaints.

Gerard Hill

67. Plaintiff Hill began his employment at the Smithtown Post Office in 1986.

68. Plaintiff Hill witnessed the harassment and degradation of older employees at the Smithtown Post Office. He was targeted and subjected to the same harassment because of his age.

69. While older employees are micromanaged and disciplined, the younger employees break virtually every regulation and are rarely disciplined.

70. While older employees were constantly being issued DPIs, younger employees continued to work with the confidence that they were not being targeted by this system of discriminatory discipline.

71. At times, as many as five supervisors gathered behind older carriers' work space in order to time how long it took them to sort mail. Supervisors insulted and degraded the older employees. Many older employees had problems with stress and blood pressure as a result of the systematic and constant harassment. Others have been diagnosed with psychological disorders and have had to take leave in order to regain their sanity. It was due to this unwarranted degradation and mistreatment that Mr. Hill filed the class action EEO complaint.

Gary Donnelly

72. Plaintiff Donnelly commenced his employment at the Smithtown Post Office in the year 2004.

73. Beginning in or about January of 2006, Donnelly began to experience harassment and differential treatment due to his age.

74. On one occasion, Plaintiff Donnelly witnessed Chris Crolick, a much younger letter carrier, berating a Registration Clerk named Frank, who was in his 70s.

75. Plaintiff Donnelly interrupted Mr. Crolick's tirade and said, "Give the old guy a break." Mr. Crolick became aggressive towards Plaintiff Donnelly. He threatened Plaintiff Donnelly and said, "I'm going to rip your heart out."

76. Mr. Crolick and Plaintiff Donnelly were taken into Mr. Capozzoli's office. Capozzoli was told the entire incident, including the fact that Plaintiff Donnelly said, "Give the old guy a break" and that Mr. Crolick had threatened Plaintiff Donnelly with physical violence. All Capozzoli said was "if you get in a fight I'll fire both of you."

77. Plaintiff Donnelly also witnessed the harassing behavior of four supervisors drinking coffee while standing behind Plaintiff Lekoski, monitoring her work and informing her that she was moving too slow, while she was in tears. He witnessed Steve Terzulli grab her left hand and shove 6" of mail in it because she was supposedly required to hold 6" of flats at a time.

78. In the summer of 2006, Donnelly was having lunch in the park with his wife on his lunch break when he noticed movement in the bushes. He called out to see if anyone was there, and Matt Bertsch and Mike Bovenzi emerged from the bushes where they were hiding and spying on him.

79. There was a period in or around the Summer of 2006 when Plaintiff Donnelly was called in to speak with management approximately 40 days in a row for some sort of discipline. When Plaintiff Donnelly informed management that he was going to have a breakdown from the constant discipline, he was informed that if he could not handle the work, he could leave.

80. One day after being disciplined and screamed at while working, Plaintiff Donnelly went to the hospital after work because he believed he was having a heart attack. His blood pressure was abnormally high and he was taken to the emergency room. The doctors told him that if his heart was not as strong as it was, he would have had a heart attack.

81. Plaintiff Donnelly was out on stress leave from August 2007 to November 2007. The Compensation Board, denied Donnelly his pay, benefits, workers' compensation, and dropped him from his 401K. As a result, he was forced to go back to work against his doctor's advice.

Virginia Sweeney

82. Plaintiff V. Sweeney began working for the Post Office as a carrier in August of 1984.

83. Soon after the start of the new policies in 2006, an outside supervisor, Lucinda Richter, went on a driver observation with Plaintiff V. Sweeney and gave her a poor evaluation. This was in contrast to all the positive, prior evaluations Plaintiff V. Sweeney received throughout the course of her employment.

84. On January 14, 2007, Plaintiff V. Sweeney was terminated on the pretext that she had many unwarranted disciplinary notices against her.

85. Her discharge was later grieved by the Union and she was reinstated.

86. Plaintiff V. Sweeney was given an Official Discussion for Extending Street Time for returning late from her route on December 3, 2007. On this day, while performing her route, Plaintiff V. Sweeney called supervisor Matt Bertsch to tell him that due to the number of heavy parcels that she had to deliver, she was going to be back late to the office. The next day she was disciplined. However, at or around the same time, a new, younger carrier named Stephanie told Matt Bertsch that she was going to be late upon return from her route before she even went out on her route, and Bertsch told her that that was fine. Stephanie was not disciplined for returning late.

87. Plaintiff V. Sweeney provided her employer with the proper documentation, but she was still written up for missing days of work while she attended doctors' appointments. She was denied FMLA leave for these appointments and she was never offered a reasonable accommodation for her diabetes which qualifies her as disabled under the Rehabilitation Act of 1973.

88. On December 31, 2008, Plaintiff V. Sweeney arrived at work early and requested a change of schedule due to an impending snow storm. Ms. Hallie Rosen, a supervisor, denied this request stating that it is policy that no change could be made within 24 hours of a shift. Later, numerous other employees were offered the exact option Plaintiff V. Sweeney had requested and was denied. It has been the practice in the past that in the event of inclement weather or other problems employees could waive their lunch and thereby avoid the weather. Plaintiff V. Sweeney was denied this right in retaliation for her previous claims of discrimination, in a discriminatory fashion, and/or as a rejection of a reasonable accommodation for her disability.

Alan Jacoby

89. Plaintiff Jacoby commenced his employment at the Smithtown Post Office in 1989.

90. In or about January 2006, Plaintiff Jacoby received a new route after all the routes were put up for bid. He was told that his route should take him four hours when, in fact, it took six and half hours to complete. Two supervisors known as Pinto and Torterise began taking him out on the whole route, telling him that he was taking too much time to complete his route. Eventually, management allowed him six hours to complete his route. Despite this allotment, it still took six and a half hours to complete on days after holidays, when the mail volume was much larger.

91. In or about the summer of 2006, Matt Bertch became a supervisor at the Smithtown Post Office.

92. After the commencement of Mr. Bertch's employment with the Smithtown Post Office, Plaintiff Jacoby began receiving multiple PDI's for Extending Street Time, in particular for the extra half-hour he took to complete his route on Mondays due to the higher volume.

93. Supervisors, especially Bertch, would follow Plaintiff Jacoby.

94. In or about August 2006, supervisor Bertch began ordering Plaintiff Jacoby to come into work on his day off. Plaintiff Jacoby felt he had to come in because he did not want to disobey a direct order.

95. In October 2006, Plaintiff Jacoby filed an EEO complaint for harassment due to his age. It was decided in January 2007 with an order that management treat Jacoby with respect.

96. On or about December 9, 2006, Supervisor Bovenzi alleged that Plaintiff Jacoby had left his truck running although Plaintiff Jacoby informed him that his truck was not running. Although there was a younger woman on his route that did in fact leave her car running, only Plaintiff Jacoby was subjected to discipline.

97. Plaintiff Jacoby received a letter of removal for this supposed incident. The union filed a grievance on behalf of Plaintiff and he continued working.

98. Plaintiff Jacoby was subsequently called into Capozzoli's office with Shop Steward Bob Volonino and Union VP Rick Hubert. Plaintiff Jacoby was told that his removal had been changed to a 14-Day Suspension.

99. On or about September 17, 2007, Plaintiff Jacoby was disciplined for failure to Deliver Express Mail, although multiple other employees did the exact same thing but did not receive the high degree of discipline that Jacoby received.

100. In and about October 2008, Plaintiff Jacoby was followed on the street every day for several weeks. Even though he had only been on the route for a short period of time and contractually should be given a much longer period of time to learn the new route, he was followed by supervisors on a daily basis under the guise of inspection.

Edwin Acosta

101. Plaintiff Acosta is the oldest carrier at the Smithtown Post Office.

102. Plaintiff Acosta had no prior disciplinary actions before Mr. Capozzoli became the post master of Smithtown Post Office.

103. Following Mr. Capozzoli's appointment as Post Master, Plaintiff Acosta was routinely forced to undergo Driver Inspections. These inspections were done more often than is policy for an employee of his years and experience. There were periods of time where he would be inspected once a week or even twice a week, and many of those times he was written up for and received formal discipline. The individuals performing these Driver Inspections in many instances were not the supervisors from Smithtown, but rather, were supervisors brought in from other offices.

104. On one occasion, a supervisor named Jose Torrez asked Plaintiff Acosta to come in on his day off, however, Plaintiff Acosta was unable to due to obligations to his brother who suffers from diabetes. Plaintiff Acosta received a 7-Day suspension for refusing to come to work on his day off.

105. Plaintiff Acosta was disciplined for taking days off when he was sick or had to take care of his brother, although he was within his allotted sick time.

106. Plaintiff Acosta was also disciplined for returning late from his route although management did not give him enough time to complete his route.

107. Plaintiff Acosta witnessed the harassing behavior of four supervisors drinking coffee while standing behind another older employee, Jennie Lekoski, monitoring her work and informing her that she was moving too slow. During this time, Ms. Lekoski was in tears because of their constant harassment.

108. On January 7, 2009 Plaintiff Acosta was issued a seven day suspension for "failure to be regular in attendance." This suspension related to three and a half days which Plaintiff Acosta took off from October through December of 2008. Plaintiff Acosta has not exhausted his leave and this discipline is believed to be a pretext for age discrimination.

Edward Prior

109. Plaintiff Prior commenced working at the Smithtown Post Office in 1985 as a carrier.

110. Prior to the commencement of Mr. Capozzoli becoming Post Master of the Smithtown Post Office, Plaintiff Prior filed no EEO complaints and had good working conditions.

111. Following Mr. Capozzoli's assignment as Post Master, Plaintiff Prior began receiving an excessive amount of discipline for various reasons including being one minute late from lunch.

112. Plaintiff Prior was given multiple driving inspections and was written up on many different occasions for various reasons, including not handing over his Christmas tip to supervisor Bertch and supposedly locking supervisor Steve Terzulli inside the truck, something which is not logical in a truck which locks from the inside.

113. In or about December 2006, Plaintiff Prior's truck and personal belongings were searched by Bertch and Bovensi.

114. Plaintiff Prior was constantly written up for taking sick days. He was also written up for taking too much time on his routes although it was within the approved time given to complete his route.

115. Prior was questioned and teased frequently by Mr. Bertsch and Mr. Bovensi about how many bathroom breaks he took, although this was due to the fact that he was a diabetic.

116. In and around December of 2006 through January of 2007, Plaintiff Prior received four Notices of Removal from four different people on four different occasions.

117. Plaintiff Prior was issued a PDI for wearing a hat that did not have a Post Office insignia. Plaintiff left the office, took the hat off and told Matt Bertch that he did not need to wear the "damn hat." Prior was taken back into the office and was disciplined for cursing at Bertch.

118. As a result of this incident, Plaintiff Prior was placed on Administrative Leave until the Union and Management decided what to do with him. Plaintiff was reinstated, but only after signing a Last Chance Agreement.

119. Upon returning to the stressful environment in the Smithtown Post office, Plaintiff Prior could not take the further stress. He decided to retire rather than risk his life and allow his health to further deteriorate under the stressful conditions.

120. Plaintiff Prior suffers from multiple medical problems as a result of the harassment. He still suffers from anxiety and depression, has problems with sleep and a loss of appetite.

Garry Kenney

121. Plaintiff Kenney served in the military from 1972-1976 and commenced his employment at the Smithtown Post Office in 1981. Prior to Mr. Capozolli becoming Post Master, Plaintiff Kenney did not experience the type of disciplinary actions taken under his regime.

122. Following Mr. Capozolli's appointment as Post Master, Plaintiff Kenney was driving in his work vehicle and he was followed by supervisors from other Post Offices. These managers took pictures of Plaintiff Kenney with their cell phones and pulled him over. Capozolli arrived on the scene and the managers showed Capozolli the pictures from their cell phones right in front of Kenney. The managers claimed that Kenney was driving recklessly, going through red lights and driving with his door open. These claims were completely fabricated and the pictures on their cell phones did not substantiate anything.

123. Plaintiff Kenney's driving was observed very frequently; much more frequently than a seasoned carrier with an impeccable driving record should have been.

124. Plaintiff Kenney received discipline, including multiple PDI's, for Extending Street Time.

125. On one occasion, he put in a request for time off to go to the doctor, and the managers and supervisors denied it. However, whenever younger people make such requests, they are approved.

126. In or about December 2006, after delivering mail to a Wendy's restaurant, Plaintiff Kenney came out with a bag of food. Mr. Berstch and Mr. Bovenzi were waiting for him in the parking lot. They searched Kenney's vehicle and personal items, harassing Mr. Kenney for having food.

127. Plaintiff Kenney was disciplined on December 28, 2007 for getting injured on the job (Letter of Warning) because rules on proper lifting are included in the Employee Manual and, because he was injured, he must not have been following those rules.

128. On January 8 of 2009 Plaintiff Kenney was issued a seven day suspension for "failure to be regular in attendance." This was because from August through January Plaintiff Kenney used a total of seven sick days. This suspension is discriminatory and in retaliation for Plaintiff Kenney's previous complaints of discrimination.

Jeanie Lekoski

129. Plaintiff Lekoski began her employment with the Smithtown Post Office in April 1988.

130. Prior to the appointment of Mr. Capozzoli as Post Master, Plaintiff Lekoski received only one letter of warning for lateness.

131. Following his appointment, she received many disciplinary notices and about two notices of removal.

132. Plaintiff Lekoski was constantly followed on her routes by various supervisors. Numerous times they did not even speak to her, they simply drove behind or along side her and stared at her.

133. Although Plaintiff Lekoski was in the process of recovering from cancer, she was given disciplinary notices whenever she took sick leave.

134. She was given much more mail to deliver than she was supposed to and not given enough time to deliver it.

135. Just about every day Plaintiff Lekoski was crying because management would micromanage and discipline her. This had never happened to her in her long career with the Post Office.

136. On one occasion a group of about five supervisors, including Tezulli, came and stood behind her to watch her every move until she burst into tears from the stress.

Timothy Mulvihill

137. Plaintiff Mulvihill began working for the Smithtown Post Office in or around August 1990. Plaintiff Mulvihill had no disciplinary record prior to Capozzoli coming to Smithtown.

138. Beginning in and around March of 2006, Plaintiff Mulvihill was followed on his route on an almost daily basis. Unmarked cars with supervisors from other Post Offices would approach him and request identification without reason.

139. In or around November of 2006, Plaintiff Mulvihill was issued a letter of warning for having used personal days three weeks after his mother died.

140. Plaintiff Mulvihill was not on the overtime list and thus could not be forced to work overtime shifts. Despite this, he was issued a seven day suspension for refusing to work an overtime shift. Younger employees were not treated in this manner.

141. In or around April of 2008, the Post Office instigated a false accusation that Plaintiff had improperly touched a patron. This was entirely untrue and the complaint was dropped. Despite this, Plaintiff Mulvihill received a seven day suspension. The Smithtown Post Office took this action in an effort to harass and discriminate against Plaintiff Mulvihill due to his age and in retaliation for previous complaints.

Jose Mercado

142. Plaintiff Mercado began working for the Smithtown Post Office in 1999. He had no disciplinary record prior to Capozzoli becoming Post Master.

143. Plaintiff Mercado volunteered to be shop steward and tried to handle the various complaints against the older employees using the EEO process. He would stay up until two or three in the morning fighting the baseless accusations leveled by the Post Master and his supervisors.

144. Plaintiff Mercado overheard Mr. Capozzoli threaten a supervisor named Scott Van Nostrum with a bat for taking sides with a carrier. Plaintiff Mercado also heard Mr. Capozzoli say, "I'll hit you with a bat before you agree with someone else, you agree with management, you agree with me." Scott later asked for a transfer.

145. Plaintiff Mercado was fired in retaliation for standing up for an employee in his capacity as shop steward and was without pay for fifteen weeks.

Count I:

Violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621 et. seq.

(Intentional Discrimination)

“Over 40 Class”

146. The Over 40 Class Plaintiffs are all at least 40 years of age. They have been targeted, harassed, disciplined and otherwise had the terms and conditions of their employment altered because of their age. They have suffered adverse employment actions and worked through a hostile work environment while taking constant harassment from management at the direction of the United States Postal Service. This treatment is in violation of the Age Discrimination in Employment Act.

147. Plaintiffs have been damaged by this physically, emotionally and economically in that they have sustained damage to their psyche, stress and other physical pressure, and have lost pay as a result of Defendants’ attempts to terminate them unjustifiably.

148. Plaintiffs request relief as set forth below.

Count II:

Violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621 et. seq.

(Disparate Impact)

“Over 40 Class”

149. The conduct alleged herein violates the ADEA as Defendants have, among other things, maintained policies and procedures which when applied, had a discriminatory and disparate impact on older employees including Plaintiffs.

150. Plaintiffs request relief as set forth below.

Count III:

Violation of Age Discrimination in Employment Act, 29 U.S.C. § 621 et. seq.

(Retaliation)

“Retaliation Class”

151. Plaintiffs have complained of discrimination on behalf of themselves and others above forty years of age. They have been retaliated against for complaining of the discriminatory treatment received from the United States Postal Service. This retaliation was taken at the direction of the United States Postal Service. This treatment is in violation of the Age Discrimination in Employment Act.

152. Plaintiffs have been damaged by this physically, emotionally and economically in that they have sustained damage to their psyche, stress and other physical pressure, and have lost pay as a result of Defendants’ attempts to terminate them unjustifiably.

153. Plaintiffs request relief as set forth below.

Count IV:

Violation of the Rehabilitation Act of 1973, 29 U.S.C. § 791 et. seq..

On behalf of Plaintiff V. Sweeney

154. Plaintiff V. Sweeney has consistently been denied reasonable accommodations for her disability. She has been retaliated against for complaining of such denial and continues to work in a hostile environment due to her disability.

155. Plaintiff V. Sweeney has been damaged by Defendants' physical, emotional and economic attacks. She has sustained damage to her psyche, endured stress and other physical pressure. She has lost wages and fought attempts to unjustifiably terminate her.

156. Plaintiff requests relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

157. Preliminary and permanent injunctions against Defendants and their officers, agents, employees, representatives, and any and all persons acting in concert with them, from engaging in each of the unlawful practices, policies, customs, and usages set forth herein;

158. A judgment declaring that the practices complained of herein are unlawful and in violation of the Age Discrimination in Employment Act, 29 U.S.C. § 621 et. seq., the New York State Executive Law Section 290, et seq. and the Rehabilitation Act of 1973, 29 U.S.C. § 791 et. seq..

159. Granting an order restraining Defendants from any retaliation against Plaintiffs for participation in any form in this litigation;

160. All damages which Plaintiffs have sustained as a result of Defendants' conduct, including back pay, front pay, general and special damages for lost compensation and job benefits they would have received but for Defendants' practices, and for emotional distress, physical distress, humiliation, embarrassment, and anguish;

161. Any applicable front pay to Plaintiffs until such time as they can be placed in the same position they would now have occupied but for Defendants' discriminatory practices;

162. Exemplary and punitive damages in an amount commensurate with Defendants' ability to pay and so as to deter future malicious, reckless and/or intentional conduct;

163. Awarding Plaintiffs their costs and disbursements incurred in connection with this action, including reasonable attorneys' fees, expert witness fees and other costs;

164. Pre-judgment and post-judgment interest, as provided by law; and

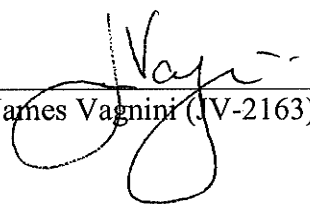
165. Granting Plaintiffs other and further relief as this Court finds necessary and proper.

Dated: January 28, 2009

Respectfully submitted,

Valli Kane & Vagnini, LLP
Attorneys for Plaintiff
600 Old Country Road, Suite 207
Garden City, New York 11530
(516) 203-7180
(516) 706-0248 (fax)

By: _____


James Vagnini (JV-2163)