

Robert L. Levy (RL-1633)
BANTLE & LEVY LLP
817 Broadway
New York, New York 10003
212.228.9666
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOVIRA LAST,	: :
	: :
Plaintiff,	: : Index No.:
	: :
- against -	: :
	: :
CONSOLIDATED EDISON, INC.,	: : <u>COMPLAINT</u>
	: : <u>AND JURY DEMAND</u>
	: :
Defendant.	: :
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Plaintiff Jovira Last, by her attorneys, Bantle & Levy LLP, alleges for her complaint against defendant Consolidated Edison, Inc. as follows:

PRELIMINARY STATEMENT

1. This is an action for employment discrimination based on sex in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. (“Title VII”) and the New York City Administrative Code § 8-101 et seq., (the “NYCHRL”). Plaintiff seeks declaratory relief and damages.

2. Plaintiff Jovira Last was employed by defendant Consolidated Edison, Inc., (“ConEd” or the “Company”), as a General Utility Worker in ConEd’s Installations & Apparatus department in the Third Avenue Yard in Brooklyn, New York (the “I&A”). At the

time of Last's assignment to the I&A in April 2014, Last was the only woman working among the 35-members of its workforce.

3. As documented in a three-month On-Trial Performance Evaluation Report (the "Three-Month Report"), Last capably performed as a General Utility Worker after commencing employment at ConEd. She enjoyed the challenges and physical demands of the job and received positive feedback on her performance.

4. Notwithstanding her performance, as the only woman in the I&A Last encountered hostility and resistance based on her sex from many of her male coworkers and from her manager, Frank Misischia. Among other things, Misischia repeatedly attempted to convince Last to transfer out of the I&A, a request Last consistently resisted.

5. Less than six months from the commencement of her employment at ConEd, Last abruptly was terminated by Misischia and General Manager Ned Mekhaiel.

6. At her termination meeting, Last was advised, for the first time, that her performance was deficient, including being presented with a six-month On-Trial Performance Evaluation Report (the "Six-Month Report") rating her performance as unsatisfactory.

7. The Six-Month Report contained several demonstrably false and misleading factual claims, including criticism of Last's performance on assignments for which she previously had received praise and the false claim that Last had only passed a less rigorous "women's" physical aptitude test when she had actually passed the same test as her male counterparts. Misischia and/or Mekhaiel invented these reasons for discharge to hide their prejudice against Last as a woman.

8. ConEd's decision to terminate was based on Last's sex and was performed

willfully, intentionally, maliciously and with reckless indifference to Last's rights.

JURISDICTION AND VENUE

9. The jurisdiction of this Court is invoked pursuant to 42 U.S.C. § 2000e et seq., as amended, and 28 U.S.C. §§ 1331, 1343(a)(3) and (4). In addition, plaintiff asserts a claim under the NYCHRL under this Court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a).

10. A substantial part of the unlawful acts and discriminatory practices alleged herein were committed within the district of the United States District Court, Southern District of New York, and venue is properly lodged in this Court pursuant to 28 U.S.C. § 1391(b).

11. All conditions precedent to jurisdiction under § 706 of Title VII, 42 U.S.C. §2000e-5(f)(3), have occurred or been complied with:

- a. A charge of employment discrimination on the basis of sex was filed by plaintiff Jovira Last with the Equal Employment Opportunity Commission ("EEOC") within 300 days of the adverse actions of which Last complains in this action.
- b. A notification of right to sue was issued to Last by the EEOC on December 10, 2015.
- c. This complaint has been filed within 90 days of Last's receipt of the EEOC's notification of right to sue.

12. Plaintiff has mailed a copy of this complaint to the Corporation Counsel for the City of New York and to the New York City Commission on Human Rights as required under New York City Administrative Code, § 8-502.

PARTIES

13. Plaintiff is a female citizen of the United States and currently resides in Philadelphia, Pennsylvania.

14. Plaintiff was employed by defendant ConEd as a General Utility Worker from April 2014 to October 2014.

15. Upon information and belief, defendant ConEd is a New York corporation organized and existing under the laws of the State of New York, with its principal executive offices at 4 Irving Place, New York, New York 10003.

16. At all times relevant to this complaint, ConEd has been an employer engaged in industry affecting commerce and has employed more than 100 employees within the meaning of 42 U.S.C. § 2000e-(b), (g) and (h). ConEd is also a person within the meaning of the New York City Administrative Code § 8-102(1).

STATEMENT OF FACTS

A. Last's Training and Initial Employment at ConEd

17. In 2013, Last enrolled in an intensive seven-week training program with Nontraditional Employment for Women, an organization that trains women for careers in the skilled construction, utility, and maintenance trades and helps women achieve economic independence and a secure future.

18. As part of the program, Last was given electrical training by employees of ConEd.

19. Last excelled in the program, receiving high grades on all her tests, both written and skills, and was voted "Most Valuable Tradeswoman" by her classmates.

20. After successfully completing the program, Last was hired by ConEd as a General Utility Worker. She began working at ConEd on April 18, 2014, after passing the

Physical Aptitude Test for General Utility Workers.

21. Following two weeks of initial training by ConEd, Last was assigned to the I&A in the Third Avenue Yard in Brooklyn.

22. With this assignment, Last became the only woman employed by ConEd in the I&A in the Third Avenue Yard.

23. Upon information and belief, as of the date of Last's assignment to the I&A that department had never employed a woman for more than a few months in the Third Avenue Yard.

B. Last Encounters Hostility as the Only Woman in the I&A

24. Last was deeply invested in her job and dedicated herself to her work and to honing and expanding her skills.

25. Soon after she started working in the I&A, Last began to encounter hostility from some of her coworkers based on her sex.

26. Last was regularly excluded from professional and social conversations in the workplace by many of her male coworkers.

27. Certain male coworkers also made false complaints about Last's work performance, including claiming that she "worked too safe."

28. Last also was subjected to hostile and unprofessional treatment based on her sex by her manager, Frank Misischia. Among other things, Misischia repeatedly pressured Last to transfer out of the I&A purportedly because he was concerned that the work there was too strenuous for her.

29. Misischia tried to direct Last to the Meters & Tests Department, claiming that it suited her better because it was more technical and less strenuous, and because, "women do well there."

30. Last did not want to transfer out of the I&A and consistently advised Misischia that she had no interest in leaving her current position. Last told Misischia that she liked her job, found it challenging and that the physical demands were well within her capacities.

31. On at least one such occasion, Last reminded Misischia that before she was hired by ConEd she had passed the same Physical Aptitude Test as the male General Utility Workers employed within the I&A.

C. Last's Three-Month Performance Report

32. In July 2014, Last was given her Three-Month Report by ConEd.

33. Last was rated "satisfactory" on every performance factor, was given an overall rating of "satisfactory", and was recommended for continued employment.

34. In the comments section of the Three-Month Report, Last's performance was described as follows: "Ms. Last models and promotes excellent safety awareness and constantly works in a safe manner." Last also was cited as having, "demonstrated that she has on the job knowledge and skills."

35. In addition to this written feedback, Last received positive comments on her performance from several coworkers, including at least one of the mechanics with whom she worked.

36. Subsequent to receiving her Three-Month Report, Last continued to devote herself to working hard and improving her performance.

37. In the ensuing months, Last was never cited for performance failures or subject to employee discipline. The contemporaneous verbal feedback on her job performance that she received continued to be positive.

D. Last's Employment at ConEd is Abruptly Terminated

38. On October 16, 2014, two days before Last completed a six month

probationary period that would have enabled her to become a member of the Utility Workers Union of America, Local 1-2, Last was abruptly terminated by ConEd.

39. In a brief termination meeting conducted by Misischia and Mekhaiel, Last was told that she was being terminated effective immediately for performance reasons.

40. Citing two specific jobs performed by Last, Misischia and Mekhaiel contended that there were deficiencies in Last's work and that she had created a safety hazard for herself and her fellow workers.

41. Last had not been cited for poor performance or creating a safety hazard in either of the two jobs identified by Misischia and Mekhaiel.

42. William Berry, a Lead Mechanic and union shop steward who was present at Last's termination meeting contested that Last had under-performed on the jobs identified by Misischia and Mekhaiel. Berry stated that he had been present for both of those jobs and that in both instances Last's performance had been satisfactory or better.

43. Berry's statement was summarily dismissed by Mekhaiel.

44. In a belated attempt to document the alleged performance deficiencies used by ConEd to justify Last's termination, Last was given her Six-Month Report at the termination meeting.

45. In the Six-Month Report, Last's work performance was rated "unsatisfactory."

46. The Six-Month Report was prepared by Mekhaiel and its substance directly contradicted the performance evaluation of Last's performance in the Three-Month Report.

47. The Six-Month Report contained numerous false statements to support the "unsatisfactory" rating of Last's performance.

48. For example, in the Six-Month Report, Mekhaiel claimed that Last was “unable to adapt to the physical requirements of the job.”

49. Mekhaiel purported to justify this conclusion by reference to an alleged inability to lift and feed cable during a job on September 22, 2014, but this claim was contested by Berry, who served as Lead Mechanic and supervisor on this job, and belied by the lack of any written or oral contemporaneous negative feedback on this job from Misischia and Mekhaiel.

50. Upon information and belief, Mekhaiel’s contention that Last could not handle the physical rigors of her job is premised on his mistaken belief that Last had only passed a less rigorous “women’s” physical aptitude test and not the same physical aptitude test as her male coworkers.

51. Upon information and belief, Mekhaiel had complained about the perceived difference in testing standards to at least two shop stewards in the I&A, bemoaning the purported unfairness.

52. As confirmed by Last with the individual who administered her physical aptitude test, Last was given and passed the same physical aptitude test as her male colleagues.

53. Upon information and belief, there is no factual basis for Mekhaiel’s belief that Last took a different physical aptitude test than the men working in the I&A.

54. The only physical task Last had difficulty performing during her employment with ConEd was carrying materials weighing more than 50 pounds—a task that is prohibited by relevant ConEd regulations.

55. In the Six-Month Report, Mekhaiel also claimed that Last’s performance was unsatisfactory because she had “failed to demonstrate the technical skills required to thrive as a mechanic in the I&A.”

56. As a General Utility Worker, Last was not required or expected to have

the technical skill of a Mechanic, a distinct job classification at ConEd with different job responsibilities and requirements.

57. There was no legitimate business justification for Mekhaiel to evaluate Last's technical proficiency based on the standard applicable to Mechanics as opposed to the standard applicable to General Utility Workers.

58. Notably, although Last was not a Mechanic, her technical work had been repeatedly praised by the lead Mechanic on a number of her assignments.

59. In the Six-Month Report, Mekhaiel further claimed that Last "did not wish to attain her Commercial Driver's License [("CDL")]." There was no factual basis for this claim.

60. Contrary to Mekhaiel's claim, Last had applied to Red Hook *On The Road* (a free CDL training program) and had been studying the Department of Motor Vehicles CDL manual before she was fired.

61. Furthermore, two male General Utility Workers who started the same day as Last – Eric Moran and Anthony Demonte – had not attained their CDL's by the date of Last's discharge, but were not subjected to any employee discipline on this basis.

62. Last attained her CDL shortly after being discharged by ConEd.

63. In the Six-Month Report, Mekhaiel also specifically cited Last for performance failures on two assignments, one on August 9, 2014 and one on September 16, 2014. Both criticisms are baseless.

64. Contrary to the criticisms in the Six-Month Report, Last had been contemporaneously praised for her work on both assignments — by Mischia for her work creatively solving a blockage program on September 16, 2014; and, by the lead Mechanic on the August 9, 2014 job for how well Last had constructed the "eye" required for a cable pull.

65. By comparison, at another job, a male General Utility Worker constructed an “eye” that failed, with nearly disastrous results, but, upon information and belief, this male employee was not disciplined or terminated for his mistake.

66. The Six-Month Report also falsely stated in the comments section that Last had received coaching and counseling sessions from multiple supervisors.

67. Last never received a single coaching or counseling session while employed by ConEd; if such sessions had occurred, a union representative would have been notified.

68. Because Last was terminated just prior to completing her six month probationary period she was unable to grieve her termination or arbitrate her discharge.

E. Sex Was a Substantial Motivating Factor in the Decision to Terminate Last

69. Prior to the date of her termination, Last had not been subjected to employee discipline of any kind or ever written up for poor performance.

70. Prior to the date of her termination, the written or oral feedback Last received on her job performance was consistently positive.

71. ConEd’s purported explanation for Last’s termination is premised on demonstrably false factual claims and manufactured criticisms of her work performance.

72. Misischia’s and Mekhaiel’s false claim that Last had passed a mere “women’s” physical aptitude test reveals their shared belief that women are too weak to work in the I&A and do not belong working there.

73. Misischia’s repeated efforts to pressure Last to transfer to a different department where “women do well” further documents his firmly held belief that women are not welcome in the I&A.

74. ConEd has an abysmal record of hiring and retaining women to work in

the I&A.

75. Upon information and belief, ConEd's poor record of hiring and retaining women employees in the I&A reflects a widely held belief at ConEd that women are not suited to the physical nature of the work in the I&A.

76. Upon information and belief, ConEd's negative and stereotyped view of women employees resulted in the company being the subject of a federal class action lawsuit brought by the Equal Employment Opportunity Commission and the New York Attorney General based on ConEd's failure to promote women employees, sexual harassment in the workplace, and retaliation against women who complained about sex discrimination.

77. This gender-biased and stereotyped view of women negatively impacted Last's employment at ConEd and was a substantial motivating factor in the decision to terminate her employment.

78. The reasons alleged to justify ConEd's termination of Last are pretextual.

79. As a consequence of the foregoing, ConEd has discriminated against Last in terminating her employment on the basis of her sex, and, thereby, denying Last continuing opportunities for employment and compensation.

80. ConEd's conduct violates Title VII of the Civil Rights Act, as well as the NYCHRL.

81. The aforesaid acts and conduct by ConEd, its agents and employees, were performed willfully, intentionally, maliciously and with reckless indifference to Last's protected rights.

COUNT I

82. Plaintiff repeats and realleges each and every allegation made in paragraphs numbered 1 through 81 as if fully set forth herein.

83. As a result of defendant's aforesaid acts, defendant ConEd has discriminated against plaintiff on account of her sex in violation of Title VII of the Civil Rights Act as amended, 42 U.S.C. § 2000e et seq.

84. As a result of defendant's discriminatory and adverse acts, plaintiff has suffered damage, including, without limitation, deprivation of income and benefits, termination of employment, loss of opportunity for advancement and promotion, emotional pain, suffering, inconvenience, mental anguish, humiliation, loss of enjoyment of life and damage to reputation and career.

COUNT II

85. Plaintiff repeats and realleges paragraphs 1 through 84 as if fully set forth herein.

86. As a result of defendant's aforesaid acts, defendant ConEd has discriminated against plaintiff on account of her sex in violation of the New York City Administrative Code § 8-101, et seq.

87. As a result of defendant's discriminatory and adverse acts, plaintiff has suffered damage, including, without limitation, deprivation of income and benefits, termination of employment, loss of opportunity for advancement and promotion, emotional pain, suffering, inconvenience, mental anguish, humiliation, loss of enjoyment of life, and damage to reputation and career.

WHEREFORE, plaintiff respectfully requests that this court grant judgment for plaintiff and that it order and award plaintiff the following relief against defendant:

(1) A declaratory judgment that the acts, policies, practices, and procedures complained of herein violated plaintiff's rights as secured by Title VII, 42 U.S.C. § 2000e et seq., and the New York City Administrative Code, § 8-101, et seq.;

(2) Damages in the form of (a) back pay with interest based on plaintiff's appropriate compensation had she not been discriminated against; (b) reinstatement or front-pay; and (c) reimbursement for lost pension, social security, experience, training opportunities and other benefits, in an amount to be shown at trial;

(4) Compensatory damages for her emotional pain and suffering, inconvenience, mental anguish, humiliation, and loss of reputation in an amount not less than \$1,000,000;

(5) Punitive damages in an amount not less than \$2,000,000;

(6) Attorneys fees;

(7) Costs and disbursements;

(8) Interest; and

(9) Such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands trial by jury.

Dated: New York, New York
January 21, 2016

BANTLE & LEVY LLP

By: 
Robert L. Levy (RL-1613)

817 Broadway
New York, New York 10003
212.228.9666
Attorneys for Plaintiff