

No ESA Severance Pay for Laid Off 12-Year Employee



After 12 years of full-time employment, a custodian was temporarily laid off for an indefinite period and 8 weeks' termination notice. Once the layoff became permanent, the custodian sued for severance under the Ontario ESA. Under Sec. 64 of the ESA, employees terminated after 5 or more years are entitled to not just notice but severance pay. The catch: Severance is due only if: i. the employer's annual payroll is over \$2.5 million; or ii. the employee is 1 of at least 50 employees whose employment is severed within a 6-month period because of a permanent discontinuance of all or part of the employer's business. But since neither condition was true in this case, the OLRB ruled that the custodian didn't qualify for severance [*Ellis v. Hiawatha Horse Park & Entertainment Centre*, 2015 CanLII 10337 (ON LRB), Feb. 18, 2015].