IN THE MATTER OF THE EMPLOYMENT STANDARDS ACT, 1980, R.S.O. Chapter 137 and amendments thereto;

AND IN THE MATTER OF an Application for review of Order To Pay No. 8001 affecting Metropolitan Toronto Board of Commissioners of Police (File No. E50/8904779)

REFEREE:	Robert D. Joyce
APPLICANT:	Metropolitan Toronto Board of Commissioners of Police
RESPONDENT:	G. J. Howard
DATE OF HEARING:	April 25, 1990
PLACE OF HEARING:	Toronto, Ontario
APPEARANCES:	B. Brown, L. Hazel for the Applicant; D. Strang for the Respondent; the Claimant, M. Connor

DETERMINATION

Order to Pay No. 8001 was issued to Metropolitan Toronto Board of Commissioners of Police on September 22, 1989, in the amount of $2,842.84, made up as follows:

Wages	-	$ 735.00
Vacation Pay	-	$ 29.40
Severance Pay	-	$1,820.00
Penalty	-	$ 258.44
		$2,842.84

The Order to Pay is based on the Respondent's decision that the Claimant, Mrs. M. Connor, a School Crossing Guard with the Commission at the time of her dismissal on January 26, 1989, was entitled to pay in lieu of notice under s.40--(1)(h) of the Act and to severance pay under s.40a. of the Act. Following her termination, the Claimant received one week's pay and that amount has been taken into account in the Order to Pay.

Pertinent provisions of the Employment Standards Act are found in attachment "A" and form a part of this determination.

The Applicant Board of Commissioners applied for a review of the Order on September 29, 1989. The grounds for the application were that the Officer erred in concluding that the employee was continuously employed by the Board for 17 years when in the Applicant's view she was employed for a series of definite terms, none of which equalled one year. In a letter to the Employment Standards Branch dated April 18, 1990, the Applicant advised that the position to be taken at the hearing would be that the Employment Standards Act does not apply to Civilian members of a Police Force. That jurisdictional point was taken at the hearing of April 25, 1990, and is dealt with at this time. In so doing,

it is helpful to first review the mechanics of how School Crossing Guards are employed by the Commission as well as certain of their working conditions as these matters do, in fact, differ substantially from the mechanics and working conditions applicable to other Civilian employees of the Commission.

Pertinent provisions of the Police Act are found in attachment "B" and form part of this determination.

School Crossing Guards are employed by the Metropolitan Toronto Police Commission and come under the Police Act.

The Guards are, however, not covered by the terms of the collective agreement between the Commission and the Metropolitan Toronto Police Association. Rather, they may elect to join a voluntarily recognized Association known as the School Crossing Guards Association of Metropolitan Toronto. In so doing, they sign an authorization card requiring the Commission to deduct seventy-five cents (75¢) bi-weekly from their pay and to forward that amount to the Association.

There is no evidence in front of me as to the function of the Crossing Guards Association.

When a person first seeks employment as a Guard an application form is completed and submitted to the Commission. That form carries the heading "Application for Employment/Re-employment For The School Year 19-- to 19--." When the job seeker is accepted and employment commences, the Guard receives a brochure headed "School Crossing Guards' Information", which brochure includes the following paragraph:

> School guards are hired for the school year from September to June, and you must reapply if you wish to

> return for the next school year. You will be contacted at the end of each school year and supplied with the necessary forms if you intend to reapply. Persons 70 years of age or older must take a vision test each year.

Guards wishing to join the aforementioned Association complete an application/authorization card which is submitted to the Commission and reads as follows:

> I, the undersigned, hereby authorize and direct the Metropolitan Toronto Board of Commissioners of Police to deduct the dues payable by me as a member of the School Crossing Guards Association of Metropolitan Toronto from each of my bi-weekly pay cheques at the rate of 75 cents per pay and to remit such dues to the School Crossing Guards Association of Metropolitan Toronto. This authorization shall remain in effect until June 30, 19--, when my appointment as a School Guard terminates.

Near the end of the school year in June those Guards wishing to work the following school year commencing in September are again required to complete the aforementioned form "Application for Employment/Re-employment." Those completing this application are advised before the end of the school year whether they are accepted for re-employment as of the coming September. This process is repeated year after year for those who are accepted for re-employment.

Each year one of the questions to be completed on the application form is "Date of Employment." The evidence is that as it pertains to the Claimant for the separate school years 1985 - 1988, the response to this question was, in each case, "7-9-71," this being the first year the Claimant was employed as a School Crossing Guard.

At the end of each school year, Guards are provided with a completed form prepared by the Commission for the purpose of claiming Unemployment Insurance. One form prepared for the Claimant, and in evidence, includes the notation that the reason for issuing the form is "Lay-off shortage of work," while the expected date of return is answered "Unknown."

At the end of each school year Guards receive vacation pay in the amount of four percent of their earnings during that school year, September to June. No vacation time is provided during the school year. Vacation benefits do not increase for those employees who return year after year.

Guards are normally employed three hours daily, five days weekly, September to June. There is a three-level wage structure with higher rates provided for Guards returning for the second and third years. Provided certain conditions are met, up to seven paid holidays are granted throughout the year. Semi-private Hospital Insurance coverage is available at a group rate through payroll deductions for those employees wishing to enrol.

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The Applicant's objection to jurisdiction centres on the fact that while the Act does not specifically stipulate that members of a Police Force are excluded from its provisions, it is common that members of the Uniform Force do not fall within the definition of "employee" under the Act except for ss.39a. - 39d. pertaining to lie detector tests. Starting from that acknowledged policy, the Applicant turns to the Police Act and notes that s.23 stipulates that every person employed in a Police Force shall be deemed to be a member thereof; there is no distinction between Civilian and Uniform employees. Turning to s.29 which deals with collective bargaining, there is again no

distinction made between Uniform and Civilian employees. It is only when duties and responsibilities are set out under the Act that Uniform and Civilian members are distinguished. Hence, it is the position of the Applicant that there is no basis for a determination that while Uniform members of the Force do not fall under the Employment Standards Act, Civilian members are covered by this Act.

Turning to s.39a. and s.39b. of the Employment Standards Act, the Applicant notes that this section states specifically that for the purpose of this section employees have a right to not take or be asked or be required to submit to a lie detector test. There is no distinction made between Uniform members and Civilian members. In the Applicant's submission, if either Civilian or Uniform members were included under the general provisions of the Act, there would have been no need for the Legislature to have stipulated that for the purpose of s.39a. members of a Police Force are employees. No other Part of the Act provides for such an inclusion.

Similarly, in s.39a. the Legislature saw the requirement to stipulate that for the purpose of this Part, "employer" includes a Police governing body. Again, if the Commission was an "employer" under the Act, there would have been no need to again include the definition under this Part.

The Applicant notes that Firefighters are included under the Act and this being so, the Legislature realized that certain exceptions to the Act were required for employees in this capacity. When one reviews Regulation 285, one finds major exceptions to the Act under the Parts pertaining to Hours of Work, Overtime Pay, and Public Holidays. In the Applicant's submission, had it been intended that members of the Police Force

were covered by the Act, identical or similar exceptions, and perhaps others, would be found in the Regulations.

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The position of the Respondent is that there is no explicit exception to be found in the Act for members of a Police Force. Members of the Uniform Force are, by law, office holders and the Ministry agrees that as a matter of policy they are not covered by the Act. Civilian members are, however, not office holders but are, rather, employees and fall within the definition found in s.1(c):

> Performs any work for or supplies any services to an employer for wages.

Turning to Part I, s.2 of the Act covers Contracts of Employment where employment is for work or services performed fully or partly in Ontario, and again in the Respondent's submission, Civilians fall four-square within this definition.

Though s.39a. refers specifically to members of the Police Force and to their governing bodies, this cannot be taken to mean that Civilian members are excluded from the other provisions; the lie detector section comes later and does not purport to change the definitions found in the Act. Office holders, i.e., Uniform members, are not covered by the Act and undoubtedly the Legislators were concerned with those members when designing the lie detector provision. In the opinion of the Respondent, those persons who do not have the protection of office holders must have the protection of the Act and this is even more true for School Crossing Guards who are not part of the Civilian bargaining unit.

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I have reached the conclusion that Civilian members of the Police Force fall within the definition of "employee" under the Act. Specifically, the Claimant is entitled to the protection and benefits found in the Act. Similarly, I have determined that the Applicant is covered by the definition of "employer" under the Act.

There is no specific exemption of Police members under the Act. It is, however, common ground that members of the Uniform Force, as office holders, are excluded from the Act. That explains why Firefighters who are covered by the Act generally are nevertheless, because of the nature of their work, excluded from certain sections of the Act. If members of the Uniform Force were subject to the Act, one could safely speculate that similar exceptions would be included for them. However, when one considers the nature of the work performed by Civilian members of the Force, one can see that similar exceptions are not required.

While the Police Act does not distinguish between Uniform and Civilian members, the fact is they are distinguished; Uniform members are office holders and Civilian members are not.

As noted, there is no specific exclusion of Police members under the Act. In reaching a decision on this jurisdictional matter, it is of assistance to note that there is such a specific exception to be found under s.2(a) of the Labour Relations Act. Similarly, under the Police Act, there is a specific exception to the Arbitration Act found in s.32(5). One would have thought that the Legislators would have included an exception for Civilian members of the Force had it been the intent to exclude them from the Employment Standards Act.

Turning to s.39a. where "employee" is defined to include a member of a Police Force, and "employer" has been defined to include a Police governing body for the purpose of legislation pertaining to a lie detector test, while the Applicant's position that this fully supports the notion that all Force members are excluded from all other parts of the Act comes close to being persuasive, I think not.

I have thus far considered the legislation sans s.39a. and have concluded that Civilian members are covered by the Act. This being so, one must ask if the Legislators intended by the introduction of the lie detector test legislation of s.39a. to, at the same time, exclude Civilian members from all other parts of the Act. Surely not! Surely, had that been the intention, Civilian members would have been excluded under the Interpretation section and included only for the purpose of sections 39a. to d. It is far more likely that the Legislators focused their attention on the office holders of the Force when designing the lie detector test legislation.

It is to be noted that this conclusion differs from the conclusion this same Referee noted at p. 8 in an award under the Police Act in Re The Town Of Napanee and Graham (November 23, 1989). In that award, the issue was not whether the Act applied, and the finding was made without the benefit of the extensive assistance provided by learned Counsel for both the Applicant and the Respondent in the instant case. In any event, I was wrong in my earlier determination that the Act does not apply to Civilian employees.

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Having determined that Civilian members are covered by the Act, I now proceed to review the merits of the Order.

The position of the Applicant with respect to s.40 is that in each of the school years involved the Claimant was employed for the definite term of September to June on the definite task of School Crossing Guard. In the Applicant's submission, the Claimant was, on each separate occasion of re-employment, fully aware of the task and the term and was equally aware that there were no recall rights and no rights to re-employment. The term of employment was for the school year, the maximum duration being ten months; hence, s.16(1) of Regulation 286 is not applicable. This being so, in the Applicant's submission, the Claimant is not entitled to the provisions of s.40(1)(h) of the Act, Notice of Termination or Pay in Lieu, by reason of s.40(3)(a) of the Act:

> **(3)** Subsections (1) and (2) do not apply to
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> (a) an employee employed for a definite term or task.

With respect to s.40a., it is common ground that while s.15 of Regulation 286 applies to s.40, it has no application to s.40a. of the Act. However, the position of the Applicant with respect to severance pay is that the Claimant is not entitled to severance because she did not meet the requirement of being employed by the Employer for five or more years; rather, the Claimant was employed on each occasion for a period of ten months. In the Applicant's submission, the requirement of the Act is that the employment be continuous as evidenced by the words of s.(1a) of s.40a. "has been employed" and this is supported by s.(1c) where it is stipulated that the severance pay entitlement is based on an employee's completed years of service and then the remaining months of service; the initial requirement is to complete a minimum of five years of employment; in the Claimant's case she had not on any occasion completed a full year

of employment and is not, therefore, entitled to severance payment.

In support of its position, the Applicant cites in Re Webster Manufacturing Limited (November 19, 1982), unreported decision of Referee Roberts.

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The position of the Respondent is that the Act is designed in a manner which protects employees from being employed, released and then re-employed in a manner which would permit an Employer to avoid the notice and severance pay requirements of the Act. In the Claimant's case she had worked on the same job for more than 17 years. Throughout her period of employment she had counted on returning to the same job in September and this had occurred. Longer notice after longer service is provided under the Act in recognition of the degree of adjustment required of an employee who builds a larger and larger stake in the job as the years pass.

In the Respondent's submission, the Claimant was continuously employed from 1971 to the time of her termination in 1989; s.15(2) of the Regulations stipulates that successive periods of employment constitute one period of employment unless there is a gap of more than 13 weeks between periods of employment. In the Claimant's case, she had been employed for a period of more than 17 years without there being a single gap in employment that approached 13 weeks. The fact that the Employer has a three-tier wage structure, which structure recognizes past service, is further proof that the Claimant was continuously employed. The fact that a School Crossing Guard is required to complete an application form each June is simply a matter of administration so that the Employer is aware of who will be available in

September of each year; the fact is, the employee is aware that resumed active employment in September is assured even before he or she finishes work in June.

In the Respondent's submission, all of the above leads to the inescapable conclusion that the Claimant is entitled to the eight weeks' notice required under s.40(1)(h) of the Act.

As noted, it is common that Regulation 286, s.16 has no application to s.40a. of the Act. The Respondent submits that even where there is a break in service, it is a requirement of s.(1c) that all of the years of employment be taken into account and only when the calculation of severance owing is made do you deduct a year of employment for which severance pay has already been granted. In the Claimant's case, one must take into account her 17 plus years of service and the fact that she had not previously received any severance pay as she had been continuously employed.

In support of its position, the Respondent cites in Re Ministry of Community and Social Services (September 10, 1989), unreported decision of Referee Haefling; in Re Domtar Inc. (January 15, 1986), unreported decision of Referee Fraser; in Re Standard Commercial Tobacco Company of Canada Limited (March 18, 1987), unreported decision of Referee Brown.

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The evidence is that the Claimant was first employed by the Commission in 1971. She worked from September to June of the following year, and in each of the school years since that time, to the date of her termination in January, 1989. Though she in fact returned to the School Crossing Guard position each September, she did not have any recall rights year to year.

Rather, since June of 1972, she was required to make a decision as to whether she wished to resume work in the coming September. So deciding, the Claimant was required to complete an Application for Re-employment form and return it to the Commission. The Commission was then obliged to decide whether the Claimant would be re-employed as of the following September. The decision was communicated to the Claimant at or near the end of the school year in June. Clearly, in the Claimant's case, the decision was positive, 1972 to 1988. The evidence includes the fact that vacation pay entitlement does not increase as School Crossing Guards return year after year. There is, however, evidence that there is a three-level tier of wages, increasing to the second and third levels when employees return in those years; the third level remains in effect in the fourth and succeeding years. There is, as well, the fact that the Employee Information Sheet entered in evidence includes the requirement that an employee must have three months' continuous service before being eligible for any of the seven paid holidays listed. One of those holidays is Thanksgiving. While there is no evidence on point, one must ask the question why Thanksgiving would be listed if service in prior school years is not recognized at least for the purpose of paid holidays; otherwise, no employee would have attained sufficient service between September and Thanksgiving to qualify for the Thanksgiving holiday pay.

In deciding whether an Employer has "re-hired" an employee in a manner which would lead one to conclude that the employee had, in fact, enjoyed successive periods of employment as anticipated by s.15(2) of Regulation 286, or whether the employee had been engaged for a definite term or task under s.40(3)(a), one must look to the task after satisfying oneself that the individual term is not in excess of the period of 12 months stipulated in s.16(1), or beyond the definite term by a period of at least three months. Were the initial and succeeding tasks dictated by

a legitimate timeframe, or were the tasks separated in a manner, whether intentional or otherwise, perhaps preventing the employee from becoming entitled to the notice provisions of the Act?

When a prospective employee applies for the job initially and then in each succeeding year, the duration of the assignment is known to him or her just as it is known that he or she will be required to re-apply and be accepted for re-employment the following year. In the instant case, the term was for approximately ten months each year. The task was to be a School Crossing Guard. There was no requirement for that task to be carried out between late June and early September. There is no ulterior motive present in the requirement that School Crossing Guards be present only when schools are open. The requirement is analogous to a student who is employed to cover for vacationing regular employees for the summer season, perhaps over a period of seven years while a student at high school and university. The situation is analogous to seasonal employees in, say, the canning and frozen food industry, or in the tobacco industry, where it is clear that employment is necessary for a specific reason for the specific term required to process the product at hand. There is, in those cases, just as in the case of the School Crossing Guards, no reason to conclude that the term or task has been designed to frustrate the rights of the employee.

Exceptions are to be found to seasonal work being for a definite term or task. One of these exceptions is where an Employer wishes to have a reasonable guarantee of a return of reliable and/or skilled employees and so the Employer guarantees the return of the employee each season; the seasonal employee is placed in the same position as a regular full-time employee on layoff. A second exception is to be found where as a result of collective bargaining, seasonal employees have the right of recall. Such a case is to be found in Re Standard Commercial

Tobacco, **supra**, where the Company had entered into a collective agreement, which agreement included a right to recall provision for seasonal employees who had advised the Company of their desire to return in the following year. While the Referee noted that the provisions of a collective agreement could not trigger the applicability of the Act, the terms of such an agreement could serve as a guide to whether seasonal employees could be considered to be on layoff and, as such, be eligible for the provisions of the Act. In that case, the Referee found that the parties to the agreement regarded seasonal employees as employees on layoff, and so the provisions of s.40 and s.40a. applied.

In the instant case the Employer elected to have employees re-apply for future employment at or near the end of each separate school term. When re-employed, past service was recognized for the purpose of the pay scale and perhaps for other reasons such as public holiday entitlement, but these conditions were triggered only after being re-accepted for the next term. The Act permits specific terms or tasks to be of a duration of up to one year. That period was not exceeded in the instant case. While the term of the annual task of School Crossing Guard is of longer duration than that of a student who returns to the same Employer for summer relief purposes over a period of several years, the situations are analogous and I cite with approval the decision of Referee Roberts in Re Webster Manufacturing Limited, **supra**, and at pp. 5-8:

> To consider the exception of s.40(3)(a) in context, it is necessary to determine what the Legislature had in mind when it mandated that the notices of termination provided in s.40(1) of the Act must be given. As to the purpose of requiring notice, it has been said, "Reading section 40 as a whole, it is clear that the Legislature did not fetter the employer's common law right to terminate a contract of employment, but sought to provide an equitable balance to that right by providing the employee with notice in advance in order

to permit the employee an opportunity to seek other employment opportunities without interrupting the continuity of his income." Re Diana's Restaurant and Ministry of Labour (1980), Employment Standards Case at 6 (E.N. Davis, Referee).

What, then, can be the reason for excepting from this notice requirement those who are "employed for a definite term or task"? English authority regarding such employment contracts indicates that no notice of termination is required because no act of termination is necessary. From the outset, both employer and employee know that on the happening of a definite event the contract of employment automatically will end. "A contract of employment for a limited period of time or for the performance of a specific task ends without the need for an act of termination on the part of either employer or employee." Hepple & O'Higgins, Employment Law, Third Edition (1979), at 215 (London, Sweet & Maxwell).

These observations indicate that the most appropriate test for determining whether an employee need not be given notice because "employed for a definite term or task is to determine whether the employee knew from the start that his employment automatically would end upon the happening of a definite event. It is not necessary to know precisely the timing of the "definite" event ending the contract. The word "definite" is best given a purposive, as opposed to literal, interpretation. English authorities have interpreted the expression "fixed term" in this fashion, holding that an employment contract that does not end until a particular job is completed nevertheless qualifies as a "fixed term" contract. See Wiltshire County Council v. N.A.T.F.H.E. [1978] I.R.L.R. 301; Dixon v. B.B.C. [1978] I.C.R. 357, affirmed on appeal. The Hepple & O'Higgins treatise, supra, defines as a contract "for a limited duration or for the performance of a specific task" an agreement to act "as a temporary replacement until a permanent employee returns to work." Id. at 214.

On this test, there can be no doubt that Mr. Speed was "employed for a definite term or task." From the outset, he knew that his employment automatically would end upon the return of the vacationing employee(s) he replaced. While the precise timing of this event was unknown, he was aware that it would occur some time between August 1, 1982 and the resumption of university

> classes, presumably shortly after Labour Day. The event that would terminate his employment was well defined. There was no reason to accord him the protection of the notice provisions of s.40(1)(a) of the Act. Under s.40(3)(a) he was not entitled to such notice.
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> The Order to Pay is hereby rescinded.

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In the result, I find the Claimant, having been employed for a definite term and task, is not entitled to the notice provisions of s.40 of the Act.

Turning to the severance pay provisions of s.40a. it is unnecessary to recount the employment history of the Claimant. One of the requirements of the Act is that an employee must have completed at least five years of employment. It is my conclusion that unlike in Re Ministry of Community and Social Services, **supra**, the instant Claimant had not completed even one year's service as is required under s.(1c) of 40a.

In Re Ministry of Community and Social Services, **supra**, the Claimant had, with one brief interruption, worked under a succession of short-term contracts with the status of an "unclassified" Civil Servant for a period of some seven years for several different agencies and branches. The Referee found, quite rightly in my view, that the Claimant had been employed continuously and was entitled to severance pay under the Act; the employee had, for whatever reasons, been placed in the position where the Employer would, in effect, say adieu on Friday but we will see you on Monday to perform virtually the same tasks over a period of some seven years.

Similarly, in Re Standard Commercial Tobacco, **supra**, the Referee found that as employees on layoff with recall rights the seasonal employees were entitled to severance pay when terminated.

Having found that the instant Claimant was not at any time in layoff status, and having found she did not at any time complete one year of employment, it follows that there is no entitlement to severance pay under the Act.

Order To Pay No. 8001 is rescinded.

DATED at Toronto, Ontario, this 1st day of June, 1990.

R. D. Joyce
Referee

ATTACHMENT "A"

Pertinent sections of the Employment Standards Act follow:

INTERPRETATION

(c) "employee" includes a person who,

(i) performs any work for or supplies any services to an employer for wages,

(ii) does homework for an employer, or

(iii) receives any instruction or training in the activity, business, work, trade, occupation or profession of the employer,

and includes a person who was an employee;

(d) "employer" includes,

(i) any owner, proprietor, manager, superintendent, overseer, receiver or trustee of any activity, business, work, trade, occupation, profession, project or undertaking who has control or direction of, or is directly or indirectly responsible for the employment of a person therein.

GENERAL APPLICATION

2.---(2) This Act applies to every contract of employment, oral or written, express or implied,

(a) where the employment is for work or services to be performed in Ontario; or

(b) where the employment is for work or services to be performed both in and out of Ontario and the work or services out of Ontario are a continuation of the work or services in Ontario.

PART XI-A

39a. For the purpose of this Part,

(a) "employee" means an employee as defined in clause 1(c) and includes an applicant for employment, a

member of a police force and a person who is an applicant to be a member of a police force;

(b) "employer" means an employer as defined in clause 1(d) and includes a prospective employer and a police governing body;

(c) "lie detector test" means an analysis, examination, interrogation or test taken or performed by means of or in conjunction with a device, instrument or machine, whether mechanical, electrical, electromagnetic, electronic or otherwise, and that is taken or performed for the purpose of assessing or purporting to assess the credibility of a person.

39b.--(1) An employee has a right not to take or be asked to take or submit to a lie detector test.

PART XII

40.

(1) No employer shall terminate the employment of an employee who has been employed for three months or more unless the employer gives,

(h) eight weeks notice in writing to the employee if his or her period of employment is eight years or more.

(3) Subsections (1) and (2) do not apply to,

(a) an employee employed for a definite term or task.

40a.--1

"termination" means,

(a) a dismissal, including a constructive dismissal,

(b) a lay-off that is effected because of a permanent discontinuance of all of the employer's business at an establishment, or

(c) a lay-off, including a lay-off effected because of a permanent discontinuance of part of the business of the employer at an establishment, commencing on or after the 15th day of June, 1987 that equals or

exceeds thirty-five weeks in any period of fifty-two consecutive weeks,

and "terminated" has a corresponding meaning.

(1a) Where,

(a) fifty or more employees have their employment terminated by an employer in a period of six months or less and the terminations are caused by the permanent discontinuance of all or part of the business of the employer at an establishment; or

(b) one or more employees have their employment terminated by an employer with a payroll of $2.5 million or more,

the employer shall pay severance pay to each employee whose employment has been terminated and who has been employed by the employer for five or more years.

(1c) The severance pay to which an employee is entitled under this section shall be in an amount equal to the employee's wages for a regular non-overtime work week multiplied by the sum of,

(a) the number of the employee's completed years of employment; and

(b) the number of the employee's completed months of employment divided by 12,

but shall not exceed twenty-six weeks regular wages for a regular non-overtime work week.

(2) Subsections (1a), (1b) and (1c) apply to,

(a) a regular full-time employee and a regular part-time employee.

(6) A year of employment for which an employee has been paid severance pay shall be excluded in any subsequent calculation of severance pay for that employee.

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PART VII - REGULATIONS

65.

(1) The Lieutenant Governor in Council may make regulations for carrying out the purposes of this Act and, without restricting the generality of the foregoing, may make regulations,

(n) prescribing what constitutes termination of employment:

(o) prescribing what constitutes "a definite term or task", "lay-off", "temporary lay-off", "indefinite lay-off", and a "period of employment".

REGULATION 286

1. For the purposes of section 40 of the Act,

15.--(1) Subject to subsection (2), period of employment constitutes the period between the time that the employment first began and the time that notice of termination is or should have been given and shall include employment before the coming into force of section 40 of the Act.

(2) Successive periods of employment of a person by an employer shall constitute one period of employment except where the successive periods of employment are more than thirteen weeks apart in which case the period of last employment shall constitute the period of employment for the purpose of section 40 of the Act.

16.--(1) Where a person is employed for a term or a task and the term or task exceeds a period of twelve months, the employment shall be deemed not to be employment for a definite term or task.

(2) Where a person who is employed for a definite term or task continues to be employed for a period of three months or more after completion of the term or task for which he was employed, the employment of that person shall be deemed not to be employment for a

definite term or task and his employment shall be deemed to have commenced at the beginning of the term or task.

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ATTACHMENT "B"

Pertinent sections of the Police Act follow:

23.--(1) Every person employed in a police force shall be deemed to be a member thereof.

28. A member of a police force shall not remain or become a member of any trade union or of any organization that is affiliated directly or indirectly with a trade union. R.S.O. 1980, c. 381, s. 28.

29.--(1) A majority of the members of the police force may, where no agreement exists or at any time after ninety days before an agreement would expire but for section 35, give notice in writing to the council of the municipality, or, where there is a board, the board, of its desire to bargain with a view to making an agreement or to the renewal, with or without modifications, of the agreement then in operation or to the making of a new agreement.

(2) Where notice has been given under subsection (1), the council of the municipality, or, where there is a board, the board, shall meet with a bargaining committee of the members of the police force within fifteen days from the giving of the notice or within such further period as the parties agree upon and the parties shall bargain in good faith and make every reasonable effort to come to an agreement for the purpose of making an agreement in writing defining, determining and providing for remuneration, pensions, sick leave credit gratuities, grievance procedures or working conditions of the members of the police force, other than the chief of police and any deputy chief of police, except such working conditions as are governed by a regulation made by the Lieutenant Governor in Council under this Act.

IN THE MATTER OF THE EMPLOYMENT STANDARDS ACT, 1980, R.S.O. Chapter 137 and amendments thereto;

AND IN THE MATTER OF an Application for review of Order To Pay No. 8001 affecting Metropolitan Toronto Board of Commissioners of Police (File No. E50/8904779)

REFEREE:	Robert D. Joyce
APPLICANT:	Metropolitan Toronto Board of Commissioners of Police
RESPONDENT:	G. J. Howard
DATE OF HEARING:	April 25, 1990
PLACE OF HEARING:	Toronto, Ontario
APPEARANCES:	B. Brown, L. Hazel for the Applicant; D. Strang for the Respondent; the Claimant, M. Connor

DETERMINATION

Order to Pay No. 8001 was issued to Metropolitan Toronto Board of Commissioners of Police on September 22, 1989, in the amount of $2,842.84, made up as follows:

Wages	-	$ 735.00
Vacation Pay	-	$ 29.40
Severance Pay	-	$1,820.00
Penalty	-	$ 258.44
		$2,842.84

The Order to Pay is based on the Respondent's decision that the Claimant, Mrs. M. Connor, a School Crossing Guard with the Commission at the time of her dismissal on January 26, 1989, was entitled to pay in lieu of notice under s.40--(1)(h) of the Act and to severance pay under s.40a. of the Act. Following her termination, the Claimant received one week's pay and that amount has been taken into account in the Order to Pay.

Pertinent provisions of the Employment Standards Act are found in attachment "A" and form a part of this determination.

The Applicant Board of Commissioners applied for a review of the Order on September 29, 1989. The grounds for the application were that the Officer erred in concluding that the employee was continuously employed by the Board for 17 years when in the Applicant's view she was employed for a series of definite terms, none of which equalled one year. In a letter to the Employment Standards Branch dated April 18, 1990, the Applicant advised that the position to be taken at the hearing would be that the Employment Standards Act does not apply to Civilian members of a Police Force. That jurisdictional point was taken at the hearing of April 25, 1990, and is dealt with at this time. In so doing,

it is helpful to first review the mechanics of how School Crossing Guards are employed by the Commission as well as certain of their working conditions as these matters do, in fact, differ substantially from the mechanics and working conditions applicable to other Civilian employees of the Commission.

Pertinent provisions of the Police Act are found in attachment "B" and form part of this determination.

School Crossing Guards are employed by the Metropolitan Toronto Police Commission and come under the Police Act.

The Guards are, however, not covered by the terms of the collective agreement between the Commission and the Metropolitan Toronto Police Association. Rather, they may elect to join a voluntarily recognized Association known as the School Crossing Guards Association of Metropolitan Toronto. In so doing, they sign an authorization card requiring the Commission to deduct seventy-five cents (75¢) bi-weekly from their pay and to forward that amount to the Association.

There is no evidence in front of me as to the function of the Crossing Guards Association.

When a person first seeks employment as a Guard an application form is completed and submitted to the Commission. That form carries the heading "Application for Employment/Re-employment For The School Year 19-- to 19--." When the job seeker is accepted and employment commences, the Guard receives a brochure headed "School Crossing Guards' Information", which brochure includes the following paragraph:

> School guards are hired for the school year from September to June, and you must reapply if you wish to

> return for the next school year. You will be contacted at the end of each school year and supplied with the necessary forms if you intend to reapply. Persons 70 years of age or older must take a vision test each year.

Guards wishing to join the aforementioned Association complete an application/authorization card which is submitted to the Commission and reads as follows:

> I, the undersigned, hereby authorize and direct the Metropolitan Toronto Board of Commissioners of Police to deduct the dues payable by me as a member of the School Crossing Guards Association of Metropolitan Toronto from each of my bi-weekly pay cheques at the rate of 75 cents per pay and to remit such dues to the School Crossing Guards Association of Metropolitan Toronto. This authorization shall remain in effect until June 30, 19--, when my appointment as a School Guard terminates.

Near the end of the school year in June those Guards wishing to work the following school year commencing in September are again required to complete the aforementioned form "Application for Employment/Re-employment." Those completing this application are advised before the end of the school year whether they are accepted for re-employment as of the coming September. This process is repeated year after year for those who are accepted for re-employment.

Each year one of the questions to be completed on the application form is "Date of Employment." The evidence is that as it pertains to the Claimant for the separate school years 1985 - 1988, the response to this question was, in each case, "7-9-71," this being the first year the Claimant was employed as a School Crossing Guard.

At the end of each school year, Guards are provided with a completed form prepared by the Commission for the purpose of claiming Unemployment Insurance. One form prepared for the Claimant, and in evidence, includes the notation that the reason for issuing the form is "Lay-off shortage of work," while the expected date of return is answered "Unknown."

At the end of each school year Guards receive vacation pay in the amount of four percent of their earnings during that school year, September to June. No vacation time is provided during the school year. Vacation benefits do not increase for those employees who return year after year.

Guards are normally employed three hours daily, five days weekly, September to June. There is a three-level wage structure with higher rates provided for Guards returning for the second and third years. Provided certain conditions are met, up to seven paid holidays are granted throughout the year. Semi-private Hospital Insurance coverage is available at a group rate through payroll deductions for those employees wishing to enrol.

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The Applicant's objection to jurisdiction centres on the fact that while the Act does not specifically stipulate that members of a Police Force are excluded from its provisions, it is common that members of the Uniform Force do not fall within the definition of "employee" under the Act except for ss.39a. - 39d. pertaining to lie detector tests. Starting from that acknowledged policy, the Applicant turns to the Police Act and notes that s.23 stipulates that every person employed in a Police Force shall be deemed to be a member thereof; there is no distinction between Civilian and Uniform employees. Turning to s.29 which deals with collective bargaining, there is again no

distinction made between Uniform and Civilian employees. It is only when duties and responsibilities are set out under the Act that Uniform and Civilian members are distinguished. Hence, it is the position of the Applicant that there is no basis for a determination that while Uniform members of the Force do not fall under the Employment Standards Act, Civilian members are covered by this Act.

Turning to s.39a. and s.39b. of the Employment Standards Act, the Applicant notes that this section states specifically that for the purpose of this section employees have a right to not take or be asked or be required to submit to a lie detector test. There is no distinction made between Uniform members and Civilian members. In the Applicant's submission, if either Civilian or Uniform members were included under the general provisions of the Act, there would have been no need for the Legislature to have stipulated that for the purpose of s.39a. members of a Police Force are employees. No other Part of the Act provides for such an inclusion.

Similarly, in s.39a. the Legislature saw the requirement to stipulate that for the purpose of this Part, "employer" includes a Police governing body. Again, if the Commission was an "employer" under the Act, there would have been no need to again include the definition under this Part.

The Applicant notes that Firefighters are included under the Act and this being so, the Legislature realized that certain exceptions to the Act were required for employees in this capacity. When one reviews Regulation 285, one finds major exceptions to the Act under the Parts pertaining to Hours of Work, Overtime Pay, and Public Holidays. In the Applicant's submission, had it been intended that members of the Police Force

were covered by the Act, identical or similar exceptions, and perhaps others, would be found in the Regulations.

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The position of the Respondent is that there is no explicit exception to be found in the Act for members of a Police Force. Members of the Uniform Force are, by law, office holders and the Ministry agrees that as a matter of policy they are not covered by the Act. Civilian members are, however, not office holders but are, rather, employees and fall within the definition found in s.1(c):

> Performs any work for or supplies any services to an employer for wages.

Turning to Part I, s.2 of the Act covers Contracts of Employment where employment is for work or services performed fully or partly in Ontario, and again in the Respondent's submission, Civilians fall four-square within this definition.

Though s.39a. refers specifically to members of the Police Force and to their governing bodies, this cannot be taken to mean that Civilian members are excluded from the other provisions; the lie detector section comes later and does not purport to change the definitions found in the Act. Office holders, i.e., Uniform members, are not covered by the Act and undoubtedly the Legislators were concerned with those members when designing the lie detector provision. In the opinion of the Respondent, those persons who do not have the protection of office holders must have the protection of the Act and this is even more true for School Crossing Guards who are not part of the Civilian bargaining unit.

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I have reached the conclusion that Civilian members of the Police Force fall within the definition of "employee" under the Act. Specifically, the Claimant is entitled to the protection and benefits found in the Act. Similarly, I have determined that the Applicant is covered by the definition of "employer" under the Act.

There is no specific exemption of Police members under the Act. It is, however, common ground that members of the Uniform Force, as office holders, are excluded from the Act. That explains why Firefighters who are covered by the Act generally are nevertheless, because of the nature of their work, excluded from certain sections of the Act. If members of the Uniform Force were subject to the Act, one could safely speculate that similar exceptions would be included for them. However, when one considers the nature of the work performed by Civilian members of the Force, one can see that similar exceptions are not required.

While the Police Act does not distinguish between Uniform and Civilian members, the fact is they are distinguished; Uniform members are office holders and Civilian members are not.

As noted, there is no specific exclusion of Police members under the Act. In reaching a decision on this jurisdictional matter, it is of assistance to note that there is such a specific exception to be found under s.2(a) of the Labour Relations Act. Similarly, under the Police Act, there is a specific exception to the Arbitration Act found in s.32(5). One would have thought that the Legislators would have included an exception for Civilian members of the Force had it been the intent to exclude them from the Employment Standards Act.

Turning to s.39a. where "employee" is defined to include a member of a Police Force, and "employer" has been defined to include a Police governing body for the purpose of legislation pertaining to a lie detector test, while the Applicant's position that this fully supports the notion that all Force members are excluded from all other parts of the Act comes close to being persuasive, I think not.

I have thus far considered the legislation sans s.39a. and have concluded that Civilian members are covered by the Act. This being so, one must ask if the Legislators intended by the introduction of the lie detector test legislation of s.39a. to, at the same time, exclude Civilian members from all other parts of the Act. Surely not! Surely, had that been the intention, Civilian members would have been excluded under the Interpretation section and included only for the purpose of sections 39a. to d. It is far more likely that the Legislators focused their attention on the office holders of the Force when designing the lie detector test legislation.

It is to be noted that this conclusion differs from the conclusion this same Referee noted at p. 8 in an award under the Police Act in Re The Town Of Napanee and Graham (November 23, 1989). In that award, the issue was not whether the Act applied, and the finding was made without the benefit of the extensive assistance provided by learned Counsel for both the Applicant and the Respondent in the instant case. In any event, I was wrong in my earlier determination that the Act does not apply to Civilian employees.

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Having determined that Civilian members are covered by the Act, I now proceed to review the merits of the Order.

The position of the Applicant with respect to s.40 is that in each of the school years involved the Claimant was employed for the definite term of September to June on the definite task of School Crossing Guard. In the Applicant's submission, the Claimant was, on each separate occasion of re-employment, fully aware of the task and the term and was equally aware that there were no recall rights and no rights to re-employment. The term of employment was for the school year, the maximum duration being ten months; hence, s.16(1) of Regulation 286 is not applicable. This being so, in the Applicant's submission, the Claimant is not entitled to the provisions of s.40(1)(h) of the Act, Notice of Termination or Pay in Lieu, by reason of s.40(3)(a) of the Act:

> **(3)** Subsections (1) and (2) do not apply to
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> (a) an employee employed for a definite term or task.

With respect to s.40a., it is common ground that while s.15 of Regulation 286 applies to s.40, it has no application to s.40a. of the Act. However, the position of the Applicant with respect to severance pay is that the Claimant is not entitled to severance because she did not meet the requirement of being employed by the Employer for five or more years; rather, the Claimant was employed on each occasion for a period of ten months. In the Applicant's submission, the requirement of the Act is that the employment be continuous as evidenced by the words of s.(1a) of s.40a. "has been employed" and this is supported by s.(1c) where it is stipulated that the severance pay entitlement is based on an employee's completed years of service and then the remaining months of service; the initial requirement is to complete a minimum of five years of employment; in the Claimant's case she had not on any occasion completed a full year

of employment and is not, therefore, entitled to severance payment.

In support of its position, the Applicant cites in Re Webster Manufacturing Limited (November 19, 1982), unreported decision of Referee Roberts.

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The position of the Respondent is that the Act is designed in a manner which protects employees from being employed, released and then re-employed in a manner which would permit an Employer to avoid the notice and severance pay requirements of the Act. In the Claimant's case she had worked on the same job for more than 17 years. Throughout her period of employment she had counted on returning to the same job in September and this had occurred. Longer notice after longer service is provided under the Act in recognition of the degree of adjustment required of an employee who builds a larger and larger stake in the job as the years pass.

In the Respondent's submission, the Claimant was continuously employed from 1971 to the time of her termination in 1989; s.15(2) of the Regulations stipulates that successive periods of employment constitute one period of employment unless there is a gap of more than 13 weeks between periods of employment. In the Claimant's case, she had been employed for a period of more than 17 years without there being a single gap in employment that approached 13 weeks. The fact that the Employer has a three-tier wage structure, which structure recognizes past service, is further proof that the Claimant was continuously employed. The fact that a School Crossing Guard is required to complete an application form each June is simply a matter of administration so that the Employer is aware of who will be available in

September of each year; the fact is, the employee is aware that resumed active employment in September is assured even before he or she finishes work in June.

In the Respondent's submission, all of the above leads to the inescapable conclusion that the Claimant is entitled to the eight weeks' notice required under s.40(1)(h) of the Act.

As noted, it is common that Regulation 286, s.16 has no application to s.40a. of the Act. The Respondent submits that even where there is a break in service, it is a requirement of s.(1c) that all of the years of employment be taken into account and only when the calculation of severance owing is made do you deduct a year of employment for which severance pay has already been granted. In the Claimant's case, one must take into account her 17 plus years of service and the fact that she had not previously received any severance pay as she had been continuously employed.

In support of its position, the Respondent cites in Re Ministry of Community and Social Services (September 10, 1989), unreported decision of Referee Haefling; in Re Domtar Inc. (January 15, 1986), unreported decision of Referee Fraser; in Re Standard Commercial Tobacco Company of Canada Limited (March 18, 1987), unreported decision of Referee Brown.

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The evidence is that the Claimant was first employed by the Commission in 1971. She worked from September to June of the following year, and in each of the school years since that time, to the date of her termination in January, 1989. Though she in fact returned to the School Crossing Guard position each September, she did not have any recall rights year to year.

Rather, since June of 1972, she was required to make a decision as to whether she wished to resume work in the coming September. So deciding, the Claimant was required to complete an Application for Re-employment form and return it to the Commission. The Commission was then obliged to decide whether the Claimant would be re-employed as of the following September. The decision was communicated to the Claimant at or near the end of the school year in June. Clearly, in the Claimant's case, the decision was positive, 1972 to 1988. The evidence includes the fact that vacation pay entitlement does not increase as School Crossing Guards return year after year. There is, however, evidence that there is a three-level tier of wages, increasing to the second and third levels when employees return in those years; the third level remains in effect in the fourth and succeeding years. There is, as well, the fact that the Employee Information Sheet entered in evidence includes the requirement that an employee must have three months' continuous service before being eligible for any of the seven paid holidays listed. One of those holidays is Thanksgiving. While there is no evidence on point, one must ask the question why Thanksgiving would be listed if service in prior school years is not recognized at least for the purpose of paid holidays; otherwise, no employee would have attained sufficient service between September and Thanksgiving to qualify for the Thanksgiving holiday pay.

In deciding whether an Employer has "re-hired" an employee in a manner which would lead one to conclude that the employee had, in fact, enjoyed successive periods of employment as anticipated by s.15(2) of Regulation 286, or whether the employee had been engaged for a definite term or task under s.40(3)(a), one must look to the task after satisfying oneself that the individual term is not in excess of the period of 12 months stipulated in s.16(1), or beyond the definite term by a period of at least three months. Were the initial and succeeding tasks dictated by

a legitimate timeframe, or were the tasks separated in a manner, whether intentional or otherwise, perhaps preventing the employee from becoming entitled to the notice provisions of the Act?

When a prospective employee applies for the job initially and then in each succeeding year, the duration of the assignment is known to him or her just as it is known that he or she will be required to re-apply and be accepted for re-employment the following year. In the instant case, the term was for approximately ten months each year. The task was to be a School Crossing Guard. There was no requirement for that task to be carried out between late June and early September. There is no ulterior motive present in the requirement that School Crossing Guards be present only when schools are open. The requirement is analogous to a student who is employed to cover for vacationing regular employees for the summer season, perhaps over a period of seven years while a student at high school and university. The situation is analogous to seasonal employees in, say, the canning and frozen food industry, or in the tobacco industry, where it is clear that employment is necessary for a specific reason for the specific term required to process the product at hand. There is, in those cases, just as in the case of the School Crossing Guards, no reason to conclude that the term or task has been designed to frustrate the rights of the employee.

Exceptions are to be found to seasonal work being for a definite term or task. One of these exceptions is where an Employer wishes to have a reasonable guarantee of a return of reliable and/or skilled employees and so the Employer guarantees the return of the employee each season; the seasonal employee is placed in the same position as a regular full-time employee on layoff. A second exception is to be found where as a result of collective bargaining, seasonal employees have the right of recall. Such a case is to be found in Re Standard Commercial

Tobacco, **supra**, where the Company had entered into a collective agreement, which agreement included a right to recall provision for seasonal employees who had advised the Company of their desire to return in the following year. While the Referee noted that the provisions of a collective agreement could not trigger the applicability of the Act, the terms of such an agreement could serve as a guide to whether seasonal employees could be considered to be on layoff and, as such, be eligible for the provisions of the Act. In that case, the Referee found that the parties to the agreement regarded seasonal employees as employees on layoff, and so the provisions of s.40 and s.40a. applied.

In the instant case the Employer elected to have employees re-apply for future employment at or near the end of each separate school term. When re-employed, past service was recognized for the purpose of the pay scale and perhaps for other reasons such as public holiday entitlement, but these conditions were triggered only after being re-accepted for the next term. The Act permits specific terms or tasks to be of a duration of up to one year. That period was not exceeded in the instant case. While the term of the annual task of School Crossing Guard is of longer duration than that of a student who returns to the same Employer for summer relief purposes over a period of several years, the situations are analogous and I cite with approval the decision of Referee Roberts in Re Webster Manufacturing Limited, **supra**, and at pp. 5-8:

> To consider the exception of s.40(3)(a) in context, it is necessary to determine what the Legislature had in mind when it mandated that the notices of termination provided in s.40(1) of the Act must be given. As to the purpose of requiring notice, it has been said, "Reading section 40 as a whole, it is clear that the Legislature did not fetter the employer's common law right to terminate a contract of employment, but sought to provide an equitable balance to that right by providing the employee with notice in advance in order

to permit the employee an opportunity to seek other employment opportunities without interrupting the continuity of his income." Re Diana's Restaurant and Ministry of Labour (1980), Employment Standards Case at 6 (E.N. Davis, Referee).

What, then, can be the reason for excepting from this notice requirement those who are "employed for a definite term or task"? English authority regarding such employment contracts indicates that no notice of termination is required because no act of termination is necessary. From the outset, both employer and employee know that on the happening of a definite event the contract of employment automatically will end. "A contract of employment for a limited period of time or for the performance of a specific task ends without the need for an act of termination on the part of either employer or employee." Hepple & O'Higgins, Employment Law, Third Edition (1979), at 215 (London, Sweet & Maxwell).

These observations indicate that the most appropriate test for determining whether an employee need not be given notice because "employed for a definite term or task is to determine whether the employee knew from the start that his employment automatically would end upon the happening of a definite event. It is not necessary to know precisely the timing of the "definite" event ending the contract. The word "definite" is best given a purposive, as opposed to literal, interpretation. English authorities have interpreted the expression "fixed term" in this fashion, holding that an employment contract that does not end until a particular job is completed nevertheless qualifies as a "fixed term" contract. See Wiltshire County Council v. N.A.T.F.H.E. [1978] I.R.L.R. 301; Dixon v. B.B.C. [1978] I.C.R. 357, affirmed on appeal. The Hepple & O'Higgins treatise, supra, defines as a contract "for a limited duration or for the performance of a specific task" an agreement to act "as a temporary replacement until a permanent employee returns to work." Id. at 214.

On this test, there can be no doubt that Mr. Speed was "employed for a definite term or task." From the outset, he knew that his employment automatically would end upon the return of the vacationing employee(s) he replaced. While the precise timing of this event was unknown, he was aware that it would occur some time between August 1, 1982 and the resumption of university

> classes, presumably shortly after Labour Day. The event that would terminate his employment was well defined. There was no reason to accord him the protection of the notice provisions of s.40(1)(a) of the Act. Under s.40(3)(a) he was not entitled to such notice.
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> The Order to Pay is hereby rescinded.

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In the result, I find the Claimant, having been employed for a definite term and task, is not entitled to the notice provisions of s.40 of the Act.

Turning to the severance pay provisions of s.40a. it is unnecessary to recount the employment history of the Claimant. One of the requirements of the Act is that an employee must have completed at least five years of employment. It is my conclusion that unlike in Re Ministry of Community and Social Services, **supra**, the instant Claimant had not completed even one year's service as is required under s.(1c) of 40a.

In Re Ministry of Community and Social Services, **supra**, the Claimant had, with one brief interruption, worked under a succession of short-term contracts with the status of an "unclassified" Civil Servant for a period of some seven years for several different agencies and branches. The Referee found, quite rightly in my view, that the Claimant had been employed continuously and was entitled to severance pay under the Act; the employee had, for whatever reasons, been placed in the position where the Employer would, in effect, say adieu on Friday but we will see you on Monday to perform virtually the same tasks over a period of some seven years.

Similarly, in Re Standard Commercial Tobacco, **supra**, the Referee found that as employees on layoff with recall rights the seasonal employees were entitled to severance pay when terminated.

Having found that the instant Claimant was not at any time in layoff status, and having found she did not at any time complete one year of employment, it follows that there is no entitlement to severance pay under the Act.

Order To Pay No. 8001 is rescinded.

DATED at Toronto, Ontario, this 1st day of June, 1990.

R. D. Joyce
Referee

ATTACHMENT "A"

Pertinent sections of the Employment Standards Act follow:

INTERPRETATION

(c) "employee" includes a person who,

(i) performs any work for or supplies any services to an employer for wages,

(ii) does homework for an employer, or

(iii) receives any instruction or training in the activity, business, work, trade, occupation or profession of the employer,

and includes a person who was an employee;

(d) "employer" includes,

(i) any owner, proprietor, manager, superintendent, overseer, receiver or trustee of any activity, business, work, trade, occupation, profession, project or undertaking who has control or direction of, or is directly or indirectly responsible for the employment of a person therein.

GENERAL APPLICATION

2.---(2) This Act applies to every contract of employment, oral or written, express or implied,

(a) where the employment is for work or services to be performed in Ontario; or

(b) where the employment is for work or services to be performed both in and out of Ontario and the work or services out of Ontario are a continuation of the work or services in Ontario.

PART XI-A

39a. For the purpose of this Part,

(a) "employee" means an employee as defined in clause 1(c) and includes an applicant for employment, a

member of a police force and a person who is an applicant to be a member of a police force;

(b) "employer" means an employer as defined in clause 1(d) and includes a prospective employer and a police governing body;

(c) "lie detector test" means an analysis, examination, interrogation or test taken or performed by means of or in conjunction with a device, instrument or machine, whether mechanical, electrical, electromagnetic, electronic or otherwise, and that is taken or performed for the purpose of assessing or purporting to assess the credibility of a person.

39b.--(1) An employee has a right not to take or be asked to take or submit to a lie detector test.

PART XII

40.

(1) No employer shall terminate the employment of an employee who has been employed for three months or more unless the employer gives,

(h) eight weeks notice in writing to the employee if his or her period of employment is eight years or more.

(3) Subsections (1) and (2) do not apply to,

(a) an employee employed for a definite term or task.

40a.--1

"termination" means,

(a) a dismissal, including a constructive dismissal,

(b) a lay-off that is effected because of a permanent discontinuance of all of the employer's business at an establishment, or

(c) a lay-off, including a lay-off effected because of a permanent discontinuance of part of the business of the employer at an establishment, commencing on or after the 15th day of June, 1987 that equals or

exceeds thirty-five weeks in any period of fifty-two consecutive weeks,

and "terminated" has a corresponding meaning.

(1a) Where,

(a) fifty or more employees have their employment terminated by an employer in a period of six months or less and the terminations are caused by the permanent discontinuance of all or part of the business of the employer at an establishment; or

(b) one or more employees have their employment terminated by an employer with a payroll of $2.5 million or more,

the employer shall pay severance pay to each employee whose employment has been terminated and who has been employed by the employer for five or more years.

(1c) The severance pay to which an employee is entitled under this section shall be in an amount equal to the employee's wages for a regular non-overtime work week multiplied by the sum of,

(a) the number of the employee's completed years of employment; and

(b) the number of the employee's completed months of employment divided by 12,

but shall not exceed twenty-six weeks regular wages for a regular non-overtime work week.

(2) Subsections (1a), (1b) and (1c) apply to,

(a) a regular full-time employee and a regular part-time employee.

(6) A year of employment for which an employee has been paid severance pay shall be excluded in any subsequent calculation of severance pay for that employee.

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PART VII - REGULATIONS

65.

(1) The Lieutenant Governor in Council may make regulations for carrying out the purposes of this Act and, without restricting the generality of the foregoing, may make regulations,

(n) prescribing what constitutes termination of employment:

(o) prescribing what constitutes "a definite term or task", "lay-off", "temporary lay-off", "indefinite lay-off", and a "period of employment".

REGULATION 286

1. For the purposes of section 40 of the Act,

15.--(1) Subject to subsection (2), period of employment constitutes the period between the time that the employment first began and the time that notice of termination is or should have been given and shall include employment before the coming into force of section 40 of the Act.

(2) Successive periods of employment of a person by an employer shall constitute one period of employment except where the successive periods of employment are more than thirteen weeks apart in which case the period of last employment shall constitute the period of employment for the purpose of section 40 of the Act.

16.--(1) Where a person is employed for a term or a task and the term or task exceeds a period of twelve months, the employment shall be deemed not to be employment for a definite term or task.

(2) Where a person who is employed for a definite term or task continues to be employed for a period of three months or more after completion of the term or task for which he was employed, the employment of that person shall be deemed not to be employment for a

definite term or task and his employment shall be deemed to have commenced at the beginning of the term or task.

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ATTACHMENT "B"

Pertinent sections of the Police Act follow:

23.--(1) Every person employed in a police force shall be deemed to be a member thereof.

28. A member of a police force shall not remain or become a member of any trade union or of any organization that is affiliated directly or indirectly with a trade union. R.S.O. 1980, c. 381, s. 28.

29.--(1) A majority of the members of the police force may, where no agreement exists or at any time after ninety days before an agreement would expire but for section 35, give notice in writing to the council of the municipality, or, where there is a board, the board, of its desire to bargain with a view to making an agreement or to the renewal, with or without modifications, of the agreement then in operation or to the making of a new agreement.

(2) Where notice has been given under subsection (1), the council of the municipality, or, where there is a board, the board, shall meet with a bargaining committee of the members of the police force within fifteen days from the giving of the notice or within such further period as the parties agree upon and the parties shall bargain in good faith and make every reasonable effort to come to an agreement for the purpose of making an agreement in writing defining, determining and providing for remuneration, pensions, sick leave credit gratuities, grievance procedures or working conditions of the members of the police force, other than the chief of police and any deputy chief of police, except such working conditions as are governed by a regulation made by the Lieutenant Governor in Council under this Act.