

----- x

In the Matter of the Application of

PHIL CARUSO, as President of the  
Patrolmen's Benevolent Association  
of the City of New York, Inc., and  
THE PATROLMEN'S BENEVOLENT ASSOCIATION  
OF THE CITY OF NEW YORK, INC.,

Petitioners,

For a Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules,

Index No. 1171/87

-against-

ARVID ANDERSON, Chairman and MILTON  
FRIEDMAN, DANIEL G. COLLINS, JOHN D.  
FEERICK, DEAN L. SILVERBERG, EDWARD  
F. GRAY and CAROLYN GENTILE, as  
Members of the Board of Collective  
Bargaining of the City of New York,  
THE BOARD OF COLLECTIVE BARGAINING  
OF THE CITY OF NEW YORK OFFICE OF  
COLLECTIVE BARGAINING, ROBERT W. LINN,  
as Director of the Office of Municipal  
Labor Relations of the City of New  
York, THE OFFICE OF MUNICIPAL LABOR  
RELATIONS OF THE CITY OF NEW YORK,  
BENJAMIN WARD, as Police Commissioner  
of the City of New York, THE POLICE  
DEPARTMENT OF THE CITY OF NEW YORK,  
THE CIVILIAN COMPLAINT REVIEW BOARD  
of the Police Department of the City  
of New York, and THE CITY OF NEW YORK,

Respondents.

----- x

LOUIS GROSSMAN, J.:

In this Article 78 proceeding, petitioner Caruso seeks  
the review of a determination of the Board of Collective  
Bargaining of the New York City Office of Collective Bargain-  
ing (OCB) dismissing a union petition which challenged actions

of the New York City Office of Municipal Labor Relations (OMLR) which had revoked a rule precluding civilian complaints filed against police officers from being revealed to their commanding officers. The respondents cross-move to dismiss the petition as time-barred.

Section 213(a) of the Civil Service Law provides that Article 78 review requires that "a petition [be] filed by an aggrieved party within thirty (30) days after service by registered or certified mail of a copy of such order upon such party . . . ." In this case the petitioner was served with notice of the OCB determination on October 3, 1986 by certified mail. This proceeding, begun on January 15, 1987 by petitioner, was brought more than thirty (30) days after the determination sought to be reviewed and is thus time-barred by section 213. Davis v. Anderson, 51 A.D.2d 528, 379 N.Y.S.2d 85 (1st Dept. 1976), motion for leave to appeal denied, 39 N.Y.2d 707, 385 N.Y.S.2d 1927 (1976).

Petitioner's argument that CPLR 217 applies is without merit. That section specifically states that the four month limit applies " [unless a shorter time is provided in the law authorizing the processing. . . ." Further, section 212 makes the provision of section 213 applicable to local governments which, under the Taylor Law, have adopted their own labor relations mechanisms. Council of Judicial Conference Employees of Nassau County v. Cooper, 68 Misc.2d 951, 328 N.Y. S. 2d 945 (Sup. Ct., Nassau Co. 1972 ), and applicability

of the thirty (30) day limitation to OCB boards has been firmly established. Davis v. Anderson, supra.

Finally, petitioner's argument that the New York City Council is without the power to limit substantive rights and, thus, cannot enact a statute of limitations is without merit. "A true 'statute of limitations' extinguishes only the right to enforce the remedy and not the substantive right itself...." Fenton v. Citizens Savings Ass'n., 400 F. Supp. 874, 878 (D.C. Mo. 1975).

Accordingly, respondents' cross motion is granted and the petition is dismissed. Settle judgment.

DATED: July 13, 1987

LOUIS GROSSMAN  
J. S. C.