Sullivan, J.P., Milonas, Ellerin, Tom, Mazzarelli, JJ.

60839 The City of New York,
Petitioner-Respondent,
Elizabeth S. Natrella

-against-

Malcolm D. MacDonald, etc., et al.,
Respondent-Appellants. Paul Bailey
Jeffrey L. Kreisberg

Judgment, Supreme Court, New York County (Paula Omansky, J.), entered February 29, 1996, which granted the petition brought pursuant to CPLR articles 75 and 78, annulled and set aside an order of respondent Board of Collective Bargaining dated June 24, 1994, mandating arbitration between petitioner and respondent Social Services Employees Union, Local 371, and which permanently stayed such arbitration, unanimously affirmed, without costs.

Following an Office of Administrative Trials and Hearings ("OATH") hearing, factual findings and a recommendation of dismissal, the Commissioner of the Human Resources Administration made a final determination and terminated the employee. The express provisions of Civil Service Law §§ 75 and 76 limit the appeal ability of a final agency determination to an Article 78 proceeding or an appeal to the Civil Service Commission, neither of which was undertaken herein. The Board of Collective Bargaining's order that the City was required to arbitrate the issue of the OATH's jurisdiction, specifically whether the

employee ever received notice of the proceedings, thus triggering his right under the collective bargaining agreement to elect the grievance procedure, was therefore arbitrary and an abuse of the Board's discretion (see, Matter of The Committee of the Interns and Residents v Dinkins, 86 NY2d 478, 484). The employee's proper remedy for his claimed lack of receipt of notice was through the statutory appellate process. The Board erred in accepting the waivers required as a precondition to invoking arbitration (Administrative Code of the City of New York § 12-312[d]), since, once the OATH process had taken place, the waiver requirement could not be satisfied and the grievance could not be subject to arbitration. It may be noted, moreover, that the employee did, in fact, receive personal notice, at his place of employment, of both the charges and specifications and of the notice of dismissal and termination, which expressly advised him of his entitlement to appeal. We have reviewed the Board's remaining arguments and find them to be without merit.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 22, 1997

Catherine O'Hagua Wolfe
CLERK