

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**  
One Ashburton Place: Room 503  
Boston, MA 02108  
(617) 727-2293

JOHN J. JONES,  
Appellant

v.

G2-17-253

TOWN OF ARLINGTON,  
Respondent

Appearance for Appellant:

*Pro Se*  
John J. Jones

Appearance for Respondent:

Wendy Chu, Esq.  
Deutsch Williams Brooks DeRensis  
& Holland, P.C.  
One Design Center Place, Suite 600  
Boston, MA 02210

Commissioner:

Christopher C. Bowman

**ORDER OF DISMISSAL**

1. On December 12, 2017, the Appellant, John J. Jones (Mr. Jones), a labor service employee for the Town of Arlington (Town), filed an appeal with the Civil Service Commission (Commission), contesting his non-selection by the Town for promotion to the labor service position of Working Foreman – Motor Equipment Repair (Working Foreman – MER).
2. On January 16, 2018, I held a pre-hearing conference at the offices of the Commission which was attended by Mr. Jones, counsel for the Town and the Town’s Human Resources Director.
3. At the pre-hearing conference, the parties agreed that three (3) labor service employees, including Mr. Jones, applied for promotion to Working Foremen – MER. The names and seniority dates of the applicants were as follows: Mr. Jones (1999); Candidate 2 (2008); and Candidate 3 (2014).
4. The Town promoted Candidate 2, the second most senior labor service employee who applied for the promotion.

### *Legal Standard / Analysis*

The Commission may on motion or upon its own initiative dismiss an appeal at any time for lack of jurisdiction or for failure to state a claim upon which relief can be granted. 801 CMR 1.01(7)(g)(3).

The job title of Working Foreman - MER is classified as a labor service position and, therefore, promotions to that position are governed by G.L.c. 31, §§ 28 through 30. Pursuant to these statutes, promotions in the labor service are made from among any of the three applicants with the greatest seniority who are qualified for the position, applying the so called 2n+1 rule. See PAR.19; Stokinger v. City of Quincy, 24 MCSR 416 (2011); Lusignan v. Holyoke G&E Dep't., 20 MCSR 401, further considered, 21 MCSR 287, after hearing, 22 MCSR 137 (2009); Brienzo v. Town of Acushnet, 20 MCSR 530 (2007). When the appointing authority chooses from among the three most senior candidates for a labor service promotion, a bypass has not occurred; the appointing authority is not required to state reasons for selecting among the qualified candidates within the 2n+1 group; and the non-selected candidates within that 2N+1 group do not have recourse to appeal to the Commission from their non-selection, even if they were more senior than the selected candidate. Id.

### *Conclusion*

For the reasons stated above, the Commission does not have jurisdiction to hear Mr. Jones's appeal and it is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman and Tivnan, Commissioners [Stein – Absent]) on February 1, 2018.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L.c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L.c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice:

John J. Jones (Appellant)

Wendy Chu, Esq. (for Respondent)