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*Federal Public Sector
Labour Relations and
Employment Board Act and
Public Service Employment Act*



Before a panel of the
Federal Public Sector
Labour Relations and
Employment Board

BETWEEN

STÉPHANE GOULET

Complainant

and

**DEPUTY HEAD
(Department of National Defence)**

Respondent

and

OTHER PARTIES

Indexed as

Goulet v. Deputy Head (Department of National Defence)

In the matter of a complaint of abuse of authority under sections 77(1)(a) and (b) of the
Public Service Employment Act

Before: Adrian Bieniasiewicz, a panel of the Federal Public Sector Labour
Relations and Employment Board

For the Complainant: Louis Bisson, Union of National Defence Employees

For the Respondent: Geneviève Brunet-Baldwin, counsel

For the Public Service Commission: Maude Bissonnette Trudeau, senior analyst

Heard by videoconference,
January 10 and 11, 2024.
[FPSLREB Translation]

REASONS FOR DECISION**FPSLREB TRANSLATION**

I. Complaint before the Board

[1] Stéphane Goulet (“the complainant”) made a complaint against the deputy head of the Department of National Defence (“the respondent” or DND) under ss. 77(1)(a) and (b) of the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13; *PSEA*). He alleges that the respondent abused its authority in the application of merit and in the choice of a non-advertised process (“the appointment process”) to fill a mechanical team leader position (“the position”) classified at the GL-VHE-11 (C3) group and level in the Weapon Systems Production Program (“the WS Program”). The position was filled indeterminately after a process that was initiated by a notice of interest initially to fill it for a 10-month term.

[2] Specifically, the complainant submits that the respondent improperly assessed his candidacy and that it was biased against him in its assessment of him because he performs union duties and has opinions that differ from its opinions. He adds that he was discriminated against because of his union duties and his membership in the GL-MAM occupational group (Machinery Maintaining sub-group in the General Labour and Trades group). Finally, he alleges that the respondent abused its authority by choosing a non-advertised process because the appointment process was dysfunctional and aimed at “[translation] hiding the fact” that he had been considered or assessed in it.

[3] At the beginning of the hearing, the complainant withdrew his allegation that he had been discriminated against on a prohibited ground of discrimination under the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6). He also withdrew the allegation that DND had failed to meet its obligations under s. 13 of the *Public Service Employment Regulations* (SOR/2005-334).

[4] The Public Service Commission did not participate in the hearing; nor did it take a position on the complaint’s merits. However, it provided general and specific comments on its *Appointment Policy*.

[5] For the reasons that follow, I find the complaint unfounded.

II. Summary of the evidence

A. For the complainant

[6] The complainant was the only witness called to support his complaint. He began his career with DND in 2010. Since then, he has held an air weapons system technician position, in the Hydraulics Workshop in the 202 Workshop Depot in east Montréal, at the GL-MAM-10 group and level. He has been the president of local 10526 of the Union of National Defence Employees since the fall of 2021 after he served in it on an interim basis since 2019.

[7] On May 13, 2021, the respondent issued a notice of interest to all employees at the 202 Workshop Depot to fill, on a 10-month interim basis, the mechanical team leader position classified GL-VHE-11 (C3) (Vehicle Heavy Equipment Maintaining subgroup within the General Labour and Trades group). It is located in the Vehicle Workshop in the WS Program. The notice of interest was accompanied by a statement of merit criteria (SoMC). Interested persons had to submit a one-page cover letter along with a résumé (CV) of no more than two pages to demonstrate that they met the merit criteria. The complainant submitted a CV that exceeded the allowed page limit. The respondent allowed him to resubmit one of no more than two pages.

[8] The selection board consisted of Stéphan Ipperciel, Assistant Head of the WS Program; Master Warrant Officer Martin Larochelle; and Alexandra Cipolla, a Human Resources representative. Major Erin Stuber, Head of the WS Program, was also involved in the appointment process that is the subject of this complaint. On June 2, 2021, Mr. Ipperciel informed the complainant by email that the selection board had selected only three candidates to interview and that he was not one of them. Mr. Ipperciel invited him to contact him for feedback, which he did.

[9] The informal discussion took place by telephone, although the complainant had wished that it be held in person. During it, he was accompanied by a union representative of his choice. Mr. Ipperciel was accompanied by a Human Resources employee. Mr. Ipperciel explained to him that his application was not accepted because of his lack of mechanic experience and apparently told him that what he did at the 202 Workshop Depot was not mechanical work. In response, the complainant told him about his work experience since his training and reminded him that he had been trained in aircraft maintenance and that he had done mechanical work on aircraft and

helicopters. He stated that since DND hired him in 2010, he had worked on armoured vehicles, including their parts. He talked about different aspects of his work compared to the work of the mechanics in the GL-VHE group. He reviewed the qualifications in the SoMC to set out to Mr. Ipperciel that he met all the criteria. According to the complainant, GL-MAM group employees perform work similar to that of GL-VHE group employees. Despite the complainant's explanations, Mr. Ipperciel stood by his decision.

[10] The complainant said that he was outraged by the explanation that he received, and he requested a review of the decision to eliminate him from the process.

According to him, for 23 years, he had been doing "[translation] ... continuous mechanical work on different products and vehicles". He believes that those involved in assessing his application did not accept it because of his union duties and opinions and because he is not part of the GL-VHE occupational group.

[11] To support his allegation, the complainant testified that the union and DND have divergent opinions on a number of issues. One of the union's functions is to report injustices in the workplace. Union representatives tend to take a more rigid approach with DND, especially in a formal process, such as a grievance. As a union representative, he has had to represent his members at the first and second levels of the grievance process. A grievance at the first level is normally presented to a major; one at the second level is presented to a commanding officer. The commanding officer also attends labour-management roundtables. Given his duties, the complainant communicated directly with the commanding officer.

[12] With respect to his interactions with Major Stuber, the fact that she is a unilingual Anglophone could have led to tensions. Most employees at the 202 Workshop Depot are Francophone, and it is important that they be well understood in French, particularly during grievance presentations. The complainant testified that as the co-chairperson of the Occupational Health and Safety Committee ("the OHS Committee"), he worked closely with Major Stuber during the COVID-19 pandemic, to implement health measures and protocols that the Public Health Agency of Canada recommended. In general, he and Major Stuber found a way to agree on those issues. However, implementing and interpreting new health standards could give rise to conflicts. Several grievances were filed, in particular on mandatory vaccination. That said, the complainant did not file a grievance on his behalf to challenge those measures or against Major Stuber.

[13] With respect to his interactions with Colonel Christopher Moyle, who at all relevant times was the commanding officer of the 202 Workshop Depot, the complainant described them as friendly, taking place in informal discussions. However, according to him, Colonel Moyle could be rigid and “[translation] very particular about certain principles” in more formal contexts and in the presence of others. The complainant stated that he made an unfair-labour-practice complaint in 2019 against Colonel Joseph Raynald Yan Poirier, who preceded Colonel Moyle. The complainant claims that Colonel Poirier would have informed his successor of it. He also testified that Colonel Moyle interfered. Specifically, Colonel Moyle reportedly requested that the complainant’s federal driver’s licence be removed from him, although the military police found that he was not involved in an accident with a vehicle at the garrison. Due to that interference, the complainant has not had a federal driver’s licence since summer 2021.

[14] The complainant confirmed that he had no conflicts with Master Warrant Officer Larochelle.

[15] As for Mr. Ipperciel, he was not a manager in terms of grievance representation. Therefore, the complainant did not really have to interact with him as part of his union duties. However, as of the relevant facts, Mr. Ipperciel was a member of the OHS Committee as a representative of the Professional Institute of the Public Service of Canada and held a senior management position. That situation gave rise to a few conflicts around the table with respect to Mr. Ipperciel’s decision making.

[16] In cross-examination, the complainant clarified that during the COVID-19 pandemic, he had weekly meetings with Major Stuber as part of his union duties. His meetings with Colonel Moyle were mainly held at quarterly labour-management meetings. Outside those meetings, he met with him about once a month, to discuss other matters. The complainant filed about 15 grievances on behalf of other employees, to challenge certain health measures. The fact that some employees did not want to comply with the health measures created problems for both the respondent and the union.

[17] The complainant confirmed that the three people who were selected for the acting position were Francophones. He admitted that Major Stuber, if she had questions prepared in advance, was able to speak and read French during a grievance

hearing. However, she was unable to keep a conversation going. The complainant confirmed that neither Major Stuber nor Colonel Moyle had forced him or his members to speak in their second language. Furthermore, the complainant did not deny that the position subjected to the appointment process was unionized.

[18] Finally, the complainant confirmed that at the informal meeting, Mr. Ipperciel offered him the chance to substitute on the GL-VHE mechanical side, to help him gain more mechanic experience. However, the complainant did not see it as relevant, given the similarities between the two classifications. However, Mr. Ipperciel did not follow up on the proposal; nor did the complainant act on it.

B. For the respondent

[19] The respondent called two witnesses, Mr. Ipperciel and Major Stuber. Mr. Ipperciel is a civilian employee. Since 2015, he has held the head position in the Project Management and Procurement Group. He is also the assistant head of the entire WS Program and the right-hand man of the major who manages it, in this case Major Stuber. He is responsible for floor production.

[20] The 202 Workshop Depot has four programs, including two production programs, which are the WS Program and the Manufacturing, Communications, and Electronics Program (“the MCE Program”). A major directs each production program.

[21] The WS Program consists of two separate workshops, the Vehicle Workshop and the Auxiliary Workshop. Each workshop has team leaders. The WS Program is made up of about a dozen trades, the main one being the GL-VHE group mechanics. They carry out “[translation] heavy mechanical work” on heavy vehicles with up to 1500 horsepower. They rebuild tanks, armoured logistical vehicles, troop vehicles, support vehicles, etc. WS Program employees are responsible for integrating weapons systems into vehicles. Employees in the GL-MAM group of the MCE Program handle the hydraulic part of those vehicles. The WS Program has no GL-MAM group employees. As of the relevant facts, Major Stuber was responsible for the WS Program. She reported to Colonel Moyle, who was the current commander.

[22] On the other hand, MCE Program employees are responsible for repairing everything made of metal and installing and repairing communication systems inside vehicles and weapons control systems. Much of the GL-MAM group employees’ work

consists of hydraulics, which is their specialty. They carry out many checks and validations of everything that encompasses hydraulic systems. With respect to armaments, they mainly take care of hydraulics, although some mechanical work is involved (e.g., pistons, control systems, etc.). In short, mechanical work is not their “[translation] priority”. The GL-MAM group consists of a mix of military members and civilians.

[23] The complainant did not report to Mr. Ipperciel. He reported to the MCE Program’s head. According to Mr. Ipperciel, his interactions with the complainant were always good. They prepared their strategies together before union-management committees. He did not note anything in particular with respect to his interactions with the complainant at or outside union-management meetings. They were there to represent their members in front of the commanding officer. That said, when Mr. Ipperciel met with the complainant or other union members, he had to clarify his role (the assistant head of the WS Program, or a union representative). It was necessary to “[translation] delineate the line some”.

[24] The team leader position for which the complainant applied is in the WS Program’s Vehicle Workshop. It has a workshop manager and team leaders. The team leader at the C3 level can be responsible for up to 20 employees. The one at the C4 level can have up to 40 employees under their supervision. Employees who report to team leaders in the WS Program are mechanics in the GL-VHE group. The appointment process was initiated to fill the team leader position at the C3 level.

[25] The incumbent of the team leader position for which the complainant applied had been on leave for health reasons for some time. Several employees had replaced him on an acting basis of four months less a day, for about a year-and-a half. That situation created a climate of instability within the team because the team leader plays a key role as the first line of supervision. It was important to have a good leader and supervisor to dispatch the production teams. There was a need to fill the position as quickly as possible because projects began arriving very quickly.

[26] In May 2021, the respondent was informed that the incumbent of the team leader position in question had “[translation] gone on Sun Life” and that he would be on leave for an estimated period of one to two years. Furthermore, the employee apparently notified the respondent that at the end of that period, he would not resume

his duties. In that context, the notice of interest was sent to all 202 Workshop Depot employees. The ultimate objective was to fill the GL-VHE-11 (C3) position indeterminately. However, to ensure that it had the right person for the position, the respondent first wanted to offer a 10-month acting appointment. That approach was intended to provide the respondent with an opportunity to assess the employee's performance in the team leader role and provide the employee with an opportunity to determine whether the job was appropriate for them.

[27] The respondent knew that it could fill the position in house. According to Mr. Ipperciel, it was a non-advertised process that was intended to be transparent. Since more employees than expected expressed an interest in the position, management decided to no longer limit the possibility to a single candidate.

[28] Mr. Ipperciel confirmed that he received the complainant's CV. It had 10 pages, which was 8 pages more than was permitted. Instead of rejecting his application, he was allowed to resubmit his CV within the 2-page limit.

[29] Mr. Ipperciel confirmed that the selection board was composed of him, Master Warrant Officer Larochelle, and Ms. Cipolla. By inviting her to a board seat, he wanted to ensure that the selection of candidates was as objective as possible. Candidates were assessed on their cover letters and CVs. The assessment results were recorded in a table ("the table").

[30] Only candidates who ranked among the top three were invited to an interview; they were Alexandre Bélanger, Mathieu Fecteau ("the appointee"), and Jacques Brousseau. The respondent chose to offer two four-month-less-a-day acting appointments to the first two candidates, Mr. Bélanger and Mr. Fecteau. The third candidate, Mr. Brousseau, was retained as a substitute. He had already replaced the team leader in question in the past. The respondent had no need to assess him.

[31] The complainant came in fourth out of seven. In short, the selection board determined that while he had mechanical and supervision experience, the first three candidates had experience in supervision and in the vehicle field that was more continuous and relevant.

[32] Mr. Ipperciel testified that it was important that candidates have at least two to three years of experience in vehicle mechanical work. The complainant had mechanical

experience similar to that being sought; however, it dated back more than 11 years. Nonetheless, he found that the complainant met the criterion that the candidate had to have two or more years' experience in vehicle mechanics (VHE). Moreover, all seven candidates listed in the table met that criterion. But the three candidates selected for an interview had more continuous and relevant supervisory and mechanical experience than did the complainant.

[33] Mr. Fecteau was the first to take on an acting position. He had worked in automotive mechanics since 2003. He worked at the 202 Workshop Depot in heavy-duty mechanical work from 2012 to 2014. He managed a garage from January 2004 to January 2011. In 2018, he returned to work as a heavy-duty mechanic at the 202 Workshop Depot. His experience in both mechanical work and supervision was more relevant than the complainant's. When his acting appointment ended, Mr. Bélanger replaced him. However, after five to six weeks in the position, he asked to be removed. Mr. Fecteau was returned to the position, to complete the acting appointment. When that ended, his assessment was very positive. After the selection board members and Major Stuber discussed things, it was decided to appoint Mr. Fecteau to the position indeterminately.

[34] During the informal discussion that took place by telephone, the complainant was accompanied by his union representative; Mr. Ipperciel and one Human Resources employee were also involved in the discussion. Mr. Ipperciel explained to the complainant why he was not selected for an interview. He gave him suggestions to help him do better in a future process. He also offered him acting appointments as a GL-VHE-10 or even as an EG-4 mechanical analyst to broaden his experience, but the complainant was not interested.

[35] Mr. Ipperciel concluded his testimony by stating that he had never felt that he and the complainant had a conflict or problems. Their interactions were always cordial and professional. He never felt any discord between them; nor did he ever shout at the complainant. They might not have always seen things the same way, but that is it. The position for which the complainant applied is unionized.

[36] In his cross-examination, Mr. Ipperciel confirmed that GL-MAM group employees specialize primarily in hydraulic mechanical work, which is not equivalent to the mechanical work that GL-VHE group employees do. There is a certain complexity that

GL-MAMs do not touch. GL-VHEs can do some hydraulic mechanical work, but as soon as it becomes somewhat more complex, they give it to their GL-MAM-classified experts.

[37] As for the SoMC attached to the notice of interest, there was a desire to make it somewhat less demanding, to enable a greater number of employees to apply.

Mr. Ipperciel confirmed that he considered the experience that Mr. Fecteau gained in personnel management while working in a mechanics' garage between January 2004 and January 2011 as relevant supervisory experience. Furthermore, Mr. Fecteau clarified in the interview that he managed the garage during that period. In addition, Mr. Ipperciel noted in the table that the complainant also had supervisory experience as the chairperson of a childcare centre's board of directors. He also considered the complainant's aircraft-mechanic experience. In addition, he considered some supervisory replacements that the complainant did between 2013 and 2019.

[38] Mr. Ipperciel confirmed that the complainant met the merit criteria for the acting position. However, he was not invited to an interview because the first three candidates had been selected. They had more continuous and relevant experience in supervision and mechanical work than did the complainant. Mr. Ipperciel concluded his testimony by specifying that had the complainant been the only employee to apply for the position, he would certainly have considered him.

[39] Major Stuber testified that at the relevant times, she was the head of the WS Program at the 202 Workshop Depot. Mr. Ipperciel reported to her. He was the second in command of the WS Program.

[40] The WS Program's overall objective is to repair and rebuild existing vehicle fleets, such as tanks, heavy trucks, and heavy-armoured wheeled vehicles. Essentially, vehicles are disassembled to their chassis, thoroughly inspected, completely repaired, and then reassembled. After that process, they are returned to the Canadian Army for their high-readiness training exercises. This is heavy-duty mechanical work. The main WS Program occupational group working on these projects are the GL-VHEs, because they perform most of the tasks related to repairing and rebuilding activities. There were about 80 civilian employees and 40 military members. The WS Program had 4 to 6 team leaders who supervised the teams.

[41] Major Stuber confirmed that she knew the complainant before the appointment process, in the context of his union position. He had served on the OHS Committee

that she had chaired. He had also served as a union representative and had regularly served as the co-chair of the OHS Committee. He was not an employee of the WS Program. Instead, he worked in the MCE Program, which supported the WS Program. The MCE Program had wireworkers, hydraulics specialists, and weapons technologists. Although the MCE Program had its own projects, which sometimes received support from the WS Program, the WS Program was the leader and was supported by occupational groups in the MCE Program. Major Stuber confirmed that when she started working at the 202 Workshop Depot in July 2020, GL-VHE-10s were working in the MCE Program. However, in January 2021, they were all centralized under the WS Program.

[42] Major Stuber testified that according to her, GL-MAM employees are hydraulics specialists; they do not have greater daily experience using large-scale vehicle equipment. On the other hand, GL-VHE group employees are essentially vehicle technicians. Many of them are heavy-equipment technicians who know and have experience with the entire vehicle platform — from motors to armour to transmissions, etc. They would be large-scale mechanics.

[43] She testified that her interactions with the complainant were very respectful. She understood that he had a job to do as a union representative, and she felt that in turn, he respected the fact that she represented management and that she also had a job to do. They simply agreed not to agree on some issues.

[44] When Major Stuber began at the 202 Workshop Depot in July 2020, employees returned to work. The workshop was at least 75% occupied. Because of the COVID-19 pandemic, they had to put in place health measures, as required by public health officials, such as wearing a mask, traffic flows within buildings, limitations on the number of people in washrooms, etc. This caused tension in the workshops. The complainant worked with Major Stuber on the health measures, and together, they made sure that employees adhered to them. Major Stuber stated that her interactions with him were very respectful.

[45] When she arrived at the 202 Workshop Depot, there was an urgent need to permanently fill the team leader position. The incumbent had been on sick leave since 2019, which led several employees to fill the position on an acting, rotating basis. The escalations in Europe led to an influx of unexpected and last-minute tasks. Combined

with the additional responsibility of managing health-measure requirements, the situation placed an increased workload on managers. On that basis, Major Stuber decided to fill the team leader position, to bring stability to the team. To that end, the notice of interest was posted in May 2021 for all 202 Workshop Depot employees. To ensure that the best candidate and the right person for the position was selected, it was decided to proceed with an internal advertised process, rather than a full advertisement for the entire public service. Management wanted to fill the position quickly, with the right candidate. It felt that there were good candidates at the 202 Workshop Depot who would not require additional training. Management also wanted to provide internal promotion opportunities.

[46] Initially, the intention was to offer a 10-month acting position to one person. However, given that several candidates with good experience applied, management wanted to give more than one person the opportunity to try out the position and, at the same time, wanted to be able to choose the right person for the position. The two candidates selected for acting opportunities were Mr. Bélanger and Mr. Fecteau. They both worked as GL-VHE-10s in the WS Program. Mr. Brousseau, also in the GL-VHE-10 group, had already had the opportunity to act in this position for several months before the notice of interest was posted. Since management had already had an opportunity to assess him, he was placed on the list as a replacement.

[47] To be considered for the acting position, candidates had to demonstrate that they had experience supervising personnel and at least two years of experience in repairing, rebuilding, modifying, fabricating, or finishing vehicle equipment or systems. Unlike the SoMC for the indeterminate position, “[translation] recent” and “[translation] significant” experience was optional for the acting position. Management did not want to discourage employees from applying based on their self-assessments of their experience and wanted to allow them to show what they had in terms of experience.

[48] The selection board ranked the candidates based on their cover letters and CVs and decided to interview only the top three candidates. The complainant ranked fourth, based on total points. As an employee in the GL-MAM group, he did not have the large-scale mechanical knowledge of or experience with a complete vehicle system that management wanted in a WS Program team leader. Given the nature of the WS Program projects, management had to ensure that the successful candidate had

experience with larger vehicles and larger integration projects, to enable them to properly plan and manage regular projects and urgent operational tasks with shorter deadlines and to effectively manage the workflow.

[49] At the end of the acting periods, the selection board found that Mr. Fecteau had done an excellent job and that he was the right person for the position. Major Stuber prepared a rationale to support his indeterminate appointment. Mr. Fecteau met all the requirements listed in the SoMC and was appointed to the mechanical team leader position (GL-VHE-11 (C3)) on an indeterminate basis. Colonel Moyle did not intervene in the appointment process. His sole participation was to approve salary funding and the offer letter.

[50] In cross-examination, Major Stuber testified that during the five-day information session on the change of command that she received upon her arrival at the 202 Workshop Depot, she was not informed of any unfair-labour-practice complaints or labour relations grievances that the complainant had personally filed against the organization. It is plausible that she learned of them later, in routine discussions.

[51] Major Stuber confirmed that the complainant's previous work on aircraft and helicopters or aircraft maintenance enabled him to meet the requirement of two years or more of mechanical experience for the acting appointment. She did not dispute that he had some supervisory experience, as shown in the table. She added that the table was completed based on the information provided in the candidates' cover letters and CVs or their profiles (i.e., security clearance, language, etc.). Each selection board member reviewed the candidates' submitted documents individually before discussing them with the other members. They wanted to ensure that all the board members interpreted the experience the same way. They assessed the complainant based on his CV, in which he referred to his work experience, diplomas, and daily experience. Major Stuber considered all those factors. However, the complainant did not have the broader experience that management was looking for (i.e., full vehicle repair and rebuild as opposed to specifically the hydraulics portion).

[52] Major Stuber acknowledged that the mandatory qualifications identified in the SoMC for the acting position were not limited to the GL-VHE group. The complainant had all the essential qualifications, as shown in the table. Asset qualifications were also considered when ranking the candidates.

[53] During re-examination, Major Stuber testified that she did not believe that the complainant included a cover letter with his CV, as requested in the notice of interest.

III. Reasons

[54] In their closing submissions, the parties submitted that Mr. Fecteau's indeterminate appointment in July 2022 was made following the process that began in May 2021 with the release of the notice of interest. According to them, this factual framework must be considered a single continuum. The complainant concedes that there is no evidence that the appointee did not meet the merit criteria.

A. Abuse of authority

[55] According to s. 2(4) of the *PSEA*, abuse of authority includes bad faith and personal favouritism. Parliament's intent was not to have a static definition of "abuse of authority" (see *Canada (Attorney General) v. Lahlali*, 2012 FC 601 at paras. 33 to 35).

[56] To establish whether abuse of authority occurred, a complainant must demonstrate on a balance of probabilities that serious wrongdoing or a flaw occurred in the appointment process. A mere error, omission, or improper conduct would not justify the intervention of the Federal Public Sector Labour Relations and Employment Board ("the Board"). An abuse-of-authority allegation is serious and should not be taken lightly (see *Portree v. Deputy Head of Service Canada*, 2006 PSST 14 at para. 47; and *Langlois v. Deputy Head (Department of Employment and Social Development)*, 2023 FPSLREB 24 at para. 32). The act need not be intentional (see *Tibbs v. Deputy Minister of National Defence*, 2006 PSST 8 at paras. 73 and 74).

B. The respondent did not abuse its authority in the choice of process

[57] The complainant alleges that the respondent abused its authority by choosing a non-advertised process because the process was dysfunctional and was intended to "[translation] cover up the fact" that he had been considered or assessed in it.

[58] The respondent or delegated manager has broad but not absolute discretion to choose between an advertised and a non-advertised process to fill a position (see s. 33 of the *PSEA*). The *PSEA* does not favour one process over the other; nor does it specify the factors that can be considered in the exercise of that discretion. The respondent is best placed to decide which of the two processes is best suited to meet operational needs. However, the choice of process must be made in accordance with the legislative

purpose of the *PSEA* and fair and transparent employment practices (see *Beyak v. Deputy Minister of Natural Resources Canada*, 2009 PSST 7 at paras. 119 to 121). It must not be based on an illegitimate motive or be tainted by bad faith or favouritism (see *D’Almeida v. Royal Canadian Mounted Police*, 2020 FPSLREB 23 at para. 55).

[59] The parties disagree on the nature of the process that the respondent chose in May 2021 (the notice of interest) to fill the team leader position on an acting basis. The respondent submits that it was a non-advertised process, although one of its witnesses testified that it was an internal advertised process. The complainant submits that in fact, it was an advertised process. He claims that the respondent labelled the process as non-advertised to “[translation] cover up” the fact that he was considered or assessed in it. According to him, it was an abuse of authority.

[60] The *PSEA* does not specify what constitutes an advertised process. I agree with the complainant that the notice of interest issued on May 13, 2021, in fact has features of an advertised process. It was emailed to all 202 Workshop Depot employees. Attached to the notice was an SoMC. That said, is the fact that the notice of interest was sent exclusively to the employees in question sufficient to describe the process as advertised? In the absence of any relevant and comprehensive submissions on this issue, to me, it is inappropriate for me to comment on it. The issue before me is not so much whether the chosen process was advertised, considering that the respondent had the authority to choose one or the other (see s. 33 of the *PSEA* and *Jack v. Commissioner of the Correctional Service of Canada*, 2011 PSST 26 at para. 14). Rather, I must ask whether the respondent abused its authority by using whatever process was used (see *De Santis v. Commissioner of the Correctional Service of Canada*, 2016 PSLREB 34 at paras. 26 and 30).

[61] The respondent explained the context of the notice of interest and its purpose. The mechanical team leader position’s incumbent had been on leave since 2019. In his absence, several employees had replaced him for approximately one-and-a-half years, on an acting basis of four months less a day. That situation created a climate of instability within the team. Around May 2021, the respondent was informed that the incumbent of the position in question would be on sick leave for an extended period and that after that, he did not think that he would return to work.

[62] According to the respondent's witnesses, projects were starting to come in very quickly. The tensions in Europe led to an influx of unexpected and last-minute tasks. Combined with the additional responsibility of managing health-measure requirements, the situation placed an increased workload on managers. It became necessary to fill this position quickly, to mobilize production teams and assign work. The team required stability. The team leader plays a key role, as they are the first line of supervision. I agree with the respondent that there was a real operational need to fill the position as quickly as possible. The complainant did not present any evidence to the contrary.

[63] Given that context, the respondent opted for a process that was intended to be fast, efficient, and transparent. The *PSEA* allows for such flexibility (see *Haller v. Deputy Head (Department of National Defence)*, 2022 FPSLREB 100 at para. 70). The notice of interest was sent to all 202 Workshop Depot employees. It contained clear information about the position that the respondent wanted to fill and the nature and duration of the appointment, as well as an SoMC. Interested employees had just over 10 days to submit their expressions of interest. The respondent even relaxed the SoMC to make the process somewhat less demanding, to allow a larger number of employees to apply and demonstrate their experience. The requirement for recent and significant experience in the areas specified in the SoMC was optional rather than mandatory. The complainant did not argue that the relaxed essential qualifications did not meet the established qualification standards for the position's classification (see *Hutlet v. Deputy Head (Department of National Defence)*, 2023 FPSLREB 73 at para. 87; and *Rinn v. Deputy Minister of Transport, Infrastructure and Communities*, 2007 PSST 44 at para. 40).

[64] The complainant does not claim that the choice of process prevented him in any way from submitting his expression of interest. Although his CV exceeded the limit by eight pages, instead of rejecting it, Mr. Ipperciel allowed him to resubmit it, to give him the opportunity to participate in the process. His application was assessed, and according to the selection board, he met the merit criteria, as did the other six candidates whose names are listed in the table. He was not selected for an interview, as were the three other candidates who placed behind him, since his experience, both in supervision and mechanical work, was less continuous and relevant than that of the other three candidates interviewed. The fact that he placed fourth had nothing to do with the choice of process.

[65] The respondent provided a reasonable and credible explanation for the need to fill the position expeditiously, regardless of the process chosen. The *PSEA* provides delegated managers with the flexibility they need to meet pressing operational needs (see the *PSEA*'s preamble). According to the uncontested evidence, there was a real need to quickly fill the team leader position (see *Chaves v. Commissioner of the Correctional Service of Canada*, 2008 PSST 3 at paras. 53 to 56; and *Haller*, at paras. 68 to 70). The complainant did not demonstrate how the respondent abused its authority by asking interested employees to submit their expressions of interest to fill the team leader position on an acting basis. Yet, he had the burden of proof (see *D'Almeida*, at para. 57). The allegations that the appointment process was dysfunctional and that it was intended to "[translation] cover up the fact" that he was considered or assessed in it are not supported by the evidence.

C. The respondent did not abuse its authority in the application of merit

[66] The respondent is responsible for establishing the essential qualifications for the work to be performed (see s. 30(2) of the *PSEA*). The qualifications must meet or exceed the qualification standards that the respondent has specified for the position's occupational group or classification (see s. 31(2) of the *PSEA*; *Hutlet*, at para. 87; and *Rinn*, at para. 40). I would also like to reiterate that managers have broad discretion to select assessment methods (see s. 36 of the *PSEA* and *Kavanagh v. President of Shared Services Canada*, 2017 FPSLREB 38 at para. 45).

[67] I do not agree with the complainant that the respondent incorrectly assessed his qualifications or that it was biased against him. The evidence does not support those allegations.

[68] According to the SoMC attached to the notice of interest, candidates had to demonstrate that they had the following:

[Translation]

...

- *Experience supervising personnel in an environment that met industrial technical standards.*
- *Two years of experience repairing, rebuilding, modifying, fabricating, or finishing vehicle equipment or systems.*

...

[69] Candidates were assessed on the basis of their cover letters and CVs. That assessment method is permitted (see *Kavanagh*, at paras. 45 and 46).

[70] As I have already stated, the complainant met the essential qualifications, as did the appointee. Even had the complainant managed to demonstrate that his experience was stronger than the appointee's, which he did not do, it would not have prevented the respondent from appointing Mr. Fecteau to the position. The respondent has considerable discretion when determining the right person, among the candidates who meet the essential qualifications, to perform the work (see *Visca v. Deputy Minister of Justice*, 2006 PSST 16 at paras. 26 and 27; and *Gabon v. Deputy Head (Department of the Environment)*, 2022 FPSLREB 86 at paras. 47 to 50). I reiterate that the complainant conceded that there was no evidence that the appointee did not meet the essential qualifications. In fact, what the complainant challenged is his ranking of fourth. His opinion is that both his supervision and mechanical experience were, at the relevant time, equivalent if not superior to that of the appointee. I disagree.

[71] The evidence sets out that the appointee had been working in auto mechanics since 2003. In addition, from 2012 to 2014, Mr. Fecteau did heavy-duty mechanical work at the 202 Workshop Depot in the GL-VHE group. He continued to work in auto mechanics in a garage from 2014 to 2018. In 2018, he returned to work as a heavy-vehicle mechanic in the GL-VHE group at the 202 Workshop Depot. In summary, when he submitted his expression of interest in May 2021, he had approximately 18 years of experience in automotive mechanics, including approximately 5 years of experience in heavy-vehicle mechanics.

[72] As for the complainant, his mechanical experience similar to that sought by the respondent dated back more than 11 years, to before DND hired him in 2010. Since then, he worked as a weapons-system-integration technician in the GL-MAM Group in the Hydraulic Workshop at the 202 Workshop Depot. However, as that kind of technician, he did hydraulic mechanical work. The evidence shows that employees in the GL-MAM group perform many checks and validations of everything related to hydraulic systems. However, hydraulic mechanical work is very different from the mechanical work in the heavy-vehicle field for which GL-VHE group employees are responsible. Automotive mechanics is a specialization area for GL-VHE group employees. There is a certain complexity that GL-MAM group employees do not touch; automotive mechanical work is not their priority.

[73] Based on the foregoing, I agree with the respondent's conclusion that the appointee had more relevant and recent experience in vehicle mechanical work. The complainant failed to convince me otherwise and did not adduce any evidence to support his allegation that the selection board members treated him differently.

[74] With respect to supervisory experience, the respondent does not deny that the complainant had it. However, it concluded that the appointee had more continuous and relevant supervisory experience. Based on the evidence presented, the appointee continuously managed personnel in an automotive mechanical garage between 2004 and 2011. In addition, between 2020 and 2021, Mr. Fecteau substituted a few times as an acting coordinator at the 202 Workshop Depot. As for the complainant, the respondent considered his experience as the chairperson of a childcare centre's board of directors between 2011 and 2013. It also considered the few replacements that he made as a team leader between 2013 and 2019 at the 202 Workshop Depot. He and the appointee had supervisory experience, although in different areas. That said, the complainant did not convince me that the respondent erred when it concluded that the appointee's supervisory experience in the vehicles area was more continuous and relevant than was his.

[75] In his closing submissions, the complainant points out that when the assessment for the acting appointments was made, Mr. Fecteau's experience in the supervision area was primarily from the private sector. I believe that it was entirely legitimate for the respondent to consider the experience that the appointee had gained in the private sector (see s. 36 of the *PSEA* and *Kavanagh*, at para. 42). As I have already mentioned, the respondent has considerable discretion, particularly as to the use of assessment methods, to determine whether a candidate meets the qualifications established for a position (see *Visca v. Deputy Minister of Justice*, 2007 PSST 24 at para. 51). I find this argument intriguing, given that the complainant had appreciated that the respondent had considered his private-sector experience in mechanical work that he had acquired before being hired in 2010.

D. There is no reasonable apprehension of bias

[76] The complainant alleges that the respondent was biased against him in its assessment because he has union duties and opinions that differ from those of the respondent. The burden of demonstrating the existence of a reasonable apprehension of bias rests with a complainant. Simple suspicions and speculations are not enough;

the evidence must establish that the bias is real, probable, or reasonably obvious (see *Denny v. Deputy Minister of National Defence*, 2009 PSST 29 at para. 124).

[77] The reasonable-apprehension test, in this context, is whether a reasonably well-informed person, who studies the matter in depth realistically and practically, would conclude that it is more likely than not that the respondent, consciously or unconsciously, assessed the complainant's application unfairly (see *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369 at 394; *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623; and *Haller*, at para. 73).

[78] The evidence does not support, on a balance of probabilities, the existence of a reasonable apprehension of bias. Specifically, the complainant alleges that his relationship with Major Stuber soured because of his actions as a union representative and because he is an advocate of the French language, while the Major is Anglophone. I find it difficult to reconcile this allegation with the adduced evidence. First, in cross-examination, he admitted that she could read and speak in French during a grievance hearing, as long as she had questions prepared in advance. She never required the complainant or his members to communicate with her in their second language. In short, it appears that there was no tension and that there were no problems because English is Major Stuber's first official language.

[79] With respect to the complainant's actions as a union representative, Major Stuber testified that her interactions with him were very respectful. She understood that he had a job to do as a union representative, and she felt that in turn, he respected the fact that she represented management and that she also had a job to do. They simply agreed not to agree on some issues. He did not contradict that evidence. It is true that he filed grievances and, possibly, made complaints on his members' behalf. However, it was part of his job, which Major Stuber understood. The evidence set out that they got along and that they had a respectful and collaborative professional relationship. I do not deny that they could have had differing opinions on different subjects, given their respective roles; it would be quite normal. The interests of the union and its members do not always go hand in hand with those of the respondent.

[80] With respect to Mr. Ipperciel, the complainant referred in his testimony to the disputes that apparently occurred at the OHS Committee meetings because

Mr. Ipperciel sat on them as a union representative while holding a senior management position. Apart from the fact that such disputes apparently occurred, the complainant did not provide me with any further information in this respect. This silence prevents me from concluding that there was a reasonable apprehension of bias, especially since Mr. Ipperciel described his interactions with the complainant as always good. He did not note anything in particular with respect to his interactions with the complainant inside or outside union-management meetings. Finally, with respect to Colonel Moyle, he was not involved in the appointment process.

[81] The complainant referred me to the following decisions, in which the Board found a reasonable apprehension of bias: *Denny*; *Amirault v. Deputy Minister of National Defence*, 2012 PSST 6; and *Monfourny v. Deputy Head (Department of National Defence)*, 2023 FPSLREB 37. They are of no help to him because facts that would lead to a finding of a reasonable apprehension of bias do not exist in this case.

[82] In *Denny*, the complainant had helped remove one of an assessment board members from the local occupational health and safety committee and replaced him as a co-chair, all before the appointment process began. In addition, he had filed a grievance and made a harassment complaint against the same person. They had not spoken for a long time. In *Amirault*, the complainant demonstrated that he had had serious conflicts with two members of the assessment board. Specifically, one of the members had identified the complainant in a complaint before the Board before assessing him. A significant conflict had arisen between the second member and the complainant that required Human Resources and the fire chief to intervene. Finally, in *Monfourny*, the complainant demonstrated that she had conflicting relationships with the delegated manager. The complainant had made a complaint against the delegated manager and had reported the manager to senior management. In addition, the delegated manager had told a third party that the complainant would not be selected for the position. The seriousness of the conflicts between the members of the assessment board and the complainants, as detailed in those decisions, cannot be likened to the circumstances of this case, based on the evidence before me.

[83] My opinion is that a reasonably well-informed person who realistically and practically examines the appointment process at issue would not reasonably perceive bias by the respondent in its assessment of the complainant's application. His

allegation that there was a reasonable apprehension of bias is based on conjecture and innuendo.

[84] I also disagree with the complainant that the respondent rejected his application because he was part of the GL-MAM Group. It appointed Mr. Fecteau to the position not because he was part of the GL-VHE group but because of his experience in vehicle mechanical work and supervision. I agree with the respondent that restricting the number of candidates to be interviewed to three was not an abuse of authority. It chose to summon candidates who had practical experience in heavy-vehicle mechanics and who had worked as GL-VHEs. That experience is essential to enable the team leader to plan the work properly and to set timelines. The team leader must understand the nature of the work to be done. As previously mentioned in this decision, the respondent has a great deal of discretion when it comes to assessing candidates.

E. There was no abuse of authority when the essential qualifications were established

[85] The respondent was very satisfied with Mr. Fecteau's performance as an acting mechanical team leader. It decided to appoint him on an indeterminate basis to that position through a non-advertised process, as it was entitled to do (see s. 33 of the *PSEA*). As it was an indeterminate appointment, the respondent raised the merit qualifications that the candidate had to meet. Specifically, it required that the candidate have recent experience (i.e., gained in the past five years) in supervision and recent and significant (two years ongoing) experience in vehicle mechanical work. In addition, the candidate had to have recent experience in coaching and on-the-job training. The complainant argued that that change to the SoMC made the process unfair and not transparent. In this respect, he referred me to *Renaud v. Deputy Minister of National Defence*, 2013 PSST 26. In that decision, the former Board found abuse of authority because, on one hand, the respondent had reopened the appointment process after the closing date, to promote a particular person's candidacy, and, on the other hand, the candidate's appointment was not based on merit. The facts in that decision cannot be likened to the facts in this one.

[86] I would like to reiterate that the respondent had the right to establish the essential qualifications for the team leader position, considering the nature of the work to be performed (see s. 30(2) of the *PSEA*). The complainant does not allege that

the qualifications established were below those required for the position in question (see *Hutlet*, at para. 87; and *Rinn*, at para. 40); nor did he convince me that their purpose was to exclude him.

[87] Mr. Fecteau met all the essential qualifications, as demonstrated in his assessment, which Major Stuber prepared. Furthermore, the complainant does not dispute that Mr. Fecteau's appointment was based on merit. The respondent also filed as evidence the justification for selecting the appointee. The complainant did not challenge it. The respondent was not required to consider more than one person for an appointment to be made on the basis of merit (see *Vaudrin v. Deputy Minister of Human Resources and Skills Development Canada*, 2011 PSST 19 at para. 52; and s. 30(4) of the *PSEA*).

[88] Finally, the complainant appears to suggest that it was inappropriate for the respondent to ask the appointee to provide an up-to-date CV because that enabled him to include the experience that he gained during his acting appointment. I find it completely justified that the documents that a candidate submits in an appointment process be as up to date as possible. I agree with the respondent that even were the experience that Mr. Fecteau gained as an acting team leader ignored, he would still have met the merit criteria.

[89] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

IV. Order

[90] The complaint is dismissed.

July 30, 2024.

FPSLREB Translation

**Adrian Bieniasiewicz,
a panel of the Federal Public Sector
Labour Relations and Employment Board**