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September 8, 2026

VIA EMAIL

Catherine Gilbert, Registrar
Ontario Labour Relations Board
505 University Avenue, 2nd Floor
Toronto, ON M5G 2P1

Dear Ms. Gilbert:

Re: Crane Rental Association of Ontario v International Union of Operating Engineers, Local 793 et. al. - Accreditation Application
OLRB File No. 2973-24-R

We are counsel to the Applicant, the Crane Rental Association of Ontario (the "CRAO") in the above noted Application for Accreditation. In accordance with the Board's direction dated June 16, 2026, please find enclosed the CRAO's submissions regarding its no-prima-facie objections to the positions advanced by the Intervenors. A copy of this correspondence and the attached submissions have been provided to the representatives of all parties.

In accordance with the Board's directions at the last Case Management Hearing, now that the Intervenors have confirmed that they are raising an objection on the basis of an alleged appearance of bias, we confirm that we will provide fulsome submissions as directed following a procedural Case Management Hearing to be convened for this sole purpose. However, we would also take this opportunity to confirm that we do not concur that there is actual or an appearance of bias; rather, in the finest traditions of the Board, a presiding Vice Chair at a Case Management Hearing expressed reservations about the chances of success of the Intervenors' positions based on decades of experience in the construction industry and familiarity with the parties' collective agreement.

The Vice Chair indicated that his mind was not made up on any of the relevant issues. It was neither improper nor unusual for a Vice Chair to endeavor to narrow the issues in dispute in this fashion at case management.

Yours very truly,

STRINGER LLP

Jeremy Schwartz

Jeremy D. Schwartz
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OLRB File No. 2973-24-R

Crane Rental Association of Ontario v International Union of Operating Engineers, Local 793 et. al. - Accreditation Application

Submissions of the Applicant, Crane Rental Association of Ontario

Introduction:

1. These are the submissions of the Crane Rental Association of Ontario (the "CRAO") pursuant to the Board's direction dated June 16, 2026. They address whether the positions framed by Pumpcrete Corporation ("Pumpcrete") and Aurora Concrete Pumping ("Aurora") (collectively, the "Intervenors") disclose a *prima facie* basis to resist the CRAO's application for accreditation.

2. Solely for the purposes of this preliminary exercise, the CRAO accepts properly pleaded material facts as true, but does not accept legal argument and conclusions, speculation, rhetorical characterizations, or inferences for which no supporting material facts are pleaded. Even on that generous footing, the Intervenors' August 7, 2026, submissions do not disclose facts capable of establishing any of their three objections: lack of vested authority under subsection 136(3), prohibited union involvement under subsection 136(5), or an inappropriate unit of employers under section 135 of the *Labour Relations Act*, 1995 (the "Act").

3. The CRAO accordingly asks the Board to dismiss those objections without an oral hearing; to decline to receive evidence relevant to un-pleaded material facts; and, in the alternative, to confine the scope of relevant evidence and of any further hearing to precisely identified issue(s) that survive this no-*prima-facie* review (if any survive).

4. The CRAO relies on its prior submissions and the record already filed. These submissions respond specifically to the Intervenors' latest framing and to the evidence they say would be relevant.

The *Prima Facie* Test and Pleading Requirements:

It would serve no labour relations purpose, and would indeed be contrary to well-established Board policy and practice in representation applications, to permit the Intervenors to seek evidentiary disclosure, to convene hearings to permit the Intervenors to call evidence and to make representations and argument in respect of issues which have not been properly pleaded in accordance with Rule 2.4, and especially where – even accepting the vague and unparticularized factual statements as true (for purposes of this preliminary inquiry), the Intervenors have failed to plead *prima facie* grounds for the relief sought.

5. The Intervenors should not be permitted to introduce unnecessary and costly delay into these proceedings, where their pleadings violate the Rules and, even taken at their best, their pleaded facts cannot support findings that would be dispositive of any issue before the Board.

6. The Board has substantial authority to govern proceedings before it, including applications for accreditation. For example,

    a. Rule 39.1 of the Board's Rules of Procedure permits dismissal of an "application", or part of it, without a hearing where, assuming all facts stated are true and provable, no *prima facie* case is made out for the orders or remedies requested, and "application" is of course defined broadly to include not just an initiating application, but also statements of representations (such as those filed by objecting employees in certification applications), complaints, and requests made of the Board.

    b. Rules 41.2 and 41.3, which apply to applications for accreditation (pursuant to Rule 41.1(j)), provide the Board with significant discretion to determine issues without the filing of evidence, without hearings, and to restrict the calling of evidence to that which is probative of issues relevant to the ultimate issues to be decided – and to prevent the calling of evidence which is not.

    c. Rule 5.1 requires any party alleging improper conduct to do so promptly, and in doing so to provide a detailed statement of all material facts relied upon, including the circumstances, what happened, when and where it happened, and the names of any persons said to have acted improperly.

    d. And Rule 2.4 prohibits parties from presenting evidence or representations about any material fact relied upon which the Board considers was not set out in the pleadings except with the permission of the Board, and even then, only on such terms as it considers advisable.

7. In *Kapoor v. UFCW, Local 1006A*, 2025 CanLII 135663 (ON LRB), the Board explained the applicable approach to a no-*prima-facie* motion as follows, at paragraph 10:

> The Board will not dismiss an application for failing to disclose a *prima facie* case unless it is clear, or plain and obvious, that the application has no reasonable chance of success. In making this determination, the Board assumes all facts set out in the application are true and provable. However, when the Board assesses whether the applicant has pled facts that could make out a violation of section 74, it will distinguish between material facts, and bald (or obviously false) allegations or conclusions of law. Bald assertions or conclusions of law will not meet the threshold for pleading facts capable of establishing a *prima facie* case.

8. Although *Kapoor* concerned an alleged breach of section 74 of the Act, rather than the accreditation provisions at issue in this proceeding, the Board was applying the same procedural test under Rule 39.1. Unlike pursuant to 41.3 motions, where the Board may determine issues without a hearing irrespective of whether the requesting party has pleaded a *prima facie* case, under 39.1 / *prima facie* inquiries, the underlying inquiry is therefore the same as in *Kapoor*: whether, assuming the pleaded material facts to be true and provable, those facts are capable of establishing the statutory case advanced for the relief requested of the Board. Bald allegations, legal conclusions and unsupported characterizations do not satisfy that threshold.

9. The assumption of truth is not an assumption that every asserted conclusion follows. Statements such as "bullying," "favourable treatment," "not coincidentally," "manufactured support," and "the CRAO does not have the authority" are conclusions. They require pleaded facts capable of proving the statutory element to which they are directed. That distinction matters particularly for an allegation of improper conduct such as that alleged by the Intervenors, which triggers Rule 5.1.

10. The Intervenors' attempt to reserve that their evidence is "without limitation," their statement that witnesses have not yet been finally selected, and their intention to add particulars after documents are produced (Intervenors' submissions, at paras. 8 - 10 and 77) are not pleaded material facts. They cannot preserve an open-ended right to construct a different case after this directed pleading exercise. Any new material fact and the calling of related evidence would require leave under Rule 2.4 (which leave the Board ought not to grant where the Intervenors have failed to plead a *prima facie* case).

<u>Statutory Tests Engaged by the Intervenors' Objections:</u>

11. The accreditation scheme of the Act asks distinct questions. Under section 135, the Board determines an appropriate unit of employers. Under subsection 136(2), an employers' organization must satisfy the statutory double-majority test: it must represent a majority of the employers in the unit, and that majority must employ a majority of the affected employees.

12. Before accreditation, subsection 136(3) requires the Board to be satisfied that the employers' organization is properly constituted and that each employer it represents has vested appropriate authority in it to discharge the responsibilities of an accredited bargaining agent. Subsection 136(4) expressly permits the Board, where it finds the authority vested by some employers insufficient, to postpone disposition so that represented employers may vest the additional or other authority the Board considers necessary.

13. Under subsection 136(5), the Board must dismiss the application if a trade union participated in the formation or administration of the employers' organization or contributed financial or other support to it.

14. Those provisions do not require unanimous employer approval. Individual employers may oppose an application, and an employers' organization may still satisfy subsection 136(2). Nor does subsection 136(3) require the applicant to have exercised accredited authority before it applies. It asks whether the organization is properly constituted and has been vested with appropriate authority, not whether it has already performed the statutory role it seeks.

15. Accordingly, to survive the *prima facie* review on any of the three grounds they advance, the Intervenors must plead material facts capable, if proven, of establishing at least one of the following: that the CRAO is not properly constituted or lacks the authority required by subsection 136(3); that Local 793 participated in the CRAO's formation or administration or provided support prohibited by subsection 136(5); or that the applied-for unit is not appropriate under section 135. For the reasons that follow, the material facts pleaded by the Intervenors, even assumed to be true and provable, are not capable of establishing any of those propositions. Many of their allegations do not engage the statutory tests at all.

No *Prima Facie* Case of Lack of Authority Under Subsection 136(3) of the Act:

16. The Intervenors' first objection is that the CRAO lacks the authority required by subsection 136(3) because its authority is said to be limited in two respects: first, sectorally, to bargaining in the ICI sector through OEEBA; and second, by the employers and work it is authorized to represent, to crane-rental employers rather than concrete-pumping employers. The Intervenors rely on the CRAO's historical bargaining through OEEBA and on selected provisions of its by-laws in support of those asserted limitations. Even assuming the material facts pleaded in support of those allegations are true and provable, they are not capable of establishing either limitation on the CRAO's authority.

The CRAO's Authority Is Not Confined to the ICI Sector

17. In *Electrical Power Systems Construction Association v United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada*, 2007 CanLII 49764 (ON LRB), at para. 15, the Board held that an accreditation applicant "represents" an employer for purposes of subsection 136(1)(b) where the employer is a member and the applicant's objects include representing members in labour-relations matters, including collective bargaining and entering collective agreements. The Board also recognized representation where an employer authorizes the applicant to bring the accreditation application and act as its bargaining agent.

18. Subsection 136(3) requires the Board, before accrediting an employers' organization, to satisfy itself that the organization is properly constituted and that each employer it represents has vested appropriate authority in it to discharge the responsibilities of an accredited bargaining agent. Subsection 136(4) further provides that, where appropriate authority has not

been vested, the Board may postpone disposition of the application to permit represented employers to vest such additional or other authority as the Board considers necessary.

19. Similarly, in [*Electrical Power Systems Construction Association v. Labourers' International Union of North America*, 2009 CanLII 43383] (ON LRB), the Board confirmed that the proposition that an employers' association represents its members for accreditation purposes where its objects include representing members in collective bargaining is not novel. The Board referred to an early decision in *The General Contractors' Section of the Toronto Construction Association*, [1971] OLRB Rep. Nov. 719, where membership in the association, read together with its by-laws, was found as sufficient to establish that the association represented its employer members and that there had been "sufficient vesting of authority" to enable it to discharge the responsibilities of an accredited employers' organization.

20. Against that legal framework, the Intervenors rely first on the CRAO's by-laws. At paragraphs 27 and 31 of their submissions, they rely on paragraph 1(a) of By-law No. 1, which refers to representing and advancing the interests of the "crane rental industry," and assert that the CRAO's Constitution and by-laws contain no authority to negotiate on behalf of concrete-pumping or placing-boom employers. That asserted legal effect is not itself a material fact that must be accepted as true. As the Board held in *Kapoor*, the *prima facie* analysis distinguishes between material facts and "bald (or obviously false) allegations or conclusions of law"; bald assertions and legal conclusions do not satisfy the requirement to plead facts capable of establishing a *prima facie* case

21. The material fact is the content of the CRAO's by-laws, which must be considered as a whole. Paragraphs 1(b), (c) and (d) authorize the CRAO to negotiate and enter collective agreements on behalf of its ***members***, to become an accredited employers' organization and exercise the rights and obligations arising from accreditation, and to represent members in matters pertaining to the building and construction industry throughout Ontario. By-law 17(c) goes further and expressly includes within active membership persons and entities engaged as "Crane Rental Companies ***or*** **Concrete Pumping Companies**." [Emphasis added]

22. The Intervenors separately rely on By-law No. 3, while acknowledging that it expressly authorizes the Board of Directors to apply for accreditation. They argue that the by-law should nevertheless be given no effect because it is "nearly 50 years old," has never previously been exercised, and was enacted at a time when, they say, the CRAO had no members specializing in concrete pumping other than Pumpcrete. From those facts, they conclude that the by-law is "outdated," "of no force or effect," and could not authorize accreditation involving concrete-pumping or placing-boom employers. The age of a valid constating instrument is not a basis upon which its authority expires, nor is the scope of an enduring grant of corporate authority necessarily frozen by the composition of the organization's membership on the date it was enacted. By the same reasoning advanced by the Intervenors, the *Canadian Charter of Rights*

and Freedoms would be incapable of application to circumstances, technologies or institutions that did not exist when it was enacted in 1982. The suggestion is baseless and absurd.

23. By-law No. 3 authorizes the CRAO to act as bargaining agent for all *members* and other employers whom it may lawfully represent, while By-law 17(c) expressly includes "Concrete Pumping Companies" within CRAO membership. The Intervenors plead no material fact that By-law No. 3 was repealed, amended, suspended or declared invalid. Their assertion that it therefore "could not apply" to concrete-pumping employers is an interpretive conclusion, not a material fact that must be assumed true under *Kapoor*.

24. The Intervenors next rely on the CRAO's historical bargaining practices to support their contention that its authority is confined to the ICI sector. They plead that the CRAO has been a constituent of OEEBA since 1978; that OEEBA bargains the Master Portion of the ICI PCA; that the CRAO bargains Schedule "A"; that OEEBA has no authority to bargain in the residential sector; and that there is no example of the CRAO having represented an employer in collective bargaining outside the ICI sector. Assuming those historical facts as being true and provable, the Intervenors plead no provision of the Act, the CRAO's by-laws, or any other corporate instrument under which the non-exercise of an authority causes that authority to cease to exist.

25. The same distinction answers the proposed evidence from current and former OEEBA representatives. The Intervenors propose evidence that OEEBA's mandate, and the bargaining conducted through it, is confined to the ICI sector. Even if every proposed witness gives that evidence exactly as anticipated, that would merely establish the limits of OEEBA's statutory bargaining role. It would not establish that the CRAO's own corporate authority is co-extensive with OEEBA's mandate, nor would it amend or displace the CRAO's constating documents or the authority vested through membership. The Intervenors' conclusion depends upon treating two different organizations and two different sources of authority as though they were the same.

26. The April 2025 correspondence relied upon at paragraphs 37 to 40 of the Intervenors' submissions does not establish otherwise. In response to Pumpcrete's questions concerning non-ICI bargaining, the CRAO stated that, as a constituent member of OEEBA, it was authorized to represent its members in ICI bargaining and that "[t]he scope of such negotiations" was expressly limited by statute to the ICI sector. The alleged fact is therefore that the CRAO acknowledged the statutory limits of the negotiations conducted through OEEBA. Even assumed to be true, the correspondence does not state that the CRAO lacks any separate authority to seek accreditation under sections 134 to 136, nor does it purport to amend or restrict its constating documents. The Intervenors' characterization of that letter as confirming a broader absence of non-ICI authority is a conclusion that does not follow from the words upon which they rely.

27. The Intervenors also rely on the fact that Local 793 has previously bargained directly with individual employers, including DCP and Maple Concrete Pumping, in relation to work outside the ICI sector. Even assuming those allegations to be true, the existence of prior direct bargaining does not establish that the CRAO was legally incapable of representing those employers or of subsequently becoming their accredited bargaining agent. It establishes only how bargaining occurred before the accreditation now sought. Nothing pleaded connects the existence of those prior arrangements to a loss or absence of authority under subsection 136(3).

28. The Intervenors next rely on the present composition of the CRAO membership. They allege that only six of approximately sixty to seventy CRAO members/authorizing employers perform concrete-pumping or placing-boom work and emphasize that concrete pumps and placing booms are physically and functionally different from cranes. These allegations do not establish that the CRAO lacks authority to represent concrete-pumping employers under subsection 136(3). By-law 17(c) expressly admits concrete-pumping companies to active membership. The fact that those members comprise a minority, or operate different equipment, does not negate the authority arising from membership and the CRAO's constating documents.

29. The Intervenors similarly rely on the composition of the CRAO's Board of Directors, alleging that only one director, Mark Welstead, was associated with a concrete-pumping company and that Amherst also operates a crane business. Even if accepted in full, those facts do not identify any defect in the authority vested in the CRAO. The Intervenors plead no provision requiring Board representation in proportion to the different businesses carried on by CRAO members, or requiring a particular number of directors associated with concrete-pumping companies before the CRAO can exercise authority on their behalf.

30. The Intervenors further rely on the manner in which the CRAO decided to pursue accreditation. They plead that members attending a CRAO meeting in July 2022 unanimously opposed the idea, and that the CRAO's Board ultimately voted 5–1 to proceed on March 5, 2025. They characterize the ultimate decision as having been made "in the dark" by only five persons and without a vote of the CRAO membership. Even assuming those facts to be true, the Intervenors identify no provision requiring a membership-wide vote before the Board may authorize an accreditation application which is authorized explicitly in CRAO's constating documents. By-law No. 3 expressly places the authority to make accreditation applications in the Board of Directors. An earlier decision by attending members not to pursue accreditation does not itself remove that authority or prevent the Board from later exercising it.

31. The allegation concerning Jason Hanna does not establish otherwise. The Intervenors allege that Mr. Hanna held an active Local 793 union card and rely upon By-law 17(e)(iii), which requires such a member to refrain from voting in a union matter. However, the very provision quoted by the Intervenors provides that any such vote is null and void only where, "in the

opinion of the Board of Directors," there was a conflict of interest and the active member should not have voted. No such determination by the Board is pleaded. Moreover, on the Intervenors' own pleaded facts, the motion to pursue accreditation passed 5–1. Even assuming Mr. Hanna cast an affirmative vote and that vote were removed, the result would remain 4–1. The pleaded facts therefore provide no route to the conclusion that the Board lacked authority to authorize the application.

32. The Intervenors also rely on petitions signed by CRAO members shortly before and after the application was filed. They plead that eight members signed petitions in March 2025, and that JCL Concrete Pumping signed a similar petition in April 2025, stating that they did not wish to be represented by the CRAO in non-ICI collective bargaining and objected to the Board's decision to seek accreditation. At their highest, those facts establish opposition by particular employers to the application. They do not establish that unanimous membership approval is required, that the CRAO's constating authority is invalid, or that authority vested by other employers is ineffective. The extent of employer support required for accreditation is addressed expressly by the majority requirements in subsection 136(2); dissent by individual employers cannot be converted into an additional unanimity requirement under subsection 136(3) that was not drafted by the Legislature.

33. Finally, the Intervenors rely on the circumstances in which employer authorizations were obtained. They allege that Local 793 representatives solicited and collected authorizations before the CRAO Board voted to proceed and provide specific allegations concerning Premier Concrete Pumping and DCP. Even if those allegations were accepted as true, they do not establish that the employers failed to vest authority in the CRAO. The Intervenors do not plead that Premier or DCP did not execute the authorizations, that the persons signing lacked authority to bind the employers, that the documents were forged or altered, or that their operative wording was incapable of authorizing the CRAO to act on their behalf.

34. The allegation that Local 793 solicited those authorizations may engage the Intervenors' separate objection under subsection 136(5), which expressly addresses union participation in or support for an employers' organization. It does not follow that a duly executed employer authorization is incapable of vesting authority for purposes of subsection 136(3) merely because a union representative encouraged or facilitated its execution. The Intervenors' submissions themselves combine the same facts across all three statutory objections. The *prima facie* inquiry requires the pleaded facts to be measured against the statutory element they are said to establish.

35. Accordingly, even assuming the Intervenors' pleaded material facts to be true and provable, those facts are not capable of establishing that the CRAO lacks the authority required by subsection 136(3). They may establish that the CRAO has historically bargained through OEEBA in the ICI sector, that concrete-pumping employers comprise a minority of its membership, that certain members opposed the application, that Local 793 encouraged

accreditation, and that the CRAO's Board ultimately voted to proceed. None of those facts establishes that the CRAO's constating documents exclude or fail to include concrete-pumping employers, that its authority is legally confined to the ICI sector, that the CRAO's Board lacked authority to make the Application, or that the employers represented by the CRAO failed to vest the authority required by the Act.

No *Prima Facie* Case of Prohibited Union Participation or Support Under Subsection 136(5):

36. The Intervenors' second objection is that Local 793 participated in the formation or administration of the CRAO, or contributed financial or other support to it, contrary to subsection 136(5). Their pleaded allegations concern Local 793's efforts to encourage accreditation, communications with CRAO members and directors, alleged favourable or adverse treatment of particular employers, Jason Hanna's alleged union membership, and the Union's alleged role in soliciting employer authorizations. Even assuming the material facts pleaded in support of those allegations are true and provable, they are not capable of establishing the statutory prohibition alleged.

37. Subsection 136(5) provides that the Board shall not accredit an employers' organization where a trade union has "participated in its formation or administration" or "contributed financial or other support to it." The statutory question is therefore not whether Local 793 favoured accreditation, advocated for it, or acted in pursuit of its own labour-relations interests. The pleaded facts must be capable of establishing participation in the formation or administration of the CRAO, or the provision of financial or "other support" to the CRAO.

38. Formation can be disposed of immediately. On the Intervenors' own pleaded facts, the CRAO has existed for decades, has participated in OEEBA since 1978, has by-laws dating to 1980, and has approximately sixty to seventy members. The conduct relied upon by the Intervenors occurred principally between 2022 and 2025. Whatever else those facts may establish, conduct occurring decades after an employers' organization was constituted is not capable of establishing that Local 793 participated in its formation.

39. The Intervenors' case therefore depends on "administration" or "financial or other support." *Wood Mill & Trim Owners Association of Ontario (c.o.b. as Trim Association of Ontario) v. Carpenters and Allied Workers Local 27*, 2007 CanLII 87048 (ON LRB), at para. 37, is directly responsive to their central theory. There, the Board held that a union does not improperly interfere with an employers' association merely by communicating to a contractor that it favours an accreditation application and seeks the contractor's approval. A union's advocacy for an accreditation result it prefers is therefore not, without more, the participation or support prohibited by subsection 136(5).

40. Against that framework, the Intervenors first rely on Local 793's alleged efforts to persuade the CRAO to seek accreditation. They plead that, during the DCP dispute, the Union

repeatedly urged the CRAO to pursue accreditation; that accreditation was an important objective of Local 793; and that Mike Gallagher contacted Mark Williams and encouraged him to persuade CRAO members and directors to support the application. Those communications may be assumed to have occurred. They establish that Local 793 wanted the CRAO to seek accreditation and advocated for that result. Under *Wood Mill & Trim*, that does not itself establish participation in the CRAO's administration or prohibited support of the CRAO.

41. Indeed, the Intervenors' own pleading demonstrates the distinction between Union advocacy and CRAO decision-making. They plead that Mr. Gallagher sought to persuade Mr. Williams to influence the CRAO's Board; they do not plead that Mr. Gallagher possessed or exercised the Board's authority himself. They further plead that the decision to seek accreditation was subsequently put before the CRAO Board on March 5, 2025 and approved by a 5–1 vote, with one director voting against it. Those facts, even assumed to be true, describe an employers' organization making its own decision after being urged by a union to make it. They do not establish that the Union administered the organization.

42. The Intervenors next rely on Local 793's alleged role in soliciting and collecting employer authorizations. They plead that Union representatives contacted employers, presented authorizations for signature, collected them, and in numerous cases witnessed their execution. They characterize that conduct as evidence that the Union was administering the CRAO and preparing its application. Again, the material facts and the asserted conclusion must be separated. The pleaded fact is that Union representatives facilitated the execution of authorizations (the form of which CRAO had prepared). The authority conveyed by those instruments, however, was conveyed by the employers who executed them to the CRAO. The Intervenors plead no fact that Local 793 executed an authorization on an employer's behalf, possessed authority to bind an employer to the CRAO, or exercised a corporate power of the CRAO by presenting or witnessing the documents.

43. That is materially the same distinction recognized in *Wood Mill & Trim*. If a union may tell an employer that it supports accreditation and seek that employer's approval without violating subsection 136(5), the fact that a Union representative communicated that request by presenting the authorization through which the employer expressed its approval does not, without more, convert the employer's decision into administration of the employers' organization by the Union. The Intervenors must plead facts capable of establishing the statutory conclusion, not merely facts showing that Local 793 actively sought the result.

44. The allegation concerning Premier does not take the matter further. The Intervenors plead that Mike Chianello told Premier's principal that Local 793 wanted Premier to execute an authorization and that Premier's principal understood that signing would do the Union a favour and believed that refusing might place Premier out of favour with it. They also plead that no CRAO representative contacted Premier. Even assuming all of those facts are true, the

authorization was executed by Premier in favour of the CRAO. The pleaded apprehension about falling out of favour is attributed to Premier's principal; the Intervenors plead no threat, promise, sanction or stated consequence imposed by Mr. Chianello if Premier refused. More fundamentally, whether Premier was persuaded to execute an authorization does not establish that Local 793 thereby participated in the CRAO's administration or supplied financial or other support to the CRAO.

45. The same analysis applies to DCP. The Intervenors plead that Virgil Nose repeatedly pushed DCP to execute an authorization, that DCP had not previously communicated with the CRAO concerning the authorization, and that DCP ultimately executed it at Mr. Nose's insistence. Even accepting those allegations, they establish Union advocacy directed at an employer. The operative act vesting authority remained DCP's execution of an authorization in favour of the CRAO. The Intervenors identify no material fact by which Mr. Nose assumed a CRAO governance function or exercised authority belonging to the CRAO.

46. The Intervenors place particular emphasis on chronology. They plead that Local 793 representatives began obtaining authorizations in November and December 2024 and January 2025, whereas the CRAO Board did not vote to seek accreditation until March 5, 2025. From that chronology they conclude that the Union "was already preparing the Application materials" before the CRAO itself had decided to apply. The dates are material facts and may be assumed true. However, the Applicants' conclusion does not follow from them. No pleaded fact identifies an application prepared by Local 793, a pleading drafted by the Union for the CRAO, authority granted to the Union to file an application on the CRAO's behalf, or any act by which Local 793 itself committed the CRAO to seek accreditation. The Intervenors' own pleaded facts are that the CRAO Board subsequently made that decision itself.

47. The sequence of events must also be viewed against the established course of dealings between the CRAO and Local 793. For decades, the two organizations have interacted in collective bargaining and related labour-relations matters. In that setting, discussions about a proposed accreditation application, and communications between Local 793 and employers potentially affected by it, are not unusual or inherently suggestive of improper involvement. The fact that the Union engaged with CRAO representatives and affected employers does not show that it exercised control over the CRAO, participated in its internal administration, or supplied prohibited support within the meaning of subsection 136(5).

48. The remaining allegations are further removed from the statutory test. Pumpcrete alleges that, after demonstrating "apathy" toward accreditation, it received approximately twenty to thirty grievances between late summer 2024 and spring 2025 after having received few or none previously. From that sequence, the Intervenors assert that the Union and the CRAO were "bullying" employers that opposed accreditation. The number and timing of the grievances may be assumed true. "Bullying" and the asserted connection to CRAO are conclusions. No

material fact is pleaded that the CRAO requested, directed, participated in, or received any support from the filing of those grievances.

49. The allegations concerning Amherst suffer from the same defect. The Intervenors plead that Amherst equipment appeared at a Highway 413 announcement held at Local 793's training facility, that Mr. Gallagher made favourable comments concerning Amherst, and that Local 793 had not grieved Amherst over its alleged use of "s bends." Those facts may likewise be assumed true. They may support an allegation that Local 793 treated Amherst favourably. They do not establish that Local 793 participated in any decision of the CRAO, exercised any authority over its affairs, financed the CRAO, or otherwise provided support to the CRAO within subsection 136(5). Whatever concerns the Intervenors may have about Local 793's dealings with Amherst or its conduct surrounding that political event, those concerns are unrelated to the statutory issue raised by subsection 136(5) and do not disclose a prima facie basis for the objection. The 's bends' allegation does not advance the subsection 136(5) objection. Even assuming the alleged differential enforcement occurred, it is difficult to see how a Union's alleged tolerance of an unsafe work practice by an individual contractor could amount to participation in the administration of the CRAO or support provided to the CRAO for purposes of this Application.

50. The July 2025 allegation concerning Shannon Castle is even more remote. The Intervenors plead that a Union representative declined to contact Pumpcrete concerning employment for Ms. Castle because there were "problems" with Pumpcrete and instead promoted employment with Amherst. From those facts, they expressly conclude that Local 793 was "participating in the administration of CRAO and contributing financial and other support to CRAO." That is precisely the distinction identified in *Kapoor*. The referral conduct is the pleaded fact; its characterization as administration or support of the CRAO is the statutory conclusion. Even assuming the referral conduct occurred exactly as alleged, it does not plead any act in the governance, direction, financing or operation of the CRAO.

51. Kris Wuis's removal from the CRAO Board similarly does not establish Union participation. The Intervenors plead that Mr. Wuis voted against accreditation on March 5, 2025 and was subsequently removed from the Board, which they characterize as occurring "not coincidentally." No material fact is pleaded that Local 793 requested, directed, participated in, voted upon or otherwise caused Mr. Wuis's removal. The characterization "not coincidentally" is an inference, not a material fact that must be assumed true. In any event, the pleaded removal occurred after Mr. Wuis had cast his dissenting vote and after the Board had already approved the application 5–1.

52. The allegation concerning Jason Hanna's change of employment is still further removed. The Intervenors plead that Mr. Hanna left Modern Crane for Lift All Crane in May 2024 and introduce that allegation with the words "not coincidentally." They plead no act, communication, promise, benefit or direction by Local 793 connecting that employment

change to the accreditation application. The employment change is a material fact that may be assumed true; the suggestion that it evidences Union influence over the CRAO is an unsupported inference and does not satisfy *Kapoor*.

53. Nor does Mr. Hanna's alleged possession of an active Local 793 union card establish participation by the Union in the CRAO's administration. The Intervenors rely on the CRAO's internal conflict-of-interest provision and conclude that Mr. Hanna's position demonstrates Union influence over the Board. But the pleaded fact that a CRAO director possessed a Local 793 card is not a pleaded fact that **Local 793** administered the CRAO. The Intervenors do not plead that Mr. Hanna was a Local 793 officer, was appointed to the CRAO Board by the Union, acted pursuant to Union instructions, reported to the Union concerning CRAO decisions, or cast his vote as the Union's representative. His alleged status under the CRAO's internal by-laws does not itself establish the participation of the trade union required by subsection 136(5). Rather, Mr. Hanna has served as CRAO's President for almost 10 years, and his family has a longstanding history of service to and leadership roles in, the CRAO and affiliated employers' associations. The Board is almost certainly familiar with the reality that it is not unlawful or uncommon that an company owner in the crane and concrete pumping rental industry, who is himself a licensed journeyperson operator, should wish to retain his union membership to continue participating in the multi-employer benefits plan. That does not, in and of itself, establish any pleaded conclusion urged by the Applicants.

54. Finally, any issue concerning whether a particular employer authorization should ultimately be counted is analytically distinct. If the Board were later to find a defect in a particular authorization, which is not conceded, that issue would bear on whether the employer vested authority in the CRAO and whether the statutory support requirements are met. It would not, without additional material facts, establish that Local 793 formed, administered or supported the CRAO, nor would a defect concerning one authorization invalidate unrelated authorizations.

55. The subsection 136(5) objection therefore discloses no *prima facie* case. The Intervenors plead facts capable of establishing, taken at their best, that Local 793 wanted accreditation, advocated strongly for it, communicated that preference to CRAO members and other employers, facilitated the execution of employer authorizations, and may have treated employers differently depending upon their relationship with the Union. Those facts may be controversial, but controversy is not the statutory test. Even assumed to be true and provable, they are not capable of establishing that Local 793 participated in the CRAO's formation or administration, or contributed financial or other support to the CRAO within subsection 136(5). The contrary allegations depend upon precisely the type of conclusions and unsupported inferences that *Kapoor* distinguishes from pleaded material facts.

No *Prima Facie* Case Regarding the Unit and Section 140:

56. The Intervenors' third objection is that the proposed unit is not appropriate under section 135 of the Act because concrete-pumping and placing-boom employers allegedly lack a sufficient community of interest with crane-rental employers. They rely on differences in the equipment operated, operator training, customers, economics, hours of work and jobsite function; the absence of a prior pattern of association bargaining outside the ICI sector; and an alleged overlap with the existing accreditation of the Ontario Formwork Association ("OFA"). Even assuming the material facts pleaded in support of those allegations are true and provable, they do not establish that the proposed unit is incapable of constituting an appropriate unit under section 135 or that section 140 requires dismissal of the Application.

57. Section 135 does not require the Board to identify the only conceivable or most homogeneous grouping of employers. It directs the Board to determine a unit of employers that is appropriate for collective bargaining and expressly permits the Board, where advisable, to combine geographic areas, sectors, or parts of sectors. The existence of differences among employers within the proposed unit therefore does not itself establish that the unit is inappropriate.

58. The proposed unit has a readily identifiable organizing principle. It encompasses employers of employees represented by Local 793 who are engaged in the manned crane and equipment rental business through the operation of hoisting equipment, concrete pumps, placing booms and similar equipment in the non-ICI construction sectors, subject to the exclusions contained in the proposed description. The Intervenors' assertion that this is not a "tangibly defined group of employers with a community of interest" is a conclusion. The material facts they plead about differences among particular types of equipment do not establish that employers falling within that defined business grouping are incapable of collective bargaining together.

59. In particular, the Intervenors plead that cranes and concrete pumps are different equipment; that their operators generally require different training and are not interchangeable; that crane and pumping companies do not compete for identical work or provide substitute services; and that there may be differences in customers, pricing and hours of operation. Those facts may be assumed true. They establish differences among employers within the proposed unit. They do not establish an absence of a labour-relations community of interest. A collective agreement is capable of accommodating different classifications, equipment, working conditions and terms applicable to different operations. Nothing pleaded establishes that common bargaining between these employers is unworkable. Those differences may be matters for bargaining, but they do not plead an inability to bargain common terms. A bargaining unit need not contain identical businesses or interchangeable employees. Common collective-agreement architecture may accommodate classification-specific or equipment-specific terms.

60. The Intervenors' own submissions also plead an existing labour-relations connection between these employers. They acknowledge that the CRAO bargains Schedule "A" of the Provincial Collective Agreement with Local 793 and that Schedule "A" applies to employers engaged in

the "Crane and Equipment Rental Business" in Ontario. They further plead that concrete-pumping companies are members of the CRAO and that Local 793 represents employees of both crane-rental and concrete-pumping employers. Against those pleaded facts, the categorical assertion that crane and concrete-pumping employers possess no relevant community of interest outside the ICI sector does not follow merely because their equipment and particular business operations differ.

61. The Intervenors next rely on the absence of an established pattern of CRAO bargaining outside the ICI sector. They plead that the CRAO has not previously negotiated an association agreement covering the proposed non-ICI unit and that Local 793 has instead bargained directly with individual employers. From that alleged history they conclude that no appropriate association-bargaining unit exists. Again, the historical fact may be accepted for purposes of this inquiry; but, the conclusion does not follow. Nothing in sections 134 or 135 of the Act requires an applicant for accreditation to establish that it has already collectively bargained for the precise unit for which accreditation is sought. Such a requirement would substantially defeat the function of accreditation for an employers' organization seeking accreditation for the first time.

62. The Divisional Court's decision in *International Union of Operating Engineers, Local 793 v. 1476247 Ontario Ltd. o/a De Grandis Concrete Pumping*, 2023 ONSC 3481, is particularly significant to the Intervenors' reliance on the absence of a distinct non-ICI CRAO agreement. There, the Board had defined a pattern agreement as requiring a "specific non-ICI collective agreement" and, on that basis, rejected the Provincial Collective Agreement as a pattern applicable outside ICI. The Divisional Court held that approach was unreasonable. It emphasized both the evidence that the Provincial Collective Agreement had been applied by concrete-pumping contractors outside the ICI sector and prior Board authority recognizing that the Provincial Collective Agreement extends beyond ICI work.

63. *De Grandis* answers the categorical premise underlying the Intervenors' argument: the fact that the Provincial Collective Agreement originates in the ICI bargaining structure does not itself establish that it is irrelevant to bargaining practices outside ICI. The Court expressly rejected an analysis that treated the absence of a distinct non-ICI agreement as determinative without engaging with the evidence of how the Provincial Collective Agreement was actually applied.

64. The fact that some proposed witnesses would say OEEBA's statutory mandate is ICI-only does not answer whether Schedule A has in practice been applied as a pattern agreement for mobile crane and pumping work in other sectors, whether the employer authorizations are sufficient, or whether the unit is appropriate. Those are different questions.

65. The Intervenors separately invoke section 140 and adopt the former submissions of the OFA. They allege that the OFA already possesses accreditation rights covering at least some of the work at issue and contend that concrete-pump and placing-boom work performed in residential

formwork construction "inevitably" falls within the OFA's accreditation. Section 140, however, does not itself define the unit appropriate under section 135 or confer additional bargaining rights upon a union. It prohibits individual bargaining between a union and an employer represented by an accredited employers' organization while that accreditation remains operative.

66. More fundamentally, accreditation does not enlarge the underlying bargaining rights of the responding union. In *Ontario Formwork Association v. Formwork Council of Ontario*, 2007 CanLII 52341 (ON LRB), at para. 21, the Board held that an accreditation order neither detracts from bargaining rights already held by another party nor adds to the bargaining rights of the applicant and responding union. The accreditation order is confined to employers for whose employees the responding union already possesses bargaining rights. The Board specifically rejected the proposition that accreditation could expand those rights.

67. The same principle was applied in *Terrazzo, Tile and Marble Guild of Ontario, Inc. v. Brick and Allied Craft Union of Canada*, 2019 CanLII 4181 (ON LRB), at para. 6: accreditation is not a mechanism through which a union obtains bargaining rights "through the back door." The Intervenors' suggestion that the CRAO application itself will extend Local 793's work jurisdiction therefore mistakes the legal effect of accreditation. The application can operate only upon bargaining rights Local 793 otherwise possesses.

68. In any event, the alleged OFA overlap has already been addressed through a carve out in the unit description. The proposed unit expressly excludes employers bound by and performing work under the existing accredited formwork arrangement, following the consent amendment that resulted in the OFA withdrawing its intervention. The Intervenors nevertheless assert that the OFA exclusion must be interpreted as excluding all concrete-pumping and placing-boom employers whenever their equipment is used in connection with residential formwork. That proposition does not follow from the pleaded facts. The OFA withdrew its intervention. The Intervenors cannot turn the resolved concern into a basis to dismiss the entire application without identifying a concrete residual overlap.

69. The third objection therefore discloses no *prima facie* basis either to dismiss the Application or to exclude concrete-pumping and placing-boom employers as a class. The pleaded facts establish differences among the businesses within the proposed unit, an absence of prior CRAO accreditation outside ICI, and a potential interaction with existing formwork bargaining rights. They do not establish that the proposed unit is incapable of constituting an appropriate unit under section 135, that accreditation would impermissibly enlarge Local 793's bargaining rights, or that section 140 requires dismissal. To the extent the Board concludes that a discrete issue concerning the wording of the unit remains, that issue can be addressed through the Board's determination of the appropriate unit rather than through dismissal of the Application.

Conclusion:

70. Even assuming every properly pleaded material fact to be true and provable, the Intervenors have not disclosed facts capable of establishing that the CRAO lacks the authority required by subsection 136(3), that Local 793 participated in the CRAO's formation or administration or contributed prohibited support within subsection 136(5), or that the proposed unit is inappropriate under section 135.

71. Instead, each objection depends in material part on precisely the types of allegations that *Kapoor* distinguishes from material facts: legal conclusions, bald assertions, speculation, rhetorical characterizations, and inferences unsupported by pleaded facts.

72. Once those conclusions and unsupported inferences are separated from the material facts pleaded, no prima facie case remains on any of the three objections. The CRAO therefore respectfully requests that the Board dismiss the objections without an oral hearing pursuant to Rule 39.1 / for want of a properly pleaded *prima facie* case, and decline to permit the Intervenors to supplement their case with new material facts or particulars except with leave under Rule 2.4 and on such terms as the Board considers appropriate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.