



September 8, 2026

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

Dear Registrar Gilbert:

**Re: Crane Rental Association of Ontario (Applicant) v
International Union of Operating Engineers, Local 793 (Responding Party)
Application for Accreditation (Construction Industry)
OLRB File No. 2973-24-R; Our File No. 5324-25**

As you are aware, I am counsel to the International Union of Operating Engineers, Local 793 ("Local 793" or the "Union") with respect to the above-noted matter.

In accordance with the Board's Decision of June 16, 2026, I write to provide the Union's submissions with respect to its no-*prima-facie* objections to the arguments raised by Pumpcrete Corporation and Aurora Concrete Pumping (the "Intervenors") in this Application.

Introduction

1. Local 793 submits that the Intervenors have failed to establish a *prima facie* case for any of its three objections to the Accreditation Application and asks the Board to dismiss these objections on a preliminary basis, without a hearing.
2. Rule 39.1 of the Board's Rules of Procedure allows the Board to dismiss an application or part of an application 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.
3. The Intervenors raise three objections to the Accreditation Application, set out at paragraph 7 of its August 7, 2026 submissions:
 - (a) The Board cannot and should not accredit the CRAO because the CRAO does not have "appropriate vested authority" within the meaning of subsection 136(3) of the Labour Relations Act, 1995 ("the Act");
 - (b) The Board cannot and should not accredit the CRAO because the Union has participated in its formation or administration or has contributed financial or other support to the CRAO within the meaning of subsection 136(5) of the Act;

(c) The Board cannot and should not accredit the CRAO because the bargaining unit description is not appropriate and the Application should be dismissed entirely, or alternatively, the bargaining unit description ought to be amended to [sic]

4. Local 793 submits that even if all facts pled by the Intervenor in support of these three arguments are assumed, for the purpose of this section 39.1 motion, to be true, the Intervenor has not made out a case for the orders or remedies requested. As a result, Local 793 requests that the Board dismiss the Intervenor's arguments without a hearing. The anticipated evidence outlined by the Intervenor in its August 7, 2026 submissions would not establish a case for the orders or remedies sought by the Intervenor, and is therefore unnecessary for a determination of these issues.
5. To the extent that the Intervenor indicates in its August 7, 2026 submissions that further unspecified evidence or particulars may be forthcoming, or may be relied upon by the Intervenor at a hearing with respect to the issues above, this is inappropriate both in the context of the pleading requirements set out in the Board's Rules, and with respect to the Board's direction in its June 16, 2026 Decision.
6. The purpose of the August 7, 2026 submissions was to allow the Intervenor (another) opportunity to "frame their objections to the application, and the grounds in support of them", and to "set out the evidence they say would be relevant to them." The Board ordered the Intervenor to set out all of this in writing for the purpose of the CRAO's and Union's preliminary objections to these positions. To the extent that the Intervenor suggests it may wish to add particulars at a later date, that is not compliant with the Board's direction. The Board advised in its June 16, 2026 Decision that it may decide some of these issues on the basis of the parties' written submissions or at a Case Management Hearing. Local 793 submits that the Board ought to address these issues as pled and that any vague indication that the Intervenor may rely on something further simply cannot be considered for the purpose of this motion, and further would be a violation of the prompt pleading requirement in Rule 5.1.
7. Local 793 continues to rely on all of its previous submissions in this matter. As addressed in those previous submissions, Local 793 denies certain facts relied upon by the Intervenor. However, and without prejudice to those positions, we make the following submissions for the purpose of a s. 39.1 motion, and submit that for the purpose of that motion, the Board can assume that the material facts pled by the Intervenor are true and provable.

Appropriate Vested Authority

8. The Intervenor argues that the CRAO does not have appropriate authority vested in it to represent the employers it claims it represents. The Intervenor says this authority is limited in two ways: that the CRAO only has authority to represent crane-rental employers and not concrete-pumping employers, and that the CRAO is or has historically been limited to bargaining in the ICI sector and therefore does not have the authority to bargain outside of the ICI sector. In support of these arguments, the Intervenor relies on the CRAO's by-laws and on the CRAO's history of bargaining with the Union through the OE Employer Bargaining Agency.

Failure to Plead Prima Facie Case that CRAO's Authority Excludes Concrete Pumps

9. Subsection 136(3) of the *Act* 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.
10. In interpreting this provision, the Board has repeatedly held that an accreditation applicant "represents" an employer for purposes of that application where the employer is a member of the applicant, and the applicant's objects include representing members in labour relations matters, which can include collective bargaining (see *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); *The General Contractors' Section of the Toronto Construction Association*, [1971] OLRB Rep. Nov. 719; *Electrical Power Systems Construction Association v. Labourers' International Union of North America*, 2009 CanLII 43383 (ON LRB)).
11. It is clear even on the Intervenor's own evidence that the CRAO has the authority, as defined by the Board, to represent the Intervenor and all other employers it claims in this Application to represent. The Intervenor does not dispute that Pumpcrete and Aurora, along with the other employers relied upon by the CRAO in this Application, are either members of the CRAO or have signed an employer authorization expressly granting authority to the CRAO to act on their behalf for the purpose of this application. The Intervenor also does not dispute that the CRAO's bylaws, which the Intervenor themselves rely on in part, authorize the CRAO to act as bargaining agent for all members and other employers whom it may lawfully represent (By-law No. 3); authorize the CRAO to negotiate and enter collective agreements on behalf of its members (By-laws No. 1 and 3); authorize the CRAO to become an accredited employers' organization and exercise the rights and obligations arising from accreditation (By-laws No. 1 and No. 3), and authorize the CRAO to represent members in matters pertaining to the building and construction industry throughout Ontario (By-law No. 1).
12. The Intervenor submit, in response to all of these provisions, that the By-laws do not reference the CRAO negotiating on behalf of concrete pumping companies. It submits this despite the language in By-law No. 1 at paragraph 17(c), which expressly includes within active membership persons and entities engaged as "Crane Rental Companies or Concrete Pumping Companies." The Intervenor do not challenge or dispute this provision.
13. The Intervenor further rely on an allegation that only six of the CRAO's members perform concrete-pumping or placing-boom work. This pleading, even if true, does not establish that the CRAO lacks authority to represent concrete-pumping employers under subsection 136(3). To the contrary, this pleading establishes that concrete pumping companies form part of the membership of the CRAO to which its By-laws conveying representation apply. The same is true of the Intervenor's submission that only one of the CRAO's directors is affiliated with a concrete-pumping company.
14. The Intervenor make no submissions which if proven could challenge the clear representational authority set out in the CRAO's bylaws, which the Board has in other cases

deemed to be a sufficient demonstration of authority for the purposes of the accreditation provisions of the *Act*.

Failure to Plead Prima Facie Case that CRAO's Authority is Limited to ICI Sector

15. The Intervenors also argue that the CRAO does not have the authority to negotiate an agreement applicable outside of the ICI sector. In support of this position, the Intervenors state that they will call evidence to outline the CRAO's bargaining history with the Union and to establish that there is no example of the CRAO having represented an employer in collective bargaining outside the ICI sector.
16. At its highest, if the Intervenor's pleadings on this issue were proven to be true, they could establish that the CRAO has not, in the past, negotiated an agreement binding on its members outside of the ICI sector (the Intervenors acknowledge that "some members of the CRAO have independently agreed to apply or voluntarily apply the terms and conditions of the ICI PCA to certain work outside of the ICI sector"). Even if the Intervenor's pleadings are true, this would not establish that the CRAO's authority to negotiate with the Union is legally confined to the ICI sector. The Intervenors point to no By-law or provision of the *Act* which would lead the Board to determine this, and have provided no submission on why an alleged past practice of not negotiating or enforcing a binding agreement outside of the ICI sector ought to lead the Board to determine that this authority does not exist.
17. The Intervenors rely on April 2025 correspondence between it and the CRAO, in which 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. Even if true, that correspondence does not state that the CRAO lacks any separate authority to represent its members outside of the ICI sector.
18. The Intervenors also rely on an allegation that Local 793 has previously bargained directly with individual employers, including DCP and Maple Concrete Pumping, in relation to work outside the ICI sector. Again, 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 in bargaining or of subsequently becoming their accredited bargaining agent for such work.
19. Nothing pleaded by the Intervenors connects the alleged past practice to the conclusion it asks the Board to draw of an absence of authority under subsection 136(3).

Allegations of Union Support

20. The Intervenors also argue that there has been improper Union support and initiation of this Application, and interference in the administration of the CRAO, by Local 793. The basis of this allegation appears to be: first, that Local 793 consistently maintained its legal position in the *DeGrandis* (DCP) litigation that the Provincial Collective Agreement is a pattern agreement applicable to all sectors of the construction industry; second, that the idea of accreditation was raised by Local 793 to the CRAO, and not the other way around; third, that Local 793 gave "more favourable treatment" to certain contractor members of the CRAO who were perceived as being supportive of the accreditation, and that Pumcrete received grievances from Local

793 which it perceived as “bullying”; fourth, that the Union discriminated against the Intervenors in the referral of its members; and fifth, that representatives of Local 793 were in contact with employers about the accreditation and witnessed a number of the employer authorizations.

21. The Intervenors have failed to establish a *prima facie* case of any violation of the *Act* by the Union or the CRAO in relation to this Application. Section 136(5) of the *Act* states:

The Board shall not accredit any employers’ organization if any trade union or council of trade unions has participated in its formation or administration or has contributed financial or other support to it or if it discriminates against any person because of any ground of discrimination prohibited by the *Human Rights Code*, or the *Canadian Charter of Rights and Freedoms*. 1995, c. 1, Sched. A, s. 136.

22. The Intervenors make no allegations which, if proven, could demonstrate any such participation in the formation or administration of the CRAO. The crux of the Intervenor’s argument is that it was Local 793, not the CRAO, that cared more about the accreditation. Even if true, that is not a violation of the *Act*.
23. Local 793 and the CRAO have had a collective bargaining and labour relations relationship for nearly 50 years. It should not come as a surprise to the Intervenors that the CRAO and Local 793 engaged in discussions about this Application, and that the Union, as the organization with day-to-day contact with the CRAO’s members, spoke to and fielded questions from employers who would be affected by this Application. None of these collaborative actions taken by the Applicant and Responding Party with the goal of positive labour relations and establishing a uniform bargaining structure are in any way improper or contrary to the accreditation provisions of the *Act*.
24. The Board has addressed similar allegations of improper support, finding, for example in *2805-05-R 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) that:

It is no surprise that some unions find the prospect of an accreditation order made in favour of a particular employer association, and the consequences that flow from that accreditation order, to be to their advantage. The simple act of speaking to a contractor to indicate that the union is in favour of the application and seeks their approval does not constitute, in the context of an application for accreditation, improper interference in the activities of the Association contrary to section 136(5).

The allegations made by the Intervenors amount to nothing more than the kind of general support for accreditation by the Union which the Board has held is not improper.

25. The Intervenors cite as the first example of Local 793’s improper actions its position in the litigation surrounding DeGrandis Concrete Pumping. The Intervenors state that “throughout the legal battle between DCP and Local 793, it was obviously the position of Local 793 that the only agreement that Local 793 was prepared to enter into for the non-ICI sectors was the ICI PCA”. This is correct. At all times, Local 793 has maintained its position that Schedule A of

the Union's Provincial Agreement has, since the inception of province-wide bargaining, been an all-sector collective agreement.

26. The Intervenors suggest that the Union was motivated by the *De Grandis* litigation to advocate for the CRAO to file this Application, "in an effort to defeat DCP". It is true that an accredited CRAO agreement may clarify for any employers looking to advance a position similar to De Grandis that there is only one Local 793 collective agreement applicable to crane and equipment rental work in the Province of Ontario. However, the Union being supportive of, or even advocating for, an accreditation for that purpose is not in any way improper. This allegation falls far short of establishing a *prima facie* case that Local 793 participated in the formation or administration of the CRAO or contributed financial or other support to it.
27. The second objection to Local 793's actions raised by the Intervenors is its allegation that the idea of accreditation was raised by Local 793 to the CRAO, and not the other way around. Even if the Board were to find the Intervenors' depiction of events to be true, this again simply does not rise to the level of interference. A Union suggesting to an association that it would be in favour of accreditation does not amount to improper interference in the activities of the Association contrary to section 136(5).
28. The complaint that Local 793 Business Manager Mike Gallagher contacted CRAO members to express the Union's support of accreditation is answered directly by the Board's finding in the *Trim Association* decision cited above. The simple act of speaking to a contractor to indicate that the union is in favour of the application and seeks their approval does not constitute improper interference.
29. The Intervenors also allege that the Union gave preferential treatment to one particular contractor who was perceived to be supportive of this Application, and that it singled out and bullied Pumpcrete because it was perceived to be unsupportive of the Application. As outlined in detail in our previous submissions, this allegation is denied, but again, even if established to be true this allegation fails to establish a *prima facie* case that the Union interfered in the formation or administration of the CRAO. The Intervenors do not plead that the CRAO was aware of, or made any decisions on the basis of, this perceived bullying.
30. The allegation that Local 793 ignored safety violations by contractors supportive of this Application is completely baseless, but again, even if true, it defies logic to suggest that the Union allowing unsafe work practices by contractors would assist the CRAO in filing this Application. This allegation also fails to establish a *prima facie* case that the Union interfered in the formation or administration of the CRAO.
31. The Intervenors complain that the CRAO Board of Directors voted to remove Kris Wuis following a vote where he opposed accreditation. Even if true, the Intervenors make no suggestion that the Union had any knowledge of this vote or had any influence over this vote. This allegation, even if true, clearly fails to establish a *prima facie* case that the Union interfered in the administration of the CRAO.
32. The Intervenors further allege that the Union's Director of Organizing refused to contact Pumpcrete to try to obtain employment for one of the Union's members, and instead attempted to refer that member to Amherst Concrete Pumping. As set out in our previous submissions

these facts are disputed, but again, even if true, the Union's decision to refer an employee to one employer over another, even if done maliciously as alleged, cannot establish a contribution of financial or other support to the CRAO by the Union. The Intervenors' bald pleading that this constitutes participation in the administration of the CRAO or improper support of the CRAO is simply a legal conclusion it has failed to support with any pled facts.

33. Finally, the Intervenors complain that representatives of Local 793 were in contact with employers about the accreditation to "solicit and collect" employer authorizations, and that they witnessed a number of the employer authorizations that were filed in support of this Application.
34. All the Intervenors describe is that representatives of the Union contacted employers to indicate that the union is in favour of the application and seeks their approval. This is not denied by the Union. The Union has relationships with these employers and is often in more regular contact with the CRAO's members than the CRAO itself. There is nothing unusual or inappropriate about the Union contacting employers to discuss the accreditation and to witness authorizations. As discussed above, the Board has determined that such conduct is not improper and does not amount to improper interference in the activities of the Association contrary to section 136(5). As a result, this allegation fails to establish a *prima facie* case that the Union interfered in the administration of the CRAO or otherwise violated the *Act*.

Objection to the Bargaining Unit

35. The Intervenors' third objection to the Application is its position that the Application ought to be dismissed, or in the alternative, amended, because the bargaining unit is not appropriate for collective bargaining. It makes this submission on the basis of the following arguments: that concrete-pumping and placing-boom employers allegedly lack a sufficient community of interest with crane-rental employers; that there is allegedly no prior pattern of the CRAO bargaining outside the ICI sector; and that there is alleged overlap with the existing accreditation of the Ontario Formwork Association. Even assuming the material facts plead in support of those allegations are true and provable, those facts do not establish that the proposed unit cannot be an appropriate unit under section 135 or that section 140 requires dismissal of the Application.
36. The Intervenors' own submissions acknowledge an existing labour-relations connection and community of interest between concrete-pumping and placing-boom employers and crane-rental employers. The Intervenors acknowledge that the CRAO bargains Schedule "A" of the Provincial Collective Agreement with Local 793. It acknowledges that concrete-pumping companies are members of the CRAO and that Local 793 represents employees of both crane-rental and concrete-pumping employers in ICI bargaining. It further relies on alleged overlap between the applied-for unit and the Formwork Agreement, which also encompasses bargaining rights with both concrete-pumping and placing-boom employers and crane-rental employers.
37. The existence of these two longstanding collective bargaining arrangements – neither of which is challenged or differentiated by the Intervenors – demonstrates that a bargaining unit which encompasses employers of both concrete-pumping and placing-boom employers and crane-rental employers is a unit that can be appropriate for collective bargaining. The Intervenors' submissions and anticipated evidence about the differences between cranes and concrete pumps

do not establish a *prima facie* case that a bargaining unit encompassing both concrete-pumping and placing-boom employers and crane-rental employers cannot be appropriate. Beyond a baldly-pleaded legal conclusion, the Intervenors make no submission capable of establishing that a bargaining unit cannot be appropriate if it encompasses these two types of employers.

38. The Intervenors also rely on its submission that there is an absence of an established pattern of CRAO bargaining outside the ICI sector. This argument overlaps with its submissions addressed above that the CRAO has no authority to bargain outside of the ICI sector. It pleads that the CRAO has not previously bargained an agreement covering the proposed non-ICI unit, and that Local 793 has instead bargained directly with individual employers. For the reasons outlined above, even if these allegations are accepted as true, a failure to negotiate a non-ICI collective agreement does not mean that the CRAO lacks the legal authority to do so. Further, 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. The Intervenors' submissions on this issue accordingly fail to establish a *prima facie* case that the proposed bargaining unit is inappropriate.
39. Finally, the Intervenors state that it agrees with and adopts the submissions made by the Ontario Formwork Association and the Utility Contractors Association of Ontario Incorporated (before those parties withdrew their interventions) that the within Application must be dismissed by virtue of, or to the extent that it violates, section 140 of the Act, because "effectively, the OFA already holds the bargaining rights for, at least, a large extent of employers of the employees at issue."
40. As the Board previously determined in this matter, "As the Board has stated many times, accreditation applications neither create bargaining rights for a trade union or council of trade unions nor diminish the bargaining rights of any other trade union [...] Nor will it determine any issues of alleged illegality of the affected collective agreement or any competition between the applicability of the affected collective agreement with the Provincial Formwork Agreement or any other collective agreement." (*Crane Rental Association of Ontario v International Union of Operating Engineers, Local 793*, 2026 CanLII 55513 (ON LRB)).
41. The proposed bargaining unit provides for the exclusion of employers bound by and performing work under a number of existing accredited agreements, including the Formwork Agreement. The clarity note confirms that these exclusions are in accordance with the past and existing practice of the parties to those agreements. This description is consistent with previous accreditation orders which carve out bargaining rights held under existing accredited agreements. The Formwork Association has withdrawn its intervention in this matter. The Intervenors merely assert that there is or might be overlap with the Formwork Agreement. It has not identified any issue that is not addressed through the existing exclusion of work falling within the scope of the formwork agreement. That there may be overlap between the two agreements does not establish a *prima facie* case that the bargaining unit cannot be appropriate, for the reasons already addressed by the Board in dismissing the Labourers' proposed intervention.
42. In summary, the facts pled by the Intervenors, if true, would establish differences between classifications of employers within the proposed unit, an absence of a prior specific non-ICI CRAO agreement, and a potential interaction with or overlap between existing formwork

bargaining rights and the bargaining unit in this case. Even if true, these facts do not establish that the proposed unit cannot be an appropriate unit under section 135, or that section 140 requires dismissal of this Application.

Conclusion

43. In summary, the Interventions filed by Pumpcrete and Aurora fail to establish any legitimate legal challenge to the Application and do not make out a *prima facie* case for the remedies requested. For all of these reasons, the Interventions of Pumpcrete and Aurora should be dismissed by the Board without the need for a hearing, in accordance with Rule 39.1 of the Board's Rules of Procedure.

Apprehension of Bias

44. We note that the Intervenors have raised that it intends to pursue an argument that the Vice Chair appointed to this case presents an apprehension of bias toward the issues in this case and to request that he recuse himself. We intend to argue that there is no reasonable apprehension of bias by Vice Chair Slaughter in this case. We reserve the right to make fulsome submissions regarding this issue in accordance with the procedure directed by the Board.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Yours truly,



Kathryn Bell

Legal Counsel

International Union of Operating Engineers, Local 793

cc. *Jeremy Schwartz and Natalie Caballero, Stringer LLP*
Jim McKeown, Mathews, Dinsdale & Clark LLP
Melissa Atkins-Mahaney, IUOE Local 793, Labour Relations Manager
Caitlin Hanak, IUOE Local 793, Legal Counsel