Ius Laboris Canada Global HR Lawyers
MathewsDinsdale

MATHEWS, DINSDALE & CLARK LLP
The Well, 35th Floor
8 Spadina Avenue
Toronto, Ontario, Canada M5V 0S8
O 416.862.8280 | F 416.862.8247

October 16, 2026

Jim C. McKeown

jmckeown@mathewsdinsdale.com

T 416.869.2506

Toronto Office

VIA EMAIL and E-FILING

Ms. 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 ("Applicant") and International Union of Operating Engineers, The Union ("Responding Party")
OLRB File No. 2973-24-R

As you are aware, we are counsel for the Interveners, Pumpcrete Corporation and Aurora Concrete Pumping, with respect to the above-noted matter.

In accordance with the direction of the Board at paragraph 3(b) of the Decision dated June 16, 2026, attached at Schedule "A" hereto are our response submissions to the "no *prima facie*" objections raised by the Applicant and Responding Party, and where we say evidence is needed, state what that evidence is and why it would be relevant.

We explicitly note that in these submissions, we do not make submissions regarding our position regarding there being a reasonable apprehension of bias in the panel of the Board appointed to the matter. As indicated in our previous correspondence, our understanding of the direction of the Board was to raise that matter separately, which we did, and for which we requested a separate case management hearing or teleconference, and that there would be a separate process to deal with that issue. We will write the Board under separate cover to reiterate that approach and renew our request for a case management hearing or teleconference call in order to address how to resolve that issue.

Please contact the undersigned should you have any questions.

Yours truly,
Mathews, Dinsdale & Clark LLP

Jim C. McKeown
JCM:kt
Attachments

cc: Jeremy Schwartz and Natalie Caballero, *Stringer LLP*
Kathryn Bell and Caitlin Hanak, *IUOE*
Client

Schedule "A"

1. Without repeating every single representation in our submissions of June 27, 2025, August 5, 2025, and August 7, 2026, the Interveners Pumpcrete Corporation ("Pumpcrete") and Aurora Concrete Pumping ("Aurora") (collectively "the Interveners") adopt and rely upon all of our previous representations in those correspondence.

Motion to Dismiss Arguments Regarding Subsection 136(3) "Vested Appropriate Authority"

2. At paragraphs 1 through 15 of the CRAO's submissions, the CRAO cites a number of provisions of the *Labour Relations Act, 1995* ("the Act") and the Board's *Rules of Procedure* ("the Board's Rules"). In light of all of the Board's Rules cited, it is somewhat unclear from the CRAO's introduction exactly what the motion is. The CRAO appears to confirm that they are not arguing that under Rule 41.3, the Board can be satisfied it can make a decision regarding the issue "on the basis of the material before it…[and] without a hearing". At paragraphs 1, 3, 4, and 8, the CRAO refers to "*prima facie* motion" or "no *prima facie* case". It is apparent from the CRAO's submissions that what they are arguing is that, if the Board does not dismiss the Interveners' arguments, then the issues raised should proceed to a hearing with some evidentiary process.

3. At paragraphs 7 and 8, the CRAO cites the case of *Kapoor*, 2025 CanLII 135663 (ON LRB) and submits how, even though *Kapoor*, *supra* involved a motion for dismissal of a duty of fair representation application made pursuant to section 74 of the Act, in the CRAO's submission, the test in the present case should be the same as what the Board applied in *Kapoor*, *supra* (at paragraph 8 of the CRAO's submissions):

> 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.

4. We accept that the motion, as defined by the CRAO's submissions, is that the Board should dismiss the arguments of the Interveners, under sections 136(3) (and similarly 136(5), and about the appropriateness of the bargaining unit, below) because the Interveners have not pleaded a *prima facie* case that, even assuming the factual assertions of the Interveners to be true, that the Board would conclude in favour of the Interveners.

5. The Interveners submit that, respectfully, the test that the CRAO is asking the Board to adopt and apply is not appropriate on the facts. Defining the appropriate test is not simply a conceptual exercise.

6. The CRAO, in raising its motion and in what it argues is the "test" the Board should apply, is attempting to deflect its own onus under section 136(3) of establishing the each employer has "vested appropriate authority", by arguing, in a circular fashion, that it is up to the Interveners to plead evidence that disproves that the CRAO has the appropriate authority vested in it.

7. The Interveners submit that the argument of the CRAO cannot fit into a Rule 39.1 motion, whether directly or by analogy, as that Rule and its meaning are not applicable in the case at hand:

> **RULE 39 DISMISSAL WITHOUT A HEARING OR CONSULTATION**
>
> **39.1** Where the Board considers that **an application** does not make out a case for the orders or remedies requested, even if all of the facts stated in the application are assumed to be true, the Board may dismiss the application or part of the application without a hearing or consultation. In its decision, the Board will set out its reasons. [Emphasis added]

8. We note that the case of *Kapoor*, *supra*, and others cited therein, are motions brought by responding parties for the summary dismissal of applications. The Interventions of Pumpcrete and Aurora are not "applications". The Board in *Limen Masonry Ltd.*, 2004 CanLII 29805 (ON LRB) ruled that Rule 39.1 (in context of its previous version, with identical wording, Rule 46) may only be applied to dismiss an "application", and cannot be applied to dismiss a response to an application, or similarly an intervention to an application:

> 6. … Local 506 asserts that it is bound to a collective agreement covering employees in the residential sector with Limen Masonry Ltd. Local 183 in response asserts that if such a bargaining relationship ever existed (and I can understand why a residential collective agreement executed by Local 506 would be a surprise to Local 183), then Local 506 has abandoned those bargaining rights. Local 183 asserts that, in the circumstances of the facts as pleaded, there is an onus on Local 506 to disprove abandonment. He asserts that the pleadings of Local 506 (directly or through the OPDC) disclose no facts which refute a "presumption" of abandonment and that therefore Local 506's claim to residential bargaining rights should be struck from the proceedings, with certain further consequences to the rest of the case.
>
> 7. While the argument is an attractive one, I do not accept it. Rule 46 deals with the sufficiency of an application, not a defence raised by a party responding to an allegation. This is true, even in circumstances where that party is the applicant responding to a defence raised by a responding party). What counsel is really seeking is summary judgement on one important issue in the case. I am unaware of any decision in which the Board has dismissed a responding party's defence under Rule 46, or an applicant's reply

> to a responding party's defence, even in cases where section 96(5) places the onus on the responding party. While such an approach might well be appropriate, on proper notice, in certain circumstances, it is not appropriate here.

9. The CRAO here is similarly asking for what is essentially summary judgement, and in doing is erroneously citing Rule 39.1 and / or the test from case law under Rule 39.1, as applicable.

10. The Interveners submit that there is no case law cited by the CRAO, or the Responding Party International Union of Operating Engineers, Local 793 ("the Union"), in which the Board dismissed an objection from an intervening employer disputing whether under section 136(3) the employer(s) had "vested appropriate authority" in the employer's organization. And none without a hearing of evidence. The CRAO is making a novel argument, asking the Board to do something that has never been done before.

11. There is not a test or rule codified in the Board's Rules, the Board's case law, the Board's Information Bulletins, or any Board other resource, which establishes what an intervening employer must plead to make a *prima facie* case to challenge whether an employer has "vested appropriate authority" in the employer's organization under 136(3) of the Act.

12. At paragraphs 4 and 8, the CRAO refers to the Interveners' objections as asking for "relief". The Interveners are not asking for relief. The CRAO has the onus and is the party asking the Board for statutory relief in the nature of a determination under section 136(3) that the employers have vested in it the appropriate authority.

13. The case of *Electrical Power Systems Contractors Association*, 2007 CanLII 49764 (ON LRB) ("*EPSCA #1*") is interesting for Vice-Chair Freedman's comments, particularly at paragraph 15, relied on by the CRAO, in which he stated:

> 15. … In my view, an applicant for accreditation represents an employer where that employer is a member of the applicant and the applicant's objects as set out in its by-laws or constitution include the representation of members in labour relations matters including, but not limited to, collective bargaining negotiations and entering into collective agreements.

14. It is necessary to evaluate what part of section 136 Vice-Chair Freedman was referring to. His comments are about when an "applicant for accreditation represents an employer…". Subsection 136(3) asks more than just whether the applicant for accreditation merely represents each employer:

> 136(3) … the Board shall satisfy itself that the employers' organization is a properly constituted organization and that each of the employers whom it represents has vested appropriate authority in the organization to enable it to discharge the responsibilities of an accredited bargaining agent. [Emphasis added]

15. There are two separate clauses to be satisfied. Not only must the applicant employer's organization represent the employers, the employers must also have vested appropriate authority in the organization to discharge the responsibilities of an accredited bargaining

agent. The comments of Vice-Chair Freedman said nothing of, whether in that case, representation alone in the form of membership in the employer's organization was sufficient to establish that the employers "vested appropriate authority".

16. It is a significant issue on which the CRAO is seeking summary judgement. The CRAO is arguing that, as a general rule, membership alone in the CRAO satisfies the requirement for each employer to have "vested appropriate authority in the organization to enable it to discharge the responsibilities of an accredited bargaining agent." The CRAO has submitted no case law in support of the proposition that membership alone, as a general rule, constitutes sufficient vesting of appropriate authority. *EPSCA #1*, *supra* certainly does not stand for that proposition.

17. The comments in *EPSCA #1*, *supra* must also be read in the context in which they were made, and it should be clear that case was not the same as this case or what the CRAO has done here.

18. In that case, the applicant employer's organization was found to have filed employer authorizations on behalf of a vast majority of employers in the bargaining unit – to be exact, 9 of 11, according to paragraph 16 of that Decision. It appears from the reasons in the Decision that those employer authorizations were not challenged by any intervening party as being invalid for the purpose of establishing vested appropriate authority within the meaning of subsection 136(3).

19. Most importantly, in that case, the Board in its reasons did not cite:

    (a) that any of the employers in the bargaining unit were *actually* members in the employer's organization, and / or

    (b) that it was membership in the employer's organization that satisfied the Board that the employers vested appropriate authority in the employer's organization.

20. In our submission, the comments from *EPSCA #1*, *supra*, were *obiter dicta*, and are general remarks, which must be assessed on a case-by-case basis having regard to the facts of whatever the case at hand.

21. The case of *Electrical Power Systems Contractors Association*, 2009 CanLII 43383 (ON LRB) ("*EPSCA #2*"), another Decision of Vice-Chair Freedman also relied on heavily by the CRAO, does not say anything more than what *EPSCA #1*, *supra*, said.

22. In that case, similar to *EPSCA #1*, *supra*, no employer intervened to argue that it had not vested appropriate authority in the employer's organization (as is the case here). But unlike in *EPSCA #1*, the responding party trade union argued that the employer authorizations were invalid for the purpose of establishing vested appropriate authority for the purpose of section 136(3) (at paragraphs 19-20).

23. However, importantly, the Board's determination of whether each employer had vested appropriate authority in the employer's organization for the purpose of section 136(3) again came down to the Board's assessment of employer authorizations, and not membership alone (paragraphs 27-28):

> 27. … An employer, on becoming a member of the applicant, is bound by the applicant's constitution and by-laws by virtue of its membership. Thus, it is apparent every employer who was a member of the applicant at the time the application was made was, for purposes of section 136(1)(b) of the Act, represented by the applicant. Eleven of the thirteen employers in the bargaining unit were members of the applicant at the time the application was made. Moreover, the authorizations filed by the applicant, discounting for purposes of this issue the authorizations signed after the application was filed, reinforce the fact that the applicant represented, as of the application date, not less than nine of the employers in the bargaining unit. [Emphasis added]
>
> 28. While the authorizations dated before the application was filed could certainly have been more explicit, they are, in our view, sufficient for purposes of demonstrating "representation" within the meaning of section 136(1)(b) since they all clearly authorize the applicant to represent them in collective bargaining and in concluding a collective agreement with the OPDC. [Emphasis added]

24. In other words, the Board did not simply accept the fact of membership in, and/or the accompanying Constitution and By-Laws of, the employer's organization as establishing the vesting of appropriate authority on behalf of each employer under section 136(3). It was relevant and necessary to the Board that there were specific employer authorizations signed by the employers for the purpose of that accreditation application.

25. The Interveners accept the comments of Vice-Chair Freedman in *EPSCA #1*, *supra* and *EPSCA #2*, *supra* as it relates to an employer's association "representing" an employer, but that does not mean membership alone was found in those cases to satisfy that each employer had vested appropriate authority in the employer's organization.

26. For each of *EPSCA #1*, *supra* and *EPSCA #2*, *supra*, if they stand for any proposition at all relating to the vesting of appropriate authority for an accredited bargaining agent, it is the proposition that the Board's assessment of whether each employer has appropriately vested authority must be satisfied by some form of specific employer authorization, and more than simply membership in the organization and reference to the By-Laws or Constitution.

27. In fact, *EPSCA #1*, *supra* and *EPSCA #2* reveal the novelty of what the CRAO is asking for here – for the Board to make a determination about vested appropriate authority by each employer whose a member of the CRAO in the absence of any actual authorization documents from CRAO members. If it was so evident that the employers who are members of the CRAO have vested appropriate authority in the CRAO for the purpose of this Application under section 136(3), why is it that the CRAO did not, or was not able to, collect from their members employer authorizations like employers' organizations do in virtually every other accreditation case, and like the Union collected in this case from non-CRAO members? It is not a rhetorical or theoretical question of what alternatively the CRAO could have done. Rather, it is a legal question of what CRAO must necessarily have done.

28. It is submitted that, in the least, the notion of whether for the purpose of section 136(3), an employer's organization is vested with appropriate authority must be considered having regard to the context and facts of the case.

29. In this case, it is not appropriate for the question to be determined in a vacuum of the CRAO being an employers' association that represents its members for certain purposes, including certain purposes under the Act.

30. We submit that the facts pleaded by the Interveners establish that, in the circumstances of this case, membership in the CRAO is not sufficient to satisfy that each employer has vested appropriate authority in the CRAO to enable the CRAO to discharge the responsibilities of an accredited bargaining agent.

31. The CRAO submitted at paragraph 2 of their submissions how "Solely for the purposes of this preliminary exercise, the CRAO accepts properly pleaded material facts as true…" .

32. However, the CRAO at paragraphs 20 to 35 of their submissions do not accept any of the factual assertions pleaded by the Interveners as true and provable, and instead treat the motion as an argument about the veracity of their own factual assertions in response about their Constitution and By-Laws and practices. For instance, paragraphs 24-25:

> 24. … 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 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. …

33. The very factual dispute is whether the CRAO has on behalf of its members the authority to bargain for non-ICI sectors. It is circular for the CRAO to point to its own interpretations of its Constitution and By-Laws, interpretations which are not consistent with the reality and practices of the CRAO for over 40 years.

34. The facts that the Interveners rely on are that the CRAO is not, and has never been, a bargaining agent, for any of its members or anyone else, for anything outside of the ICI sector. Simply, the CRAO does not represent employers for any purpose outside of the ICI sector. The CRAO acknowledges that it must assume that as a fact for the purpose of this motion.

35. The bargaining structure within which the CRAO exists, as a constituent of the Operating Engineers Employer Bargaining Agency, is restricted by statute to only the ICI sector. The evidence will be that Operating Engineers Employer Bargaining Agency which negotiates the collective agreement, of which the CRAO negotiates only a portion, has confirmed that the collective agreement is limited to ICI bargaining.

36. The CRAO has actually represented in writing to the Interveners that it does not represent them, or any of its members, outside of the ICI sector.

37. The CRAO has never concluded a collective agreement, full stop, let alone a collective agreement for work outside of the ICI sector.

38. The CRAO's Constitution and By-Laws must be read within that context. Is there anything in the By-Laws and Constitution that vests authority in the CRAO on behalf of the member employers to represent the employers in the non-ICI sectors including filing for accreditation?

39. Essentially, what the CRAO and the Union are arguing is that the Constitution and the By-Laws must be interpreted without a hearing of any evidence about the context within which those Constitution and By-Laws exist.

40. The By-Law referring to accreditation is from the early 1980s, at a time when accreditation was still or had just been relevant not long before in the ICI sector. There is nothing in the By-Law to indicate that the reference to accreditation concerns accreditation outside of the ICI sector.

41. In our submission, at best for the CRAO, on its face there is an ambiguity as to whether the reference to accreditation applies outside of the ICI sector.

42. While it is not a grievance arbitration case involving contract interpretation and in which practice evidence might be assessed in order to resolve an ambiguity, it is trite that in labour relations, and in the Board's expertise as an administrative tribunal, the Board would appropriately consider the contextual evidence, including labour relations practices, surrounding the Constitution and By-Laws. It is a representation application, and the Board is tasked with determining whether authority has been vested by its members in the CRAO.

43. Another case the CRAO cited was the early case of *The General Contractors' Section of the Toronto Construction Association*, [1971] O.L.R.B. Rep. 719 (a copy of the Carswell/WestLaw version is included herewith as Tab 2). The CRAO cites it, respectfully, in throwaway fashion as standing for the proposition that membership in that employer's organization was interpreted as evidence "…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."

44. The CRAO's analysis about *GCS*, *supra* omitted extensive detail which the Board went into in evaluating whether the evidence submitted from the employer's organization was sufficient. The Board was persuaded by not only the membership, but by, among other things, the facts that (a) there was a By-Law enacted only months before the accreditation application was filed that specifically referred to the organization having authority to seek accreditation, and (b) that the employer's organization on behalf of its members had negotiated a series of collective agreements covering bargaining rights for which the employer's organization was now seeking accreditation (at paragraphs 2 to 6):

> 2 … The applicant is a Corporation. It has filed with its application true copies, under the seal of the Corporation and certified by the Executive Director of the Corporation, various Letters Patent,

Supplementary Letters Patent and By-Law Number 1 New Series of the Toronto Construction Association. By Supplementary Letters Patent granted on the fifth day of February, 1971, by the Minister of Financial and Commercial Affairs, the objects of the applicant Corporation were varied to include the power "to become an accredited employers' bargaining agent either alone or jointly with other associations or organizations under The Labour Relations Act or any legislation substituted therefor or similar thereto as amended from time to time and to regulate relations between employers and employees in the construction industry and represent such employers in collective bargaining within any sector of the construction industry in any geographical areas as defined under The Labour Relations Act which is composed in whole or part of the said Municipality of Metropolitan Toronto Geographic Area." The by-law filed with the Board covers many aspects of the applicant's affairs and in particular, in section 42 authorizes the Association to make application for certificates of accreditation for any geographic area which includes all or any part of the Municipality of Metropolitan Toronto Geographic Area for any particular sector or sectors of the construction industry and "each member of the Association or a Section or Sub-Section thereof who is affected by any such application by one of them of which the member is a member shall be deemed to have authorized such application on its or his behalf." On the basis of all the evidence, the Board is satisfied that the applicant employers' organization is an employers' organization within the meaning of section 106(d) of the Act and that it is a properly constituted organization for the purposes of section 115(3) of the Act. [emphasis added]

3 The applicant also filed in support of its application 113 documents entitled "Employer Authorization" signed by various employers. In addition, there was filed with the application as "Schedule 'A'" a list of one hundred and seventeen (117) employers. This list was certified under the seal of the Corporation by a Director of the Association to be a list of employers who were members in good standing of the Association, as of May 18, 1971. However, "Employer Authorizations" were not submitted for all the employers listed on this "Schedule 'A'" and conversely, employer authorizations were submitted on behalf of other employers not listed on the "Schedule 'A'" (these employers were listed on "Schedule 'B'" filed with the application). Two of the "Employer Authorizations" submitted related to a trade union other than the respondent and seven of the "Employer Authorizations" although signed bear no dates. The Board therefore finds that the applicant has submitted acceptable evidence of representation in accordance with section 96 of the Board's Rules of Procedure on behalf of one hundred and four (104) employers.

4 An examination of the evidence of representation submitted by the applicant, together with the By-Law Number 1 New Series filed with the application, indicates that for members of the Association

there has been sufficient vesting of authority in the applicant employers' organization to enable it to discharge the responsibilities of an accredited employers' organization. With respect to those employers for whom there is no evidence that they are members of the applicant, the Board is satisfied that the documents entitled "Employer Authorization" filed by the applicant on their behalf vests sufficient authority in the applicant to discharge the responsibilities of an accredited employers' organization on their behalf.

5 The applicant is applying to the Board for accreditation as bargaining agent for all employers of rodmen for whom the respondent has bargaining rights in Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing and the Towns of Oakville and Milton and the Townships of Pickering in the County of Ontario and the present limits of the Ford Motor Company, Oakville Plant and the County of Halton in the industrial, commercial and institutional sector and the heavy engineering sectors. The unit of employers which is proposed by the respondent is the same as that which is being applied for by the applicant except the respondent submits that the roads sector and the electrical power systems sector are also appropriate for inclusion in the unit.

6 Prior to 1967 the applicant was a party to a series of collective agreements with the Rodmen's Section of the respondent. By these agreements the applicant recognized the union as the bargaining agent for all rodmen within a radius of twenty-five miles from the Toronto City Hall. The preamble to each of these collective agreements provided that the agreements were to apply with respect to employees "engaged in building construction" in the above described geographic area. The applicant entered into a further collective agreement effective from October 13, 1967, until April 30, 1970. The reference to the Rodmen's Section was deleted. By this agreement the applicant recognized the respondent as bargaining agent for all rodmen in the same twenty-five mile radius from Toronto City Hall. The preamble to the collective agreement, however, was altered to provide that the agreement was to apply with respect to employees engaged in "building and construction work" in the said geographic area. The applicant and the respondent entered into a further collective agreement effective from May 1, 1970, until April 30, 1971. The scope clause provided that the applicant recognizes the respondent as bargaining agent for all rodmen in an expanded geographic area which includes Metropolitan Toronto, the Counties of York and Peel, and the Township of Esquesing and the Towns of Oakville and Milton and the Township of Pickering in the County of Ontario and the present limits of the Ford Motor Company, Oakville Plant and the County of Halton. This is the present geographic jurisdiction of the respondent and is the same area for which the applicant is applying for accreditation. The preamble of the collective agreement is identical

> to its predecessor. That is to say, the agreement was made applicable to employers engaged in building and construction work.

45. It is not surprising that the Board had little trouble concluding that appropriate authority had been vested by each employer when the By-Laws referring to accreditation were enacted mere months before accreditation was applied for, and were so clearly written to encompass the very geographic area and sectors in question, which had already been the subject of successive collective agreements. That was all in a case in which there was no opposition to the assertion that each employer vested appropriate authority. It is not possible to assume that the Board would have come to the same conclusion had member employers filed interventions asserting that the organization's asserted authority was fraudulent or non-existent, as is the case here.

46. The factual backdrop of *GCS*, *supra* simply is not present in this case. The relevant context here is the practice in how the CRAO has governed itself in light of the language in the By-Laws. The By-Law referring to accreditation, if there was any intention that it was applicable to accreditation outside of the ICI sector, which again is ambiguous at best, subsequently has never been used for over 40 years. That cannot pass scrutiny. The question the within Application engages is whether the members of the CRAO have vested the authority in the CRAO to represent them in the non-ICI sectors, not for purposes unrelated to the Application or the applied-for bargaining rights.

47. The issue of the inclusion of concrete pumps is a distinct and significant issue within the assessment of the vesting of appropriate authority. The Interveners are not suggesting that the CRAO had or has no authority whatsoever in relation to concrete pumping. It clearly does in the structure of Schedule A to the Provincial ICI Collective Agreement.

48. However, the issue here is whether the specific accreditation authority, whatever it may be in the Constitution and By-Laws, and again it is ambiguous at best, was intended to extend beyond that historical ICI relationship and allow the CRAO to obtain statutory bargaining authority over a province wide non-ICI bargaining unit that expressly includes concrete pumps and placing booms.

49. If the "Crane Rental Industry" was intended to automatically include concrete pumping for accreditation purposes, the CRAO should be required to explain that, particularly where its own Constitution distinguishes the two categories elsewhere.

50. There is also an amendment history issue that is significant. Concrete pumping companies were clearly added to the CRAO's membership structure at some point, but the accreditation language appears to have retained the reference to the "Crane Rental Industry". The Interveners submit that it is necessary for the CRAO to establish when concrete pumping was added, exactly what amendment was proposed and approved, and whether the accreditation authority was ever amended at the same time to expressly include concrete pumping. The amendment provisions under Article 29 of the By-Laws require advance notice and a two thirds approval of Active Members:

> 29(a) Any Active member may propose amendments to the Constitution and/or By-Laws. Any such proposal requires 10 working days written notice of the proposed changes to be provided to the members before any such amendment may be considered for approval at a membership meet ing.

> 29(b) Amendments to any proposed amendments for which notice has been given under paragraph 29(a) shall be limited to technical amendments. Any substantive amendments to a proposed amendment for which notice has been given under paragraph 29(a) shall require the holding of another meeting subject to the requirements of paragraph 29(a).
>
> Technical amendments for purposes of this Article 29 shall mean amendments to the original proposal that affect the form of the proposal but do not affect the subject matter or scope of application of the proposed amendment. Substantive changes for the purposes of this Article 29 shall mean any amendment to the original proposed amendment that will change the subject matter or the scope of the application of the proposed amendment.
>
> Any constitution or by-law amendment requires two-thirds (2/3) approval of Active members present or represented by proxy at the membership meeting.

51. There should be a historical record showing exactly what happened. The CRAO has not disclosed that material to the other parties or to the Board.

52. Furthermore, the Interveners submits that these gaps most certainly do not pass scrutiny when the facts alleged (and which must be assumed as true) are that the CRAO's Board of Directors, only one of whom is associated with a concrete pumping company and how concrete pumping in context of the De Grandis Concrete Pumping case, as explained below, was the sole reason for the within Application, implemented the direction to apply for accreditation on their own (after receiving support and initiation into its administration by the Union, as explained below), without any general vote among the broader CRAO membership.

53. The vote among the Board of Directors was very much held in the dark and in silence. It was never explained to any of the members of the CRAO what authority the CRAO believed it had to carry forward such a direction, where the authority originates, what was considered in the moving forward in that direction, such as the motivations or any evaluation process that was followed, or what had changed since 2022 when the CRAO and its Board of Directors was not interested. There was certainly no attempt by the CRAO's Board of Directors to ascertain whether the general membership was in favour of moving forward in such a direction.

54. The Interveners subsequently have attempted to obtain records from the CRAO's Board of Directors about meeting minutes from March 2025 onward to inquire into these questions. An email of that request of Jason Hanna is attached hereto as Tab 1. The Board of Directors has ignored those requests.

55. It is not a black-and-white question that is answered by one reference in the By-Laws to accreditation. It does not lead to a result, like the Board described in *Limen*, *supra*, in which the CRAO can simply point to the reference, assert there is no other possible meaning and no further questions need to be asked, and demand summary judgement.

56. The Interveners submit that this portion of the CRAO's motion ought to be dismissed, and that the Board ought to direct further case management regarding an evidentiary process, for determining the question of vesting of appropriate authority under subsection 136(3) of the Act.

Motion to Dismiss Arguments Regarding Subsection 136(5) – Whether the Union "participated in" the CRAO's "administration or has contributed financial or other support to" the CRAO

57. The Interveners adopt and rely on our comments above regarding the appropriate test and how, in regard to section 136(5) as well, the CRAO has not articulated an appropriate test for how the Board must assess the factual assertions of the Interveners.

58. The CRAO (and the Union) not only relies very heavily, but in fact bases its entire argument on what the Board said of trade union support allegations under s. 136(5) in the accreditation application case of *Wood Mill & Trim Owners Association of Ontario (c.o.b. as Trim Association of Ontario)*, 2007 CanLII 87048 (ON LRB) ("*Trim Association*") (at paragraphs 37-38):

> Improper Support
>
> 37. The TDCCA also asserted that the Trim Association had received improper support from the Carpenters Union. The particulars are contained in a letter dated December 7, 2006 addressed to counsel for the Carpenters Union. The TDCCA relies on two instances which, it says, are evidence of the Carpenters seeking to persuade employers (one of whom is a member of the TDCCA) to sign an authorization form such that the Trim Association could represent them in bringing this application. 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).
>
> 38. The other allegation is that Carl D'Ambrosio of the Trim Association told Mauro Angeloni of the TDCCA that the Carpenters were going to pay the Associations legal expenses. That fact may well be true, or it may be the kind of taunt that would not be surprising between members of rival associations, one of which has not had a history of good relations with the Carpenters' Union. However, the allegation only asserts that someone said so, not that the assertion itself is true. By itself, and in the absence of any other relevant particular, does not make out a case for the relief sought. The Board will not inquire into the allegation.

59. In that case, from the Board's summary, it was basically one lone hearsay allegation that the trade union would cover the legal fees arising from the accreditation process, and

another allegation of two contractors hearing from the trade union that the trade union was supportive of the application. Below, we will differentiate the allegations in that case in more detail, but suffice to say, those are not the only types of allegations that are made against the CRAO and the Union for the Board to assess in this case.

60. The Interveners acknowledge that the Board confirmed in *Trim Association*, *supra*, that the Board has the ability to dismiss without a hearing allegations under section 136(5) of the Act made by intervening employers.

61. Allegations of trade union initiation or support for the employer's organization are no different from, and in our submission are properly treated in an identical fashion to, how the Board has treated allegations of initiation or support by employers under section 63(16) of the Act, or in applications dealing with section 15 or 53 of the Act:

> What unions not to be certified
>
> 15. The Board shall not certify a trade union if any employer or any employers' organization 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. 15.
>
> …
>
> Certain agreements not to be treated as collective agreements
>
> 53. An agreement between an employer or an employers' organization and a trade union shall be deemed not to be a collective agreement for the purposes of this Act if an employer or employers' organization participated in the formation or administration of the trade union or contributed financial or other support to the trade union. 1995, c. 1, Sched. A, s. 53.
>
> …
>
> 63. (16) Despite subsections (5) and (14), the Board may dismiss the application if the Board is satisfied that the employer or a person acting on behalf of the employer initiated the application or engaged in threats, coercion or intimidation in connection with the application.

62. A key aspect that sets apart the allegations brought forward by the Interveners from those in the *Trim Association*, *supra*, is the shear volume of allegations and the direct nature of those allegations. Unlike in *Trim Association*, *supra*, the allegations are not few, incidental or tangential, and are not hearsay. The allegations are numerous, direct, and can be established by evidence from witnesses of Pumpcrete and Aurora who have direct knowledge of the events in question.

63. The allegations here are also far more in volume and in substance than many sets of employer initiation or support allegations that have survived a "no *prima facie* case" inquiry in section 63 termination applications or representation applications involving section 53 or 15.

64. Our evidence will be that the genesis of the within Application was when the Union began actively campaigning for the CRAO to apply for accreditation in 2022 when the Union acquired bargaining rights for employees of DeGrandis Concrete Pumping ("DCP"), and DCP served notice to bargain and attempted to negotiate a residential concrete pumping collective agreement separate and distinct from the ICI PCA. The legal battle that ensued between DCP and the Union is documented in a number of Board Decisions, including *1476247 Ontario Ltd. o/a De Grandis Concrete Pumping*, 2023 CanLII 116958 (ON LRB).

65. An important introductory remark about the DCP case is that, contrary to any assertion by the CRAO or the Union, the Divisional Court or Board has at no time determined that the Union's Provincial ICI Collective Agreement is a "pattern agreement" for the non-ICI sectors for concrete pumping. All that can be said is that it is still an outstanding allegation of the Union.

66. Throughout the legal battle between DCP and the Union, it was obviously the position of the Union that the only agreement that the Union was prepared to enter into for the non-ICI sectors was the ICI PCA. The position of the Union was tantamount to asserting that, for all intents and purposes, the CRAO was already the bargaining agent outside of the ICI sector for any crane rental and concrete pump companies for which employees the Union has bargaining rights, and the only party that the Union was prepared to bargain with. Leaving aside the various reasons and interests behind why the Union insisted as such, the reality is and was, that it was the Union, not the CRAO, that cared more about the ICI PCA being the only agreement outside of the ICI sector, and that the Union should have to negotiate with the CRAO only.

67. On the other hand, the CRAO as a constituent of the OE Eer BA consistently took the position before the Union that what it negotiated was for only the ICI sector.

68. The evidence of the Interveners will be that the CRAO had zero interest in accreditation.

69. During the legal battle between DCP and the Union, the Union approached the CRAO in numerous forms and through numerous persons and communications to push the CRAO to apply for accreditation, in order to eliminate the possibility of the Union having to deal with DCP or another situation like DCP.

70. In July 2022 at a regular meeting, the CRAO discussed the Union's urging of accreditation, and the members in attendance unanimously opposed the idea. In 2024, while the DCP and the Union legal battle was still live and with increasing tensions between the Union and the Labourers' International Union of North America ("LIUNA") before the 2025 "open period" in construction, the Union's Business Manager Mike Gallagher began personally making calls to members of the CRAO he considered influential to initiate the process of CRAO applying for accreditation, including to Pumpcrete's principal Mark Williams. One such call was in February 2024, and another was on March 14, 2024. Gallagher presented to Williams that they had to do something to defeat the DCP case so that, in his view, the ICI PCA would be the only collective agreement for cranes and concrete pumps, that accreditation was a very important issue to the Union and urged Williams to take up the

cause and to influence others. Gallagher told Williams that DCP was looking to undercut Pumpcrete and get a better deal, and that DCP would take work away from Pumpcrete. Gallagher said he was calling Williams because he thought that Williams was very influential to the Board of Directors and membership of CRAO. Gallagher urged Williams to convince the members of CRAO and the Board of Directors to seek accreditation. Williams met Gallagher's comments with skepticism and even expressed to Gallagher that what DCP was trying to accomplish had some appeal.

71. The evidence will establish that, prior to there ever having been a mention within CRAO of applying for accreditation, it was the Union's idea and interest, and the Union's alone. These facts contrast the basic facts of *Trim Association*, *supra*, in which there was no suggestion of the motivations of the accreditation application originating with the trade union.

72. Gallagher in turn focused his efforts on the Board of Directors, which at the time the within Application was filed was constituted as follows:

> Jason Hanna - President - Lift all
> Mark Welstead Vice President - Amherst
> Peter Smith - Elite/Pete Smith Crane
> Aaron Hanna - Elite crane
> Matt Archer - Craneway
> Jennifer Fitzpatrick - Secretary Treasurer - Mammoet

73. In previous pleadings, the Interveners focused on Jason Hanna's membership in the Union as a conflict of interest. It should be noted, and if it is disputed, the Interveners will call evidence to establish, that five of six of the members of the Board of Directors were and still are Union members.

74. The CRAO's By-Laws, specifically By-Law No. 1, s. 17(e)(iii), prohibit any member of the Union from voting in any "vote pertaining to a union matter":

> Any member who holds an active union card in Local 793 International Union of Operating Engineers shall declare him/herself and he/she or his/her proxy shall refrain from voting in any vote pertaining to a union matter to avoid conflict of interest and should he/she or his/her proxy cast a vote or votes in a union matter, the vote or votes shall be declared null and void if in the opinion of the Board of Directors, there was a conflict of interest and the active member(s) should not have voted.

75. There are safeguards in place in the Applicant's Constitution and By-Laws to prevent against exactly what occurred in this case, which is union influence in a decision at the CRAO's Board level to further the interests of Union and not the CRAO's membership. A Union member is expected to abstain from any vote at all, let alone a Board member in a vote among only the Board of Directors, and on an issue so crucial to the Union's interests as one having been initiated by Gallagher himself. It is no answer for the CRAO to downplay the conflict of interest as something that the Board of Directors could assess and decide to be a non-issue, as the majority of the Board of Directors is equally compromised. This is direct evidence of the Union's participation in the formation or

administration of the Applicant and / or other support, contrary to section 136(5) of the Act. Again, this was also not the type of allegations made in *Trim Association*, *supra*.

76. Accordingly, a quick summary is that:

(a) The idea for an application in the first place originated as an interest exclusively of the Union's arising from the DCP case;

(b) The CRAO was opposed to the idea and did not pursue any application;

(c) Into the next two years following, the Union's Business Manager actively campaigned the CRAO and its members to file an application, again out of concern for the DCP case;

(d) The Board of Directors, who are all Union members with divided loyalties and conflicted out of a vote by definition of the CRAO's own By-Laws, suddenly and without consultation among the general membership implemented the Union's interests of an accreditation application, bypassing any vote among the general membership of the CRAO;

77. Before the CRAO's Board of Directors rubber-stamped the Union's decision to apply for accreditation, the support and interference by the Union was ever more evident in the fact that it was the Union's representatives alone who solicited and collected all of the employer authorizations, prior to the Board of Directors even making any such ostensible decision to apply for accreditation.

78. The Board of Directors voted on the issue at an executive meeting before the Annual General Meeting on March 5, 2025.

79. Yet, it was representatives of the Union, not representatives of the CRAO, who went around soliciting and collecting employer authorizations in November and December 2024, and a few in January 2025, all clearly prior to the Board of Directors having even voted on the issue on March 5, 2025. The Union was already preparing the Application materials prior to the CRAO having actually decided to file the Application, more facts which were not present in *Trim Association*, *supra*.

80. The Union's representatives, such as Mike Chianello or Ryan Shelley in the GTA, and Martin Tasse in the Ottawa area, contacted employer after employer of individual companies that have bargaining rights with the Union and that are not members of the CRAO to obtain employer authorizations for the CRAO.

81. In each case, the Union representative expressed to the contractor's representative that the Union saw it as necessary for the contractor to sign the employer authorization in order for the Union to "maintain a level playing field" and not have any contractors in isolation try to negotiate terms other than the ICI PCA for crane rental and concrete pumping.

82. One such example is the employer authorization on behalf of Premier Concrete Pumping ("Premier"). Premier is not a member of the CRAO. Premier's principal Mike Perreira was contacted by Chianello in late November 2024. Chianello explained to Perreira that it was the Union that wanted Premier to sign the authorization, and that it was important to the Union that Premier do so. Perreira signed it on the understanding that he was doing the

Union a favour, and would fall out favour with the Union if Premier did not fulfill the Union's request. Perreira's understanding was that the purpose of him signing the form was to advance the Union's interests of only needing to negotiate with the CRAO and having the ICI PCA as the only collective agreement. At no time did any representative of the CRAO contact Perreira, and Perreira had no indication that the CRAO itself was seeking Premier's employer authorization.

83. The fact that the Union's representatives were the ones to solicit and collect the employer authorizations is evident from the fact that in most cases, a Union representative signed off as a witness on the authorization:

(a) 1910902 Ontario Inc. – Mike Chianello
(b) Acier Richard Ltee. – Martin Tasse
(c) Barrie Crane Rental – Martin Tasse
(d) Bay Mobile Crane Inc. – Ryan Shelley
(e) Regional Crane Rental – Martin Tasse
(f) Duff Boom Truck Service Inc. – Martin Tasse
(g) Let's Boom Crane Rental Inc. – Martin Tasse
(h) Location de Grue Gaetan Roy – Martin Tasse
(i) MacGregor Crane Services – Martin Tasse
(j) Ottawa Crane Rental – Martin Tasse
(k) Dulepka Equipment Rentals – Martin Tasse
(l) Hastings Crane Rental – Ryan Shelley
(m) Mario DiPanfilo – Mike Chianello
(n) Premier Concrete Pumping – Mike Chianello

84. There are a number of employer authorizations that were witnessed using an illegible electronic signature that is believed to be Mike Chianello's: JTM Cranes Ltd., Yes Crane Inc., X-Act Crane, Ahmed Erbil, TT Crane Services, Sky-Hi Crane Services, KK Crane, Isdova Cranes, City Crane, and Aurora Crane Service. Whether or not Chianello's, the signature is the same and would clearly be the signature of the Union representative who collected them based on how often it repeats, rather than a representative of a company.

85. DCP ultimately also signed an employer authorization, but the circumstances there too were that representatives of the Union, namely Virgil Nose, consistently pushed DCP to sign the authorization. DCP had never even spoken to anyone from the CRAO about joining the CRAO or supporting or authorizing the CRAO to apply for accreditation or to bargain for them in the non-ICI sectors prior to providing an employer authorization to Virgil Nose. It was done at Virgil Nose's insistence.

86. The employer authorizations, on their face, were not created or distributed by the CRAO. Those factual assertions, which must be assumed as true for the purpose of this motion, are in stark contrast to the allegations before the Board in *Trim Association*, *supra*, where basically it was a lone allegation that one contractor heard from a representative of the trade union that the trade union was aligned in interest with the employer's organization preparing for making an application. There were no allegations that directly linked the trade union to the actual preparation of the supporting materials to establish majority support, as there are here.

87. Furthermore, prior to the date upon which the CRAO apparently filed the within Application, March 11, 2025, Pumpcrete collected petitions from eight CRAO members:

(1) itself, (2) Aurora Concrete Pumping, (3) Cameron Crane, (4) Double D Crane, (5) Mainline Crane, (6) Motor City Crane, (7) Northern Group, and (8) Thomkess. Each of those petitions was signed on either March 6 or March 7, 2025, except for Pumpcrete's, which was signed on March 12, 2025, all before any of those employers had received notice of the within Application. Each of those petitions indicated that the company signing the petition did not wish to be represented by the CRAO in collective bargaining for the non-ICI sectors, making various comments such as a demand that the CRAO "immediately halt all efforts to seek accreditation with Local 793" and stating that the Board of Directors' decision to seek accreditation would be "violating the CRAO Constitution, applicable bi-laws and internal policy". Additionally JCL Concrete Pumping signed a similar petition on April 16, 2025, also prior to being given notice of the with Application from the CRAO.

88. It is further demonstrated how the Application serves only the interests of the Union that arise from the DCP case, and nothing to do with the interests of the CRAO, in how the conflicted Board of Directors have no interest in concrete pumping.

89. The composition of the CRAO Board of Directors is that only one director, Mark Welstead, is involved with a member that is a concrete pump company. While in theory Welstead in his role with the CRAO is involved with a concrete pump company, Amherst also owns and operates a crane company, and the Amherst Concrete Pumping company performs very little work outside of the ICI sector.

90. Jason Hanna was previously with Modern Crane, of which Mark Williams is also a principal. Not coincidentally, in May 2024, Jason Hanna left Modern Crane for a job at Lift All Crane, a crane company with no associated concrete pump company.

91. That treatment contrasts with the treatment of other contractors who have opposed accreditation. Aurora Concrete Pumping's principal Kris Wuis had been on the Board of Directors. However, in early March 2025, he was removed from the Board of Directors for expressing dissent over the CRAO application for accreditation. During the Executive Board meeting prior to the CRAO Annual General Meeting on March 5, 2025, apparently the President brought forward to the Board a motion to seek accreditation and a vote among only the Board of Directors occurred. A group of documents which were previously prepared by the law firm Hicks Morley was provided by the President. The motion was passed by a count of 5-1, with Kris Wuis being the only Board member to oppose the motion. Not coincidentally, Kris Wuis subsequently was removed from the Board of Directors by the others through a vote against him.

92. Representatives from the Interveners made multiple requests to the CRAO Board of Directors for the meeting minutes that detail the discussions leading up to the decision to apply for accreditation, including but not limited to, the CRAO's monetary spend for legal review and approval to contract Hicks Morley within the process. Kris Wuis was not involved in any meetings prior to the Executive Board meeting on March 5, 2025 regarding an accreditation application. The Board of Directors has never released any such documentation.

93. The vote among the Board of Directors was very much held in the dark and in silence. Again, it was never explained to any of the members of the CRAO what authority the CRAO believed it had to carry forward such a direction, where the authority originates, what was considered in the moving forward in that direction, such as the motivations or

any evaluation process that was followed, or what had changed since 2022 when the CRAO and its Board of Directors was not interested. There was certainly no attempt by the CRAO's Board of Directors to ascertain whether the general membership was in favour of moving forward in such a direction.

94. The Interveners subsequently have attempted to obtain records from the CRAO's Board of Directors about meeting minutes from March 2025 onward to inquire into these questions. An email of that request of Jason Hanna is attached hereto at Tab 1. The Board of Directors has ignored those requests.

95. The foregoing are all allegations, which the Interveners assert can be proven by direct evidence, that will directly link the Union to the initiation of the Application, in a manner which the Board has concluded constituted improper support or contributions in other cases where the trade union-employer relationship ought to have remained "at arm's length".

96. An illustrative example is the Board's determination about a trade union having received "other support" within the meaning of section 15 (then section 13) of the Act in *Tri-Canada Inc.*, 1981 CanLII 1010 (ON LRB) (paragraphs 11-23):

> 11. Koslowsky admits that he viewed the formation of an "in-plant association" as a means to frustrate the U.A.W.'s organizing campaign. He had no idea how a trade union should be formed or what steps had to be taken to create a viable independent employee bargaining agency. Nor was there any intention to hold a meeting of the employees to discuss this matter, or solicit their input concerning the objects of the employee association, its dues structure, the selection and responsibilities of its officers, and so on. Koslowsky was well aware that the formation of a rival organization might well be a contentious issue among the employees, and for this reason, he decided to proceed surreptitiously, with only himself and his two colleagues initially involved. The structure, objects and internal organization of the association were left entirely to their solicitor to be dealt with in the constitution, or to be decided by the association's officers once the organization had been formed and the officers had been selected. These officers were Koslowsky, Kakish, and Lancaric themselves.
>
> 15. **The bargaining process between employers and employees always implies, in addition to their common interest, some degree of conflict between the immediate economic interests of the bargainers the payer and receiver of wages. This conflict of interest will necessarily co-exists [*sic*] with their common interest in the welfare of the enterprise from which they both derive their income; and we do not mean to suggest that harmonious relations do not exist between employers and trade unions. But short-run conflicts of economic interest are inevitable, and if they are to be resolved through the process of collective bargaining, it is highly inappropriate for the agency which represents one party to the bargain, to be in any measure under the influence of the other.**

Collective bargaining by its very nature requires an arm's length relationship between the bargaining parties, and there are a number of statutory provisions designed to ensure that this is the case. [emphasis added]

[…]

19. We find that Tony Malaca, the plant manager of the respondent, supplied Kolowsky with a list of the employees' names and telephone numbers, and further that when he did so, he was aware both of Koslowsky's role in forming an employee association and Koslowsky's intention to use the list for that purpose. But does this constitute "other support" within the meaning of section 13? In order to understand why it must, it is necessary to appreciate the tactical importance of this information.

20. As a practical matter, an employer, through his possession of employee names and addresses and phone numbers, as well as his ability to communicate fully with his employees on company premises, is ensured of a continuing opportunity (subject to section 64) to inform the employees of his views with respect to trade union representation. On the other hand, a labour organization without a list of employee names and addresses, with no automatic access to plant premises, and no right to conduct its activities on company premises or company time, ordinarily has no method by which it can be certain of reaching all of the employees, or even accurately determining their numbers (an important consideration when a union must organize a fixed percentage of the work force within a relatively short period of time). This is not to deny the existence of various means by which a union may be able to communicate with employees or forecast their numbers without possessing their names and telephone numbers. It is rather to say what seems to us to be obvious that a list of employee names and phone numbers can be of real assistance to an organizing union. Such information is simply not readily available from sources other than the employer. The names of some employees may be secured with the assistance of sympathetic fellow employees, but many employees may be unknown to their fellows or known only by first names or nicknames, and some employees will inevitably be on other shifts, or on layoff, or sick leave, and thus not readily reachable. In summary then, not only is this information important to the union, but in the absence of employer disclosure, it is extremely difficult to obtain.

21. In the Board's experience, employers are well aware of the tactical value of an em-ployee list, and are usually extremely reluctant to reveal it (see for example the employer's position in: *Extendicare Diagnostic Services Limited*, [1981] OLRB Rep. Aug. 1134…

22. **It is clear that the possession of a list of employee names and phone numbers is a significant asset to an**

> **individual contemplating the formation of a trade union, and in the absence of any explanation from Mr. Malaca, we must conclude that he was actively seeking to assist Koslowsky in his efforts to form the intervener.** It is hardly likely that he would have done the same for a truly independent union such as the U.A.W. (certainly counsel's reticence with respect to the list is the more usual employer reaction), and we cannot find on the evidence that the support was given either inadvertently, or by an individual in a managerial capacity acting on his own, and contrary to the employer's interests. On the contrary, the fact that the employee list was so readily given to the intervener raises precisely the kind of question concerning its independence to which section 13 is directed. And where, as here, the intervener has no previous bargaining history, and was formed in secret, by a small group of union opponents, in the shadow of another union's organizing campaign, it is incumbent upon those employees, and the particular responsibility of the Board, to ensure that section 13 is not contravened. This does not mean that union opponents may not react to an organizing campaign by forming another employee organization. It is simply that if they do so — and especially in circumstances similar to those in the instant **the Board must give careful consideration to any evidence suggesting a non arm's length relationship with the employer, and to any allegations or evidence respecting the voluntariness of the employee organization's membership evidence.** [emphasis added]

97. The Interveners submit that the Union having supplied the CRAO with the entirety of the employer authorizations that have been used in the within Application is far worse than an employer providing a union with names and contacts of employees in a bargaining unit.

98. Another illustrative example of how the Board has treated the arms'-length relationships between unions and employers is *Seafarers' Training Institute*, 1984 CanLII 941 (ON LRB). The Board refused to certify a trade union, where the evidence disclosed that the choice of trade union was recommended to a group of employees by the president of the employer, who was also the head and a member of the trade union in question:

> 3. The employer is a non-profit corporation formed for the purpose of establishing and operating a school for the training of seamen. The employees who are the subject of this certification application work for the school either as instructors or support staff. The corporation itself is run by a board of directors. There are six directors in all: three from the SIU and three representatives of the Great Lakes Shipping Companies. The president of the respondent employer is Roman Gralewicz. Mr. Gralewicz is also the president of the SIU. The other two union" representatives on the respondent employer's board of directors are Richard Thomasson, an area vice-president of the SIU, and Roger Desjardins, the secretary-treasurer of the SIU. It is Roger Desjardins whose (stamped) signature appears on the Form 9, Statutory Declaration, attesting to the regularity and sufficiency of the applicant union's membership doc-uments. Michael Desjardins, the collector of the membership

cards filed in support of this application is the son of Roger Desjardins. It is apparent, therefore, that the applicant union and the respondent employer are inextricably intertwined. This impression was reinforced by the facts adduced before the Board at the certification hearing on February 6, 1984.

4. It is not disputed that certain employees of the School were interested in trade union representation and were "shopping around". When this came to the attention of Mr. Gralewicz, he held a meeting of the employees and suggested that they consider joining his union, the SIU. Subsequently, most of the employees did, in fact, join the SIU. **We therefore have the rather unusual spectacle of the chairman of the employer's board of directors suggesting that the respondent's employees should join a trade union of which he is also president.**

5. Mr. Boyle, the executive vice-president of the SIU, filed the application for certification and told the Board that he would be responsible for negotiating the collective agree-ment covering the employees of the School and, as well, would be responsible for dealing with any grievances or other administrative problems which might subsequently arise. Mr. Boyle reports to Mr. Gralewicz and, as a perusal of the SIU constitution indicates, is subject to the president's authority. It is a little difficult to see how he could be an independent advocate of employee interests or press a position on behalf of the employees which Mr. Gra-lewicz thought was inconsistent with the orderly running or success of the School. For example, is it conceivable that the SIU or its officers would support a strike against the SIU School?

6. **Collective bargaining, by its very nature, requires an arm's length relationship between the "two sides" whose interests and objectives are sometimes divergent. To put the matter colloquially: the bargaining table really must have two sides and the employees' rep-resentative cannot wear two hats. The union's first interest and loyalty must be to those it represents and while this does not mean that there cannot be harmonious employer-employee relationships within a collective bargaining framework, neither should there be any doubt about the employees' right to an independent spokesman. Proper representation demands that the union be unfettered by any conflict of interest. No group of employees should be left to wonder whether an unpopular stand was the product of a behind-the-scenes deal, or a "cozy relationship" between those who run the union and those who run the employer.** [emphasis added]

7. These concerns find expression in a variety of statutory provisions. Section 13 of the Act prohibits the Board from certifying a trade union "if any employer.. .has participated in its formation or administration or has contributed financial or other support to it". An

> or-ganization which has been the beneficiary of employer support cannot conclude a collective agreement. Under section 48 of the Act, such agreement is deemed to be void. Indeed, section 64 of the Act expressly prohibits employer participation in the formation selection or administration of a trade union. […] These legal controls have all been enacted to preserve the independence and the arm's length relationship to which we have referred.
>
> 8. In view of the relationship between the applicant and the respondent, the Board is of the view that granting a certificate in the instant case would be contrary to section 13 of the Labour Relations Act. It is said by the applicant that if the Board does not grant certi-fication, the employees will not be able to be admitted into membership in the SIU and will therefore lose certain advantages. The Board was advised that membership in the union is closed and that new members are only admitted as a result of a successful organizing cam-paign. This may be so; but if that is the result, it flows from the SIU's decision to close its membership, not the decision of this Board and, in any event, is no answer to the clear mean-ing and intent of section 13 of the Act.

99. Here too, the CRAO's first interest and loyalty in respect of the issue of accreditation must be to those it represents, not the Union, and there should be no doubt about the member employers' right to an independent spokesperson in that regard. Proper representation demands that the employer bargaining agent be unfettered by any conflict of interest, and no group of employers should be left to wonder whether an unpopular stand was the product of a behind-the-scenes deal, or a "cozy relationship" between those who run the Union and those who run the CRAO. Jason Hanna and the Board of Directors of CRAO, who are all members of the Union, having delegated to themselves sole authority for making a decision as to whether or not to seek accreditation, demonstrates that the decision is, in fact, a behind-the-scenes deal or product of a "cozy relationship" in which the Board must intervene.

100. There is also significant circumstantial evidence that the Union is behind the within Application. Mark Welstead and Amherst began receiving more favourable treatment from the Union right around the time that Gallagher had been campaigning for support for an accreditation application. One such example still evident is in an online video of Premier Doug Ford announcing the construction of Highway 413 on April 30, 2024 at the Union's training facilities (see https://www.youtube.com/watch?v=pbp8kKEO_IA). Gallagher was present and spoke at the announcement. A number of other employer associations were officially present and recognized by Gallagher. However the CRAO was either not officially invited or did not attend. Yet somehow, Amherst equipment was at the scene and was depicted throughout the video, and Gallagher in his comments makes favourable references to Mark Welstead and Amherst.

101. Pumpcrete and Aurora also continuously raised safety concerns with the Union representatives about the practice in the industry of an "s bend" on concrete pump hoses, which goes against CSA standards that are expressly required to be followed by the ICI PCA. Amherst uses "s bends" on their concrete pumps, which the Union is aware of, yet Amherst has not been grieved by the Union.

102. That treatment contrasts with the treatment of other contractors who have opposed accreditation. There is the treatment of Mr. Kris Wuis, described above. Furthermore, after Pumpcrete demonstrated apathy toward accreditation, in an approximate seven-month period from late summer 2024 until spring 2025, Pumpcrete received in the nature of 20 to 30 grievances from the Union. Pumpcrete had not received a grievance from the Union in years. The message was clear that if a contractor did not support the Union's desires for accreditation, the Union and the CRAO would single out the contractor and bully them.

103. The Union has also discriminated against Pumpcrete on the basis of Pumpcrete's lack of support for the Application in the referral of its members. In July 2025, a concrete pump operator who is apparently a member of the Union, named Shannon Castle, corresponded with other Pumpcrete operators and members of Pumpcrete management, indicating that she has been a member of the Union through a previous job and that she was and is looking for work as a concrete pump operator through the Union.

104. Ms. Castle indicated that over the prior few months, she attempted various times to communicate to the Union director of organizing "Kyle", who is thought to be Kyle Schutte, that she wanted to be referred to employment with Pumpcrete. Kyle responded each time that he or anyone from the Union would not even call Pumpcrete on her behalf for employment, repeating always that it was for the reason that "there were problems" in relation to Pumpcrete. However, Kyle consistently and enthusiastically encouraged Shannon that he would facilitate contact for employment with Amherst. She described to people at Pumpcrete that the Union "shoved Amherst down her throat". She declined the opportunity for work at Amherst and preferred an opportunity at Pumpcrete because she lives near Cambridge and Pumpcrete works more often in that area than Amherst.

105. The Union has refused and is continuing to refuse that members work or seek to work at Pumpcrete but is actively facilitating employment for their members at Amherst, referring their members to work for Amherst, and / or promoting Amherst. The conduct of the Union is further evidence of the Union participating in CRAO's formation or administration or contributing financial or other support to CRAO. By refusing to refer members to Pumpcrete but promoting Amherst as an employment destination for its members, the Union is participating in the administration of CRAO and contributing financial and other support to CRAO.

106. As mentioned, in totality, the allegations here are also far more robust than many sets of allegations that have survived a "no *prima facie* case" inquiry in section 63 termination applications or representation applications involving section 53 or 63, yet in termination applications, the Board has often erred on the side of dismissing allegations only in "the clearest of cases", and reasoning that "where there is smoke, there is fire", allowing an opportunity for conspiracy theories to play out in evidence.

(a) In *Bermingham Construction Ltd.*, 2011 CanLII 21886 (ON LRB) (paragraphs 28-32):

> 28. However, allegations pertaining to a conspiracy or a subterfuge to terminate a trade union's bargaining rights raise a competing spectrum of interests. As the Board noted in *Swing Stage supra* at paragraph 14:

14. Behaviour of the type asserted by the union does not occur in public, and is not openly or freely communicated to others, let alone to the bargaining agent representing the employees. It would only be in the most unusual of circumstances that the union would have the ability to plead detailed material facts establishing the behaviour alleged of the applicant and the employer in this case. With that reality in mind, the expectation of the Board is that a union making the type of allegation made by the union in this proceeding will not have in its possession evidence in the nature of a "smoking gun" but instead will have certain pieces of information that when considered collectively, and if assumed to be true, lend themselves to the conclusion that there is a possibility of employer initiation. In these circumstances, the allegations ought to be permitted to proceed.

29. The particular facts of this case demonstrate the cogency of the Board's observations in Swing Stage. The Carpenters have alleged the Employer allowed Mr. Cote time off work on the date of application to prepare and file the termination application. On that day, Mr. Cote was allegedly at work at a Water Treatment Plant in Waterloo, but the application was filed from a Canada Post outlet in Scarborough just before two o'clock in the afternoon. This is not information that the Carpenters would have in their possession, but at the very least raises questions that have to be answered. As the jurisprudence puts it, the Carpenters have set out the overt acts of a conspiracy in the alleged illegal hiring of Mr. Cote, and the alleged time off with pay from the Employer to prepare and file the termination application.

30. The Board is satisfied that paragraphs 4 to 7 of the Carpenters' allegations set out the "overt acts" of a potential conspiracy to terminate the Carpenters' bargaining rights. …

[…]

(b) In *TCI Titan Contracting Incorporated*, 2013 CanLII 28194 (ON LRB) (paragraph 28):

28. The Board is not prepared to dismiss the section 63(16) allegations. In a very similar case to the present decertification application, *TCI Titan Contracting Incorporated*, (unreported, May 13, 2013), at paragraph 16 the Board stated the following:

…. In conspiracy cases, the Board and the courts only require the pleading of the "overt acts of the conspiracy" (see Ford Motor Company of Canada Ltd., [1972] OLRB Rep. September 828; H. A. Imports of Canada Ltd. UL General Mills Inc. (1983), 1983 CanLII 1722 (ON HCJ), 42 O.R. (2d) 645, (HC), Yvan Cote, 2011 CanLII 21866 (April 20, 2011)). Upon review of the pleadings and the submissions in this matter the Board is satisfied that the responding

party has at least pleaded some overt acts of conspiracy on the part of the intervenor, applicant and LIUNA, Local 625. As such there is enough in the responding party's pleadings that the Board is not prepared to dismiss the employer support and conspiracy allegations without an oral hearing.

(c) In *Guardian Tree Systems Inc.*, 2022 CanLII 123550 (ON LRB) (paragraphs 33-38):

> 33 When considering subsection 63(16) allegations, the responding party's allegations are assumed to be true and provable for the purposes of a prima facie motion. An application will only be dismissed if the party seeking dismissal can establish that there is no reasonable likelihood that a violation of the Act can be established upon the facts as alleged.
>
> 34 At this stage, all that is required of the responding party is to plead facts that, when taken as a whole, may support the conclusion that an employer (or someone acting on behalf of an employer) has violated section 63(16). There is enough pleaded by LiUNA with the exception of two allegations specifically identified below, to establish a prima facie case of employer initiation, as defined by subsection 63(16) of the Act.
>
> […]
>
> 38 The balance of the Union's pleadings are sufficiently pleaded. The events surrounding the certification application and first termination application are admissible background pleadings. The pleadings surrounding Ian's comments, the shop meetings, and the introduction of the private benefits company could provide proof, individually or cumulatively, of employer initiation. That is all it takes to move this case forward. In the result, the Board is not prepared to dismiss the Union's invocation of subsection 63(16) in response to the termination application on the basis that LiUNA's pleadings do not disclose a prima facie case for the relief requested.

(d) In *1000334231 Ontario Inc. dba Paris Kitchens*, 2024 CanLII 65862 (ON LRB) (paragraphs 49-50):

> 49 This is not a case in which the pleadings are mere innuendo or speculation. The failure to recognize the Union at the outset; the failure to apply the collective agreement; the attempt to negotiate individually with employees; the recall and training of Gail Taylor without regard to seniority; the threats and anti-union comments by Mr. McGeachie; the offer of incentives to bargaining unit employees and a member of management initially appearing as scrutineer and agent for the purpose of the count; could provide proof, individually or collectively, of employer initiation.

> 50 The pleadings of the Union meet the requirements of Rule 5.1 and are sufficient to disclose a prima facie case. This is not a case where it is "plain and obvious" that there is no reasonable likelihood that the Union could be successful. The employer's motion to dismiss the application under section 63(16) for failure to disclose a prima facie case is dismissed.

(e) In *Wabi Iron & Steel Corp*., 2026 CanLII 14950 (ON LRB) (paragraphs 10-12):

> 10 To accept the Employer's "no prima facie case" motion, the Board must be satisfied there is no reasonable likelihood that the Union's allegations can engage subsection 63(16) or establish a breach of the Act based on the facts as alleged. The Board has stated that its discretion to dismiss allegations or an application for failing to disclose a prima facie case should only be exercised in the clearest of cases, where it is plain and obvious the party making the allegations cannot succeed - see *1000334231 Ontario Inc. dba Paris Kitchens* 2024 CanLII 65862 (ON LRB).
>
> 11 The Employer has not persuaded the Board this is one of those "clearest of cases". The Union relies upon a cumulative course of conduct and circumstantial evidence to assert that the Employer has initiated the termination application or otherwise breached the Act. To find that a prima facie case has been pleaded, the Board need only be satisfied that the facts pled, taken collectively or as a whole, could establish employer initiation or a breach of the Act - see *Swing Stage Equipment Rentals Ottawa*, 2010 CanLII 37213 (ON LRB) and *Guardian Tree Systems Inc*., [2022] O.L.R.D. No. 3235.
>
> […]
>
> 12 At a minimum, the Board is satisfied that the facts pled by the Union, considered in combination and without considering the facts pled by the Employer in response, could lead to a conclusion that the termination application was initiated by the Employer. In *Tenaquip Ltd*., [1997] OLRB Rep. July/August 742, for example, the Board found the employer in that case had initiated a termination application where employees had used company facilities during working hours to solicit signatures in support of the termination application with the knowledge and permission of the employer. As noted above, in the instant case the Union has alleged, among other allegations, that Pollard solicited signatures from employees during working hours to support the termination application and did so in view of management, in circumstances where the Union is not permitted to conduct union business in the workplace during working hours.

107. The Board in this case ought to be equally cautious in a case involving allegations of improper union support in or participation in the administration of the CRAO generally and / or its accreditation application. Events such as soliciting support for a termination

application during working hours in the plain view of company management are similar or analogous to events such as the union creating, distributing and collecting employer authorizations. The Board in representation applications, whether termination applications or accreditation applications, must ensure that actors under the Act are freely designating their bargaining agents, without undue pressures from the parties opposite who ought to be at arm's length.

108. The Interveners submit that this portion of the CRAO's motion also ought to be dismissed, and that the Board ought to direct further case management regarding an evidentiary process, for determining the question of whether the Union has improperly participated in the administration or has contributed financial or other support to the CRAO within the meaning of subsection 136(5).

Motion Regarding Appropriateness of the Applied-For Bargaining Unit Description

109. In the interest of brevity, the Interveners will limit the submissions regarding the appropriateness of the applied-for bargaining unit. The Interveners rely on all of the facts previously submitted.

110. The Interveners rely on case law such as *Independent Heating & Plumbing Contractors Association*, 1986 CanLII 1667 (ON LRB), in which the Board has articulated that in determining an appropriate unit of employers for the purpose of accreditation, the Board must consider the pattern of collective bargaining that existed when the application was filed.

111. We repeat our submissions above that the CRAO has never represented any employers in collective bargaining in any capacity before outside of the ICI sector. As a result, the CRAO has no established pattern of collective bargaining relevant to this Application.

112. There is no evidence of the CRAO or any other employer association negotiating a collective agreement for the road-building sector, the electrical power systems sector, the pipeline sector, the sewer and watermain sector, the residential or heavy engineering sectors for only "manned rental" of "hoisting equipment, concrete pumps, placing booms, and similar equipment". Even in the ICI PCA, the CRAO's Schedule "A" contains more than "hoisting equipment, concrete pumps, placing booms, and similar equipment".

113. On the other hand, there is clear evidence of employers aligning for the purpose of labour relations around the various facets of concrete formwork construction and that hoisting equipment, concrete pumps and placing booms form part of that process.

114. We adopt the submission of the OFA about how Board accreditation certificates focus on the type of construction work, rather than simply grouping together a group of tasks or in this case a select group of equipment. Outside of the ICI sector where there are Ministerial-designated trade-based bargaining agencies, accreditation certificates group together employers by the nature of what is being constructed or portion thereof, not the trade employed or the task performed.

115. Cranes are the only example of "hoisting equipment, concrete pumps, placing booms, and similar equipment" that in residential or heavy engineering sector construction have a purpose outside of concrete formwork construction, in that a crane may be multi-use. Concrete pumps and placing booms are for one homogenous use, specifically concrete

construction. The only community of interest that crane companies and concrete pump or placing boom companies have is that their employees are represented by the same the Union for the purpose of Ministerial-designated, trade-based ICI bargaining. For non-ICI work, there is no such community of interest.

116. It is different equipment, for a different purpose. The operators of cranes and concrete pumps generally are not able to operate both and do not operate both. The training requirements are far different. Crane companies and concrete pumping companies do not compete for the same work, and they do not provide substitute services. It is a completely different client base. As described above, concrete pump companies typically work for companies engaged in the concrete construction process on a construction project, such as floor finishing companies or the formwork companies. Crane companies are typically engaged by the builder or general contractor or construction manager of a project. The economics of what the market dictates as appropriate pricing is far different for cranes versus concrete pumps. They often work at different hours of the day, with concrete pumps often having to run later in the day due to concrete deliveries.

117. The CRAO's composition described above reflects this reality. The CRAO's By-Laws contain no mention of concrete pump businesses or placing boom businesses, but expressly refer to its purpose as being to "represent and advance the interests of the crane rental industry in Ontario", and only the crane rental industry. The composition of the CRAO Board of Directors, supposedly responsible for making the decision to apply for accreditation, consists of only one director, Mark Welstead, representing a concrete pump company, but which, again, is a misnomer because he also represents a crane company.

118. Ultimately, the bargaining unit as applied for is an attempt by the CRAO to control labour relations for other businesses engaged in work unrelated to cranes without the authority to do so. It is not the practice of the Board when determining the appropriate bargaining unit for an accreditation application to throw in employers for which the association has no community of interest with and no prior experience representing in the sector or sectors at issue.

119. Accordingly, the bargaining unit description, as applied for, is not appropriate. It ought to be dismissed, or alternatively, exclude concrete pumps and placing booms. The Interveners submit that this portion of the CRAO's motion also ought to be dismissed, and that the Board ought to direct further case management regarding an evidentiary process, for determining the question of an appropriate bargaining unit description.

Conclusion

120. In conclusion, the Interveners submit that all three of the CRAO's motions ought to be dismissed and evidentiary processes be directed for each of the three issues, subject to further case management discussions and attendances before the Board. This would include a process for production.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

TAB 1

From: Ryan Wilbee <ryan@pumpcrete.com>
Sent: July 16, 2026 1:07 PM
To: Jason Hanna <jason@liftallcrane.ca>
Cc: Jeremy Schwartz <jschwartz@stringerllp.com>
Subject: Request for Minutes

Good afternoon Jason,

I am writing to formally request, once again, access to the meeting minutes of the Crane Rental Association of Ontario for the period of March 2025 - present.

As a member of the Association and a stakeholder affected by the decisions, policies, and interpretations arising from Association meetings, I believe access to the minutes is essential for understanding the rationale behind decisions that have been made, the direction of the Association, and the interpretation and application of the Association's agreements and governing documents.

I respectfully refer to the Association's Constitution and By-Laws, which establish the framework for governance, transparency, and accountability to its membership. Meeting minutes form an important part of that governance process and serve as the official record of discussions, decisions, and resolutions adopted by the Association.

Given the significance of the matters being discussed, grievances arising from the interpretation of the ICI Agreement and their potential impact on member companies, I am requesting that the minutes be provided at your earliest convenience. Access to these records will assist in ensuring a clear and consistent understanding of the Association's positions and interpretations.

I would appreciate your response regarding the availability of the requested minutes and the process for obtaining them.

Thank you for your attention to this matter. I look forward to your reply.

Best regards,

Ryan Wilbee- Director Health and Safety
161 Caldari Road, Concord, ON, L4K 3Z9
Mobile: 705-875-4038
Office: 905-669-2017
www.pumpsandcranes.com

TAB 2

1971 CarswellOnt 535
Ontario Labour Relations Board

Toronto Construction Assn. v. B.S.O.I.W., Local 721

1971 CarswellOnt 535, [1971] O.L.R.B. Rep. 719

The General Contractors' Section of the Toronto Construction Association, Applicant v. The International Association of Bridge, Structural and Ornamental Ironworkers, Local Union Number 721, Respondent v. The Ontario Erectors Association, Intervener #1 v. Heavy Construction Association of Toronto, Intervener #2

J.H. Brown, Q.C., Alternate Chairman and Board Members E. Boyer and F.W. Murray

Judgment: November 25, 1971
Docket: 452-71-R

Subject: Labour; Employment

Decision of the Board:

1 This is an application for accreditation of an employers' organization under the construction industry provisions of the Act. The respondent trade union has entered into a collective agreement with "The General Contractors' Section of the Toronto Construction Association and Signatory Reinforcing Steel Contractors, Members of the Association" dated June 17, 1970. This agreement has been signed by a number of individual employers. The Board therefore finds that it has the jurisdiction under section 113 of the Act to entertain this application.

2 As part of its application, the applicant submitted a declaration by its Director of Industrial Relations, that it is an employers' organization that represents employers who operate businesses in the construction industry. The applicant is a Corporation. It has filed with its application true copies, under the seal of the Corporation and certified by the Executive Director of the Corporation, various Letters Patent, Supplementary Letters Patent and By-Law Number 1 New Series of the Toronto Construction Association. By Supplementary Letters Patent granted on the fifth day of February, 1971, by the Minister of Financial and Commercial Affairs, the objects of the applicant Corporation were varied to include the power "to become an accredited employers' bargaining agent either alone or jointly with other associations or organizations under The Labour Relations Act or any legislation substituted therefor or similar thereto as amended from time to time and to regulate relations between employers and employees in the construction industry and represent such employers in collective bargaining within any sector of the construction industry in any geographical areas as defined under The Labour Relations Act which is composed in whole or part of the said Municipality of Metropolitan Toronto Geographic Area." The by-law filed with the Board covers many aspects of the applicant's affairs and in particular, in section 42 authorizes the Association to make application for certificates of accreditation for any geographic area which includes all or any part of the Municipality of Metropolitan Toronto Geographic Area for any particular sector or sectors of the construction industry and "each member of the Association or a Section or Sub-Section thereof who is affected by any such application by one of them of which the member is a member shall be deemed to have authorized such application on its or his behalf." On the basis of all the evidence, the Board is satisfied that the applicant employers' organization is an employers' organization within the meaning of section 106(d) of the Act and that it is a properly constituted organization for the purposes of section 115(3) of the Act.

3 The applicant also filed in support of its application 113 documents entitled "Employer Authorization" signed by various employers. In addition, there was filed with the application as "Schedule 'A'" a list of one hundred and seventeen (117) employers. This list was certified under the seal of the Corporation by a Director of the Association to be a list of employers who were members in good standing of the Association, as of May 18, 1971. However, "Employer Authorizations" were not submitted for all the employers listed on this "Schedule 'A'" and conversely, employer authorizations were submitted on behalf

WESTLAW CANADA Copyright © Thomson Reuters Canada Limited or its licensors (excluding individual court documents). All rights reserved.

of other employers not listed on the "Schedule 'A'" (these employers were listed on "Schedule 'B'" filed with the application). Two of the "Employer Authorizations" submitted related to a trade union other than the respondent and seven of the "Employer Authorizations" although signed bear no dates. The Board therefore finds that the applicant has submitted acceptable evidence of representation in accordance with section 96 of the Board's Rules of Procedure on behalf of one hundred and four (104) employers.

4 An examination of the evidence of representation submitted by the applicant, together with the By-Law Number 1 New Series filed with the application, indicates that for members of the Association there has been sufficient vesting of authority in the applicant employers' organization to enable it to discharge the responsibilities of an accredited employers' organization. With respect to those employers for whom there is no evidence that they are members of the applicant, the Board is satisfied that the documents entitled "Employer Authorization" filed by the applicant on their behalf vests sufficient authority in the applicant to discharge the responsibilities of an accredited employers' organization on their behalf.

5 The applicant is applying to the Board for accreditation as bargaining agent for all employers of rodmen for whom the respondent has bargaining rights in Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing and the Towns of Oakville and Milton and the Townships of Pickering in the County of Ontario and the present limits of the Ford Motor Company, Oakville Plant and the County of Halton in the industrial, commercial and institutional sector and the heavy engineering sectors. The unit of employers which is proposed by the respondent is the same as that which is being applied for by the applicant except the respondent submits that the roads sector and the electrical power systems sector are also appropriate for inclusion in the unit.

6 Prior to 1967 the applicant was a party to a series of collective agreements with the Rodmen's Section of the respondent. By these agreements the applicant recognized the union as the bargaining agent for all rodmen within a radius of twenty-five miles from the Toronto City Hall. The preamble to each of these collective agreements provided that the agreements were to apply with respect to employees "engaged in building construction" in the above described geographic area. The applicant entered into a further collective agreement effective from October 13, 1967, until April 30, 1970. The reference to the Rodmen's Section was deleted. By this agreement the applicant recognized the respondent as bargaining agent for all rodmen in the same twenty-five mile radius from Toronto City Hall. The preamble to the collective agreement, however, was altered to provide that the agreement was to apply with respect to employees engaged in "building *and* construction work" in the said geographic area. The applicant and the respondent entered into a further collective agreement effective from May 1, 1970, until April 30, 1971. The scope clause provided that the applicant recognizes the respondent as bargaining agent for all rodmen in an expanded geographic area which includes Metropolitan Toronto, the Counties of York and Peel, and the Township of Esquesing and the Towns of Oakville and Milton and the Township of Pickering in the County of Ontario and the present limits of the Ford Motor Company, Oakville Plant and the County of Halton. This is the present geographic jurisdiction of the respondent and is the same area for which the applicant is applying for accreditation. The preamble of the collective agreement is identical to its predecessor. That is to say, the agreement was made applicable to employers engaged in building and construction work.

7 All of the major employers employing rodmen to install reinforcing steel in the geographic area applied for by the applicant are bound by the most recent collective agreement between the applicant and the respondent. Further, according to the evidence, these employers and in particular G & H Steel Service of Canada and Gilbert Steel Ltd., which companies do the largest volume of work in the re-inforcing steel field in the geographic area covered by the said agreement, operate in both the industrial, commercial and institutional sector and the heavy engineering sector. More specifically, the evidence of David Hadden, the President of G & H Steel Service of Canada is that, based on the contributions made to the Welfare Trust Fund of the respondent by all of the contractors covered by the most recent collective agreement between the applicant and the respondent as of the year ending April 30, 1971, G & H Steel Service of Canada does approximately 35 per cent of all work in the reinforcing steel field. According to Hadden's evidence, roughly from 30 to 50 per cent of the rod work done by G & H Steel Service is done in the heavy engineering field and the remainder is done in the industrial, commercial and institutional sector. Hadden further testified that there is a regular interchange of rodmen employed on projects in the heavy engineering sector and the industrial, commercial and institutional sector and all have worked under the terms and conditions of the collective agreement in effect between the

WESTLAW CANADA Copyright © Thomson Reuters Canada Limited or its licensors (excluding individual court documents). All rights reserved.

applicant and the respondent. We would mention also that according to the evidence none of the employers falling within the purview of the instant application have a collective bargaining relationship with the Heavy Construction Association of Toronto.

8 Section 114(1) of the Act provides that upon an application for accredition, the Board shall determine the unit of employers that is appropriate for collective bargaining in a particular geographic area and sector, but that the Board need not confine the unit to one geographic area or sector, and may, if it considers it advisable, combine areas or sectors or both or parts thereof. The parties to the instant application are in agreement that any unit found to be appropriate by the Board should be restricted solely to rodmen and that the geographic area should cover the area falling within the territorial jurisdiction of the respondent. Having regard to the evidence that the employers for whom the applicant is seeking accreditation by and large do work in both the industrial, commercial and institutional sector and the heavy engineering sector and the evidence of the interchange of rodmen working for a single employer between the two sectors, the Board in these circumstances deems it advisable to combine the industrial, commercial and institutional sector and the heavy engineering sector.

9 Having regard to the evidence of what appears to be a highly complicated structure of collective bargaining in the electrical power systems sector, the Board is not satisfied that the electrical power systems sector is appropriate for inclusion in the unit of employers in the instant application. With respect to the road sector, the evidence is that virtually no rodmen are employed in that sector. For this reason, the Board also is not satisfied that the road sector is appropriate for inclusion in the unit of employers in the instant application.

10 The Board accordingly finds that all employers of employees who are rodmen for whom the respondent has bargaining rights in Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing and the Towns of Oakville and Milton and the Township of Pickering in the County of Ontario and the present limits of the Ford Motor Company, Oakville Plant and the County of Halton in the industrial, commercial and institutional sector, and the heavy engineering sector, constitute an appropriate unit for collective bargaining.

11 In order to determine the number of employers in the unit of employers described in paragraph 10, the Board followed the procedure outlined in *Hamilton and District Sheet Metal Contractors Inc. and Sheet Metal Workers' International Association Local Union 537 et. al.* (1971) OLRB Rep. 562 (Sept.). The representations by the various employers in their filings were accepted by the applicant and the respondent, except in certain instances referred to below. The total number of employers served with notice of the application was one hundred and sixty-one (161). These comprised the Revised Schedule 'E' and Reviced Schedule 'F' (following the procedure used at the hearing in this matter employers are herein referred to with the number they were assigned on these revised schedules e.g. E-26 or F-5). As a result of the various filings and representations made to the Board at the hearing the following employers were removed from the list of employers in the unit of employers:

Ball Brothers Ltd. (E-3) - because this was a duplication with another employer appearing elsewhere on the list.

Polaris Steel Limited (F-23) - because this employer stated in his Employer Intervention that it was not an employer in the construction industry.

The Board has through its officers made various attempts to serve the following employers:

Capy Steel (E-21)

Reinforcing Steel Placing Co. (E-109)

Danforth Construction (F-7)

H.F.A. Steel Service Co. (F-14)

M & M Reinforcing (F-16)

M.J.D. Steel Co. (F-18)

 Copyright © Thomson Reuters Canada Limited or its licensors (excluding individual court documents). All rights reserved.

Secant Construction (Central) Ltd. (F-26)

Letters sent to these employers by registered mail have been returned. Attempts to locate these employers have indicated that they are no longer in business. Further, the applicant and the respondent agreed, at the hearing, that these employers should be considered as no longer in business for the purpose of this application and they have therefore been deleted from the list.

12 One of the employers served with notice of this application in Form 67 refused to file a Form 68, Employer Intervention, together with its accompanying Schedule 'H' as required by the Board's Rules of Procedure. This employer has continually told the Board that on advice of counsel they refuse to file anything with the Board. The Form 67 gives an employer sufficient notice of the matters involved in an accreditation proceeding. Since the applicant and the respondent agree that Con-Eng Construction Ltd. (F-4) is included in the list of employers and that employer has had ample opportunity to make representations in this matter, the Board finds that Con-Eng Construction Ltd. is an employer in the unit of employers.

13 Twenty-eight of the employers who filed Employer Interventions indicated that the respondent trade union was not entitled to bargain on behalf of employees in the geographic area and sector affected by this application. The respondent has filed with the Board collective agreements relating to six (6) of these employers. On the basis of the agreements filed with the Board, the Board is prepared to include these employers in the unit of employers. However, on the basis of all the evidence before the Board the following employers have been removed from the unit of employers because the respondent is not entitled to bargain on behalf of employees of these employers in the area and sector determined by the Board to be appropriate in paragraph 10 above:

Bramalea General Contracting (Peel) Limited (E-9)

Cadet Construction Limited (E-14)

T. Campbell Construction Ltd. (E-15)

The Cape-Tileman Co. Ltd. (E-20)

Colt Contracting Company Limited (E-28)

Louis Donolo Inc. (E-36)

Eaglewood Construction Co. Limited (E-40)

Gillanders Construction Ltd. (E-56)

William Hartley Construction Limited (E-66)

Kovacs Construction Co. Ltd. (E-78)

McNamara Construction of Ontario Ltd. (E-90)

Ontario Rock Drillers Limited (E-99)

Ostvik Construction Limited (E-100)

Franz Patella Inc. (E-102)

Tower Construction (E-119)

J. Watt & Co. (Builders) Limited (E-125)

George Wimpey Canada Limited (E-129)

WESTLAW CANADA Copyright © Thomson Reuters Canada Limited or its licensors (excluding individual court documents). All rights reserved.

Zorge Construction Company Limited (E-132)

Art Cota Steel Setters (F-1)

Conenco Canada (1968) Ltd. (F-3)

Hurley-Gregoris Construction (F-15)

W.A. Stephenson Construction Co. Limited (F-27)

14 The Revised Schedule 'E' and Revised Schedule 'F' were compiled on the basis of information supplied by the respondent and applicant. Those employers on Revised Schedule 'E' were thought to have had employees in the area and sector under construction in the year immediately preceding the date of the making of this application. Those on Revised Schedule 'F' were considered not to have had such employees within that one year period. However, on the basis of the filings by individual employers eighty-two (82) of the employers listed on the Revised Schedule 'E' were transferred to Schedule 'F' since their filings indicated that they had no employees during the year preceding the making of this application. Conversely, five (5) employers originally on Revised Schedule 'F' have had employees during the year immediately preceding this application and have thus been transferred to the Final Schedule 'E'.

15 In accordance with the foregoing considerations, the Board has compiled a Final Schedule 'E' and a Final Schedule 'F'. The Board has taken as the correct name of each individual employer, the name stated in Form 68 filed by the employer. The Final Schedule 'E' and Schedule 'F' are as follows:

Final Schedule 'E'

Wm. Batten Structural Erectors Ltd.

Bennett-Pratt Limited

C & T Reinforcing Steel Co. Ltd.

Camston Limited

Cape Installations Ltd.

Custodis Canadian Chimney Co.

Dalton Engineering & Construction Company Limited

Dickie Construction Company Limited

Direct Forming Limited

E.G.M. Cape & Company Limited

Eastern Construction Company Limited

Ellis-Don Limited

Epsilon Reinforcing Steel Limited

F & L Steel Reinforcing Ltd.

Ferro Structural Steel (Toronto) Limited

WESTLAW CANADA Copyright © Thomson Reuters Canada Limited or its licensors (excluding individual court documents). All rights reserved.

G & H Steel Service of Canada Ltd.

Gilbert Steel Limited

J. Harris and Sons Limited

Leader Masonry & Forming Limited

E.S. Martin Construction Limited

Finley W. McLachlan Construction Co. Limited

Olympia & York Developments Limited

Omer's Steel Service

Oneil Steel Limited

Ontario Reinforcing Steel

Patram Construction Limited

Plyform Construction Ltd.

Redfern Construction Company Limited

C.A. Smith Contracting Limited

Taylor Woodrow of Canada Limited

Welland Iron & Metal Co. Ltd. - Ennisteel Warehouse Division

Western Reinforcing Steel (Cooksville) Limited

York Steel Construction Limited

Young & Apperley Limited

Final Schedule 'F'

Ally Construction Co. Limited

Associated Forming Contractors Limited

Aykroyd Construction (1965) Limited

Ball Brothers Limited

Beco Equipment Limited

Bird Construction Company Limited

Ed. Broders Construction Ltd.

G.E. Buckingham Contracting Ltd.

WESTLAW CANADA Copyright © Thomson Reuters Canada Limited or its licensors (excluding individual court documents). All rights reserved.

Cadconex Enterprises Ltd.

Campbell-Yustin Limited

Canadian Stebbings Eng. & Main

Paul Carruthers Construction Limited

The Carter Construction Company Limited

Casey-Hewson Construction Ltd.

Cementarion Co. (Canada) Ltd.

Rwo Reilly (Cloke Const. Co. Ltd.)

Codeco Ltd.

Conason Construction Ltd.

Con-Eng Contractors Ltd.

Beaver Cook & Leitch Limited

Cooper Const. Co. (Eastern) Ltd.

D.R. Crawford Construction Limited

Dineen Construction Limited

Doyle Hinton Limited

Droge Construction Limited

Eichleay Corporation International

Etherington Construction Limited

Faehrmann Construction Limited

David Farn Construction Limited

Fassel Const. Co. Ltd.

Field Construction Limited

Flying Forming Limited

The Foundation Company of Canada Limited

Fran-Kiri Forming Limited

The Frid Construction Company Limited

W.G. Gallagher Construction Ltd.

WESTLAW CANADA Copyright © Thomson Reuters Canada Limited or its licensors (excluding individual court documents). All rights reserved.

Gardiner-Wighton Co. Limited

John Goba Ltd.

Gothic Construction Co.

Graham and Sibbett Co. Limited

Greco Construction Company

Jack Greedy Limited

A.P. Green Refractories (Canada) Ltd.

M.J. Guthrie Construction Ltd.

Harbridge & Cross Ltd.

Internorth Construction Company

Robert D. Ironside Associates Limited

Ivey-Dreger Construction Limited

The Jackson-Lewis Company Limited

Janin Building & Civil Works Ltd.

Wm.H. Johnston Construction Ltd.

Kamrus Construction Limited

Kevlin Construction Co. Ltd.

R.G. Kirby & Sons Limited

The John L. Klug Corporation

Konvey Construction Company Limited

Laing Construction and Equipment Limited

Leslie George Construction Limited

Lisgar Construction Company (Division of United Shelters Limited)

The Lunar Company Limited

T.F. Lynch Construction Ltd.

Magil Construction Ltd.

Mancini Construction

V.K. Mason Construction Ltd.

WESTLAW CANADA Copyright © Thomson Reuters Canada Limited or its licensors (excluding individual court documents). All rights reserved.

May Construction Co. Ltd.

Robert McAlpine Ltd.

W.A. McDougall Construction Management Ltd.

W.A. McDougall Limited

McMullen & Warnock Limited

Mel-Ron Construction Ltd.

Milne & Nicholls Limited

The Mitchell Construction Company (Canada)

Mollenhauer Ltd.

Ontario Formwork Limited

Wm. Parker Construction Limited

Perini Limited

A. Peterson Ltd.

C.A. Pitts Construction (Ont.) Ltd.

Plorins & Pede Ltd.

Pollock-McGibbon Ltd.

John Rae & Sons Construction Ltd.

Reinforcing Steel Products Co. Division of Abkosteel Limited

James A. Rice Ltd.

Lynch-Richards Construction Limited

Robertson-Yates Corporation Limited

Rockwin Construction Ltd.

Richard & B.A. Ryan Limited

Salit Steel (Niagara) Limited

Suto Steel Limited

Turncrest Construction Limited

Umacs Construction Limited

Vanbots Construction Ltd.

WESTLAW CANADA Copyright © Thomson Reuters Canada Limited or its licensors (excluding individual court documents). All rights reserved.

Varamae Construction Limited

Michael Wade Construction Co. Ltd.

West York Construction Limited

John Wheelwright Limited

The Board finds that the number of employers on Schedule 'E' totalling thirty-four (34) is the number of employers to be ascertained by the Board under section 115(1)(a) of the Act.

16 On the basis of the written evidence of representation considered above and on the basis of all the evidence before us, the Board finds that on the date of the making of this application the applicant represented twenty-three (23) of the thirty-four (34) employers ascertained as the number of employers under section 115(1)(a) of the Act. The twenty-three (23) employers so represented by the applicant is the number of employers to be ascertained by the Board under section 115(1)(b) of the Act. Accordingly, the Board is satisfied that a majority of the employers in the unit of employers are represented by the applicant employers' organization.

17 In a previous decision in this matter the Board appointed an Examiner to examine certain employers with respect to the representative nature of the weekly payroll period for the week immediately preceding the date of the making of this application. All but one of the employers withdrew their claim that the period in question was not representative. The remaining employer, Camston Limited (E-17), filed three (3) Schedule H's for various weekly payroll periods. Since these three schedules show the same number of employees the Board considers it advisable to chose the weekly payroll period immediately preceding February 3, 1971, as the representative payroll period for this employer. For the remaining thirty-four (34) employers the Board is of the opinion that the weekly payroll period immediately preceding May 18, 1971 is satisfactory.

18 On the basis of all the evidence before it and in accordance with the foregoing considerations, the Board finds that there were two hundred and twenty-five (225) employees affected by the application. The two hundred and twenty-five (225) employees is the number of employees to be ascertained by the Board under section 115(1)(c) of the Act.

19 The Board finds that the twenty-three (23) employers represented by the applicant employers' organization employed a total of one hundred and ninety (190) employees in the weekly payroll periods determined in paragraph 17 as the payroll period for the purposes of section 115(1)(c). The Board is therefore satisfied that the majority of employers represented by the applicant employed a majority of employees as ascertained in accordance with the provisions of section 115(1)(c).

20 Having regard to all the above findings, a certificate of accreditation will issue to the applicant for the unit of employers found to be the appropriate unit of employers in paragraph 10 and in accordance with the provisions of section 115(2) of the Act, for such other employers for whose employees the respondent may after May 3, 1971, obtain bargaining rights through certification or voluntary recognition in the geographic area and sector set out in the appropriate unit of employers.

End of Document Copyright © Thomson Reuters Canada Limited or its licensors (excluding individual court documents). All rights reserved.