

SCHEDULE “A”

1. The Ontario Formwork Association (the “OFA”) files this Intervention in the Application for Accreditation – Construction Industry filed by the Crane Rental Association of Ontario (the “CRAO” or the “Applicant”) in which the International Union of Operating Engineers Local 793 (“Local 793”) is the responding party and bearing OLRB Case No. 2973-24-R (the “Application”). The OFA was not provided notice of the Application but submits that it has a clear legal interest in the proceeding and ought to participate for the reasons described below.
2. The OFA submits that the proposed bargaining unit described in the Application is defective and inappropriate on the basis that it overlaps with the OFA’s accreditation certificate. The OFA is the accredited bargaining agent for all employers of employees engaged in concrete forming construction for whom the Formwork Council (which includes Local 793) holds bargaining rights in, *inter alia*, the residential sector in the Province of Ontario. If the requested accreditation certificate is granted in this Application, then there would in effect be two competing accredited collective agreements with the same union (*i.e.* Local 793). The OFA submits that this is improper, seeks to diminish the representational rights held by the OFA and, as such, the proposed bargaining unit is inappropriate.
3. Further, OFA notes that the proposed bargaining unit in the Application is defective and improper in that it attempts to describe work that is clearly the subject of other accreditation certificates, is not itself reflected in the Employer Authorizations attached to the Application, and attempts to cover the supply and rental of equipment, which includes work that is clearly not within the construction industry.
4. The OFA submits that the Application ought to be dismissed or, in the alternative, that the proposed bargaining unit description ought to include an exception for all work covered by the OFA accreditation certification, *i.e.* employers of employees for whom the Formwork Council (and/or Local 793) holds bargaining rights for concrete forming construction in the residential sector across the Province of Ontario. The OFA further submits that the description of the proposed bargaining unit description is inappropriately overly broad in regards to the equipment listed and should also not include “manned crane and rental

equipment business”, which includes work that does not fall within the construction industry.

I. OVERVIEW

5. The OFA is the employer bargaining agency for employers performing concrete forming work for whom the Formwork Council has bargaining rights in the industrial, commercial and institutional sector (“ICI”) and residential sectors of the construction industry. Specifically, the Ontario Labour Relations Board (the “Board”) accredited the OFA as the bargaining agent for “all employers of employees engaged in concrete forming construction for whom The Formwork Council of Ontario has bargaining rights in the Province of Ontario in the industrial, commercial and institutional sector and the residential sector of the construction industry (*Formwork Council of Ontario*, 2008 CanLII 9889 (ON LRB) (the “OFA Accreditation”).
6. The OFA is bound to a collective agreement with the Formwork Council of Ontario (the “Formwork Council”), which is effective on its face from May 1, 2025 to April 30, 2028 (the “Formwork Agreement”). The Formwork Council is composed of Local 793, the Responding Party in the Application, as well as the Labourers’ International Union of North America, Locals 493, 506, 527, 607, 625, 837, 1036, 1059 and 1089. The Formwork Council serves as the employee bargaining agent for employees engaged in concrete forming in the ICI and residential sectors of the construction industry across the Province of Ontario.
7. Schedule “B” of the Formwork Agreement specifically applies to Local 793, which sets out the wages, classifications, and terms and conditions of those operating equipment in concrete forming construction within the residential sector (and ICI) of the construction industry. This includes operators of concrete pumps (Article 1.01(b)), operators of mobile truck cranes, crawler cranes, and all similar equipment (Article 1.01(a), as well as journeyman mechanics and technicians (Article 1.01(a)).
8. Article 1.02 of the Formwork Agreement sets that “all new equipment introduced by Manufacturers during the life of this Agreement or not appearing as listed in Article 1.01 of this Schedule shall be confirmed by letter to the Union [...] before being put into

production”. The Formwork Agreement also contains a Letter of Understanding regarding “Inspection, Repair, Maintenance of Tower Cranes” under which the OFA and Local 793 agreed to establish a joint committee to address issues, such as “(b) Issues relating to the maintenance of tower cranes including such things as safety, repair, erection and disassembly”.

II. THE APPLICATION’S INAPPROPRIATE BARGAINING UNIT DESCRIPTION

9. The OFA states that the proposed bargaining unit is inappropriate on the basis that it interferes with representational rights held by the OFA in the accreditation certificate with the Formwork Council, which includes Local 793.
10. The Application has defined the proposed bargaining unit in such a way that covers work clearly set out and covered by the OFA Accreditation. The proposed bargaining unit in the Accreditation has been defined as follows (the “Proposed Bargaining Unit Description”):

all employers of employees engaged in the **operation of hoisting equipment, concrete pumps, placing booms, and similar equipment**; the **on-site repair, maintenance and servicing of all equipment identified herein**; the **assembly and dismantling of said equipment** (and any equipment used to erect and dismantle the equipment listed above); and **the work necessary to put the equipment identified within into production or preparation for removal from operations** for whom the International Union of Operating Engineers, Local 793 (“Local 793”) has bargaining rights and who are engaged in the manned crane and equipment rental business in all sectors of the construction industry, excluding the ICI sector, in the Province of Ontario, save and except employers bound by and performing work under any of the following collective agreements [...] [Emphasis added]

11. To the extent this work in the Proposed Bargaining Unit Description is performed in concrete forming construction in the residential sector, this work is clearly within the OFA Accreditation. The OFA states that any matters related to the “operation of hoisting equipment, concrete pumps, placing booms, and similar equipment”, the “on-site repair, maintenance and servicing of all equipment identified herein”, and the “work necessary to put the equipment identified within into production or preparation for removal from operations” used in concrete forming construction in the residential sector is already covered under the OFA Accreditation.

12. Therefore, if granted, the Application using the Proposed Bargaining Unit Description would result in competing accredited collective agreements that cover the same type of work, *i.e.* concrete forming construction, in the same sector and with the same union as a member of a council of trade unions (*i.e.* the Formwork Council). This result is not only inappropriate but is also prohibited by section 140 of the *Labour Relations Act, 1995* (the “Act”).
13. The OFA notes that the Proposed Bargaining Unit Description excludes “employers bound by and performing work under” the Formwork Agreement (see paragraph 4) from the Proposed Bargaining Unit Description. Specifically, it includes the following exception:

“[...] save and except employers bound by and performing work under any of the following collective agreements:

 - 4) The Collective Agreement between the Ontario Formwork Association and the Formwork Council of Ontario (“the Formwork Agreement”);”
14. However, this stated exclusion is insufficient. Although the Proposed Bargaining Unit Description excludes employers bound by and performing work under the Formwork Agreement, the OFA states that if there is work in the Proposed Bargaining Unit Description that overlaps with work falling under the OFA Accreditation held with the same union (*i.e.* Local 793 as a member of the Formwork Council), then these are matters that must already be negotiated exclusively and directly by Local 793 with the OFA. It should not, and could not, be negotiated with any other employer association (s. 140 of the *Act*). In other words, if work falls under the OFA Accreditation (either explicitly or even if not set out or is otherwise silent in the Formwork Agreement), then Local 793 must negotiate any such matters applicable to the residential concrete forming construction with the OFA under the Formwork Agreement. It should not be open for Local 793 to negotiate such matters applicable to concrete forming construction in the residential sector with a different employer association other than the OFA.
15. Pursuant to subsection 135(1) of the *Labour Relations Act, 1995* (the “Act”), the Board must consider the pattern of collective bargaining that existed when the application was filed (*Independent Plumbing & Heating Contractors Association v UA Local 46* 1986

CanLII 1667 at para 15). To that end, the OFA and the Formwork Council (which includes Local 793) has been party to the Formwork Agreement, *i.e.* an accredited province-wide collective agreement applicable to the ICI and residential sectors, since 2008. The relationship between the OFA and Formwork Council (including Local 793) has been recognized to have its roots in the 1960s or 70s. The OFA members have also had a longstanding history of performing concrete forming construction, which includes the operation of certain equipment using members of Local 793, in the residential sector across Ontario.

16. Accordingly, the Proposed Bargaining Unit Description of the Application is inappropriate because it ought to exclude all work that falls under and is covered by the OFA Accreditation (and not just work performed under the Formwork Agreement). The OFA opposes the Application to the extent the Proposed Bargaining Unit Description does not recognize or overlaps with the OFA's jurisdiction and representational rights with the Formwork Council (of which Local 793 is a member) for concrete forming construction in the residential sector of the Province of Ontario.
17. Accordingly, the OFA is intervening in this Application to ensure that the full scope of its representational rights are preserved and unaffected by this Application and that all concrete forming construction work in the residential sector for which the Formwork Council holds bargaining rights are negotiated with the OFA under the longstanding and accredited Formwork Agreement, and not with any other employer association.

III. THE APPLICATION IS IN ANY EVENT DEFECTIVE

18. The OFA further states that the Application is in any event defective on the basis that the Employer Authorizations relied upon in support of the Application do not specifically include "manned crane and equipment rental business", which is work that clearly does not fall within the construction industry. The Application also expands upon the type of equipment that is included in the Proposed Bargaining Unit Description in that the Employer Authorizations do not explicitly include hoisting equipment, placing booms, or "similar equipment".

19. The OFA states that these defects demonstrate the underlying issue with the Proposed Bargaining Unit Description in that it is an overly broad description of tasks without properly defining or identifying the construction work to which those tasks apply or the codification of bargaining rights held by Local 793. By way of examples, the OFA Accreditation covers the operation of certain equipment engaged in concrete forming construction in the residential sector of the construction industry. The Central Southwest Ontario Heavy Civil Construction Association's accreditation certificate with Local 793 employees covers the operation of certain equipment for employers "engaged in road construction, parking lot construction, sewer and watermain construction, common excavation and building site preparation". The Greater Toronto Sewer and Watermain Contractors Association's accreditation certificate with Local 793 employees specifically describes the "work described below", *i.e.* "all sewer and watermain work, including drainage, in the sewer and watermains sector of the construction industry, on private property more than three feet from any building, [...]", and it goes on.
20. It is clear that accreditation certificates for employers of employees engaged in, *inter alia*, equipment operation with Local 793 employees generally define not just the *task*, *e.g.* the operation of equipment, but also the *construction work* in which the equipment operation is being completed, *i.e.* in concrete forming construction, certain defined sewer and watermain work, road construction, parking lot construction, *etc.*
21. This Application, however, does no such thing. The Application does not attempt to define the actual construction work in which the equipment is being operated. The Proposed Bargaining Unit Description is then so broad enough to include, *inter alia*, all of the operation, repair, maintenance, servicing, assembly, and disassembly of certain or similar equipment, or even the "work necessary to put the equipment into operation", without specifying the particular construction work in which such equipment is engaged. The result is that the proposed description could cover conceivably *all* operation of such equipment (and the other listed tasks), even if such operation (or tasks) are already covered by other accreditation certificates held by another accredited employer association with the same union.

22. Indeed, the Employer Authorization(s) filed in support of the Application also do not support the broad nature of the Proposed Bargaining Unit Description. The Employer Authorization(s) state that the undersigned Employer acknowledges that the Applicant is seeking accreditation to become the accredited bargaining agent for “employers engaged in the operation of concrete pumping equipment and the operation of cranes” which employ members of Local 793 in non-ICI sectors. That is the extent of the authorization, at least explicitly.
23. As noted above, however, the Proposed Bargaining Unit Description seeks to cover not just the operation of pumping equipment or cranes, but also the operation of hoisting equipment, placing booms, and “similar equipment”, the on-site repair, maintenance, and servicing of all such equipment, and employers “who are engaged in the manned crane and equipment rental business”. The Proposed Bargaining Unit Description not only far exceeds the *type* of equipment that is set out in the employer authorizations but also the *type of work* to be included in a manner that conceivably seeks to include *all* equipment operation in the non-ICI sectors of the construction industry, unless otherwise performed by one of the listed collective agreements.
24. Finally, the Application that is being filed in accordance with the construction industry provisions of the *Act* seeks accreditation for work that is clearly not within the construction industry. Specifically, the Proposed Bargaining Unit is further inappropriate on the basis that it includes the “manned crane and equipment rental business”. The supply and rental of equipment is not construction work. For example, equipment that is rented in order to deliver materials to a construction site has repeatedly been found to not constitute construction work. Such rental activities do not fall under the construction provisions of the *Act*, including the accreditation provisions. It is therefore inappropriate to grant accreditation pursuant to the construction provisions of the *Act* for work that clearly does not fall within the construction industry and the term “manned crane and equipment rental business” should therefore be removed.

IV. CONCLUSION

25. For these reasons, the OFA seeks status to participate in these proceedings in order to protect and preserve its legal interests pursuant to and under the OFA Accreditation and the Formwork Agreement.
26. The OFA requests that the Board find the Proposed Bargaining Unit Description is not appropriate pursuant to subsection 135(1) of the *Act* in that it seeks to cover work that already falls under the OFA Accreditation with the Formwork Council, which includes Local 793. The Application should therefore be dismissed or, in the strict alternative, the Proposed Bargaining Unit Description ought to contain a carve out such that any granted accreditation certificate does not apply to employers of employees for whom the Formwork Council (and/or Local 793) holds bargaining rights for concrete forming construction in the residential sector across the Province of Ontario.
27. The OFA further submits that the Proposed Bargaining Unit is overly broad so as to create ambiguity and conflict over the scope of the requested accreditation order regarding the *specific* construction work to which it applies versus other accreditation orders that already exist and that the Application filed under the construction provisions seeks to apply to work that does not fall within the construction industry.
28. In the strict alternative, if the Board finds that the Proposed Bargaining Unit Description is appropriate, then for the purposes of the double majority test, the Application ought to include all employers who employed employees for whom the Formwork Council has bargaining rights and who have performed concrete forming construction in the residential sector of the construction industry in the year prior to the Application being filed.
29. The OFA reserves its right to raise and/or rely upon any position in this proceeding, as it may be or become appropriate and/or permitted by the Board.

All of which is respectfully submitted.