

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

BROWNING-FERRIS INDUSTRIES OF	)	
CALIFORNIA, INC. D/B/A BFI NEWBY	)	
ISLAND RECYCLING	)	
	)	
Petitioner/Cross-Respondent	)	
	)	
v.	)	Nos. 16-1028, 16-1063,
	)	16-1064
NATIONAL LABOR RELATIONS BOARD	)	
	)	
Respondent/Cross-Petitioner	)	
	)	<b><u>Argued on March 9, 2017</u></b>
and	)	
	)	
TEAMSTERS LOCAL 350	)	
	)	
Intervenor	)	
	)	

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**REPLY OF THE NATIONAL LABOR RELATIONS BOARD TO  
BROWNING-FERRIS’S RESPONSE TO THE BOARD’S MOTION  
TO RECALL MANDATE BASED ON EXCEPTIONAL CIRCUMSTANCES**

To the Honorable, the Judges of the United States  
Court of Appeals for the District of Columbia Circuit:

As explained in the Board’s motion, exceptional circumstances exist to recall the mandate in this case. In its response, Browning-Ferris acknowledges that the *Hy-Brand* decision overruling *Browning-Ferris Industries of California, Inc.*—the sole basis for the Board’s motion to remand and the Court’s grant of that

motion—has been vacated by the Board. The grounds on which the Court issued mandate thus no longer exist.

Browning-Ferris notes (Resp. 2) that the employer in *Hy-Brand* has filed with the Board a motion for reconsideration of the order vacating *Hy-Brand*. Under Board regulations, a motion for reconsideration of Board action “will not stay the effectiveness of the action of the Board.” 29 C.F.R. § 102.48(c)(3). The Board’s vacatur of *Hy-Brand* thus remains effective, and the joint-employer standard articulated in *Browning-Ferris*, and under review in this case, states current Board law. The grounds for recalling mandate remain in effect.

WHEREFORE, the Board respectfully requests that the Court recall the mandate and continue processing the case.

Respectfully submitted,

/s/ Linda Dreeben

Linda Dreeben

Deputy Associate General Counsel

National Labor Relations Board

1015 Half Street SE

Washington DC 20570

(202) 273-2960

Dated at Washington, DC  
this 13th day of March 2018

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Federal Rule of Appellate Procedure 27(d)(2), the Board certifies that this document contains 180 words of proportionally spaced, 14-point type, and the word-processing system used was Microsoft Word 2010.

s/Linda Dreeben

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	)	

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 13, 2018, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system. The following participants will be served by first-class mail:

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/s/Linda Dreeben

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