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Browning-Ferris Industries of California, Inc. d/b/a BFI Newby Island Recyclery and FPR-II, LLC d/b/a Leadpoint Business Services and Sanitary Truck Drivers and Helpers Local 350, International Brotherhood of Teamsters. Case 32–CA–160759

February 23, 2026

SECOND SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS PROUTY, MURPHY, AND MAYER

This test-of-certification case is before us on remand from the United States Court of Appeals for the District of Columbia Circuit to clarify the joint-employer standard set forth in *Browning-Ferris Industries of California, Inc., d/b/a BFI Newby Island Recyclery*, 362 NLRB 1599 (2015) (“*Browning-Ferris I*”) and, if appropriate, apply the clarified standard to determine the status of the putative joint employer involved here.¹

After careful consideration of the entire record, the briefs of the parties,² and all of the court’s instructions, we clarify the *Browning-Ferris I* standard and find that it is appropriate to retroactively apply this clarified standard to the instant case. Applying this clarified standard as law of the case only, we conclude that Browning-Ferris is a joint employer of the petitioned-for employees. However, we emphasize that the principles stated here have no application to cases arising after the effective date of the Board’s 2020 joint employer rule.³ Accordingly, we reaffirm the Board’s original conclusion that Browning-Ferris violated Section 8(a)(5) and (1) by failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the petitioned-for unit.

I. PROCEDURAL HISTORY

Browning-Ferris operates a recycling facility and contracts with FPR-II, LLC d/b/a Leadpoint Business Services (Leadpoint), which provides Browning-Ferris with sorters, screen cleaners, and housekeepers who work at the facility. In July 2013, the Union filed a petition seeking to represent these Leadpoint workers, asserting that Leadpoint and Browning-Ferris were joint employers of the

workers. In August 2013, the Acting Regional Director, applying the Board’s then-extant joint-employer standard,⁴ found that Browning-Ferris was not a joint employer because it did not exercise “direct and immediate control” over Leadpoint workers’ essential terms and conditions of employment. On April 25, 2014, an election was held in the petitioned-for unit. The ballots were impounded while the Board reviewed the Acting Regional Director’s joint-employer determination.

In 2015, the Board reversed the Acting Regional Director’s decision and announced a restated standard for assessing joint-employer status, holding that both a putative employer’s reserved authority to control and indirect control are relevant factors in the joint-employer inquiry, and concluded that Browning-Ferris was a joint employer of the petitioned-for employees involved in this dispute under the restated standard.⁵ Thereafter, the ballots cast in the election were counted, and the tally of ballots showed 73 for and 17 against representation, with 29 nondeterminative challenged ballots. On September 14, 2015, the Board certified the Union as the representative of the unit employees.

Thereafter, Browning-Ferris refused to bargain with the Union. In 2016, the Board granted the General Counsel’s motion for summary judgment, found that this refusal violated Section 8(a)(5) and (1), and ordered Browning-Ferris to bargain with the Union.⁶ Browning-Ferris refused to bargain and petitioned the District of Columbia Circuit for review of the unfair labor practice case.

The court largely upheld this restated standard in a 2018 decision, but remanded this case to the Board with specific instructions that the Board clarify the scope of the indirect-control factor to comport with common-law limitations and explain how a properly limited standard would apply in this case, including whether a clarified standard should be applied retroactively.⁷ In a 2020 decision, the Board instead found that Browning-Ferris was not a joint employer, applying pre-*Browning-Ferris I* precedent, on the basis that any retroactive application of the *Browning-Ferris I* standard would be manifestly unjust. The District

¹ See *Sanitary Truck Drivers & Helpers Local 350 v. NLRB*, 45 F.4th 38 (D.C. Cir. 2022).

² On October 28, 2022, the Board notified the parties that it had accepted the court’s remand and invited them to file statements of position. The General Counsel, Browning-Ferris, and the Union each filed a statement of position.

³ See *Joint Employer Status Under the National Labor Relations Act*, 85 Fed. Reg. 11184 (Feb. 26, 2020) (the “2020 Rule”).

⁴ See *TLI, Inc.*, 271 NLRB 798 (1984), enfd. mem. 772 F.2d 894 (3d Cir. 1985); *Laerco Transportation*, 269 NLRB 324 (1984).

⁵ See *Browning-Ferris I*, 362 NLRB 1599 (2015).

⁶ See *Browning-Ferris Industries of California, Inc. d/b/a BFI Newby Island Recyclery and FPR-II, LLC d/b/a Leadpoint Business Services (“Browning-Ferris II”)*, 363 NLRB 883 (2016).

⁷ See *Browning-Ferris Industries of California, Inc. v. NLRB*, 911 F.3d 1195 (D.C. Cir. 2018).

of Columbia Circuit summarily rejected that position, which resulted in a second remand by the court.⁸

II. FACTUAL BACKGROUND

A. Overview

Although the facts in this case have been set forth in previous Board and court decisions, we restate them here for ease of reference. Where necessary, we supplement these facts with supporting record evidence not specifically cited in these earlier decisions.

Browning-Ferris operates the Newby Island recycling facility, which daily processes approximately 1200 tons of recyclable and waste material. Essential to this operation is the sorting of waste from recyclable material, which Browning-Ferris then resells to its customers. Browning-Ferris is the sole employer of approximately 60 loader operators, equipment operators, forklift operators, and spotters, who are represented by the Union in an existing separate unit. Most of these Browning-Ferris employees work outside the facility, where they move and prepare materials for sorting inside the facility. The interior of the facility houses four conveyor belts, which are called material streams. Each stream carries a different category of material for sorting, i.e., residential mixed recyclables, commercial mixed recyclables, dry waste process, and wet waste process.

Browning-Ferris also contracts with Leadpoint, which provides 240 sorters, screen cleaners, and housekeepers who work inside the facility. Sorters stand on platforms alongside the material streams and manually sort recyclable material from waste material. Other material is automatically sorted when it passes through screens that are positioned near the conveyor belts. Screen cleaners clear jams from these screens. Housekeepers clean the facility, including areas around the streams. Browning-Ferris is the sole employer of a single sorter, who works alongside Leadpoint's 240 workers and is paid approximately \$5 an hour more in wages than the Leadpoint workers. Browning-Ferris also is the sole employer of operators who work in the facility's control room, where they are responsible for monitoring the status of the streams and restarting them should they be stopped.

Leadpoint employs Acting On-Site Manager Vincent Haas, three shift supervisors, and seven line leads. The shift supervisors oversee the streams and coach the line leads. Line leads work on the floor with the sorters and act as their front-line supervisors. Browning-Ferris employs its own managers and supervisors who oversee operations. Operations Manager Paul Keck oversees the

material recovery facility and supervises Browning-Ferris employees. Division Manager Carl Mennie oversees the recycling and compost operations and reports to Keck. Shift Supervisors Augustine Ortiz and John Sutter supervise Browning-Ferris employees, including the control room operators. As discussed in more detail below, Ortiz and Sutter spend a percentage of the workday in the material streams area, monitoring the operation and productivity of the streams.

The relationship between Browning-Ferris and Leadpoint is governed by a temporary labor services agreement (the "Agreement"), which is terminable at will by either party. The Agreement includes a rate schedule that governs Leadpoint's compensation for its services. Under this schedule, commonly referred to as a "cost-plus contract," Browning-Ferris (the user of workers) compensates Leadpoint (the supplier of workers) for the "cost" of each worker, i.e., their wage, "plus" a specified percentage mark-up, which varies based on whether work is performed during regular hours or as overtime.

B. Hiring

Under the Agreement, Leadpoint handles all aspects of the hiring of its workers. The Agreement requires Leadpoint to ensure that its workers "have the appropriate qualifications . . . consistent with all applicable laws and instructions from [Browning-Ferris], to perform the general duties of the assigned position," which include requirements that workers pass a drug screening and meet certification and training qualifications. According to the Agreement, Leadpoint workers shall not be assigned to work at the Browning-Ferris facility for more than six months. The Agreement also requires that Leadpoint workers complete a written acknowledgment that they have read, understand, and agree to comply with Browning-Ferris's safety policies and procedures, which Browning-Ferris "reserves the right to enforce." Finally, Leadpoint must make "reasonable efforts" not to hire workers previously employed by Browning-Ferris who Browning-Ferris deems ineligible for rehire.

C. Wages and Benefits

Although the Agreement states that Leadpoint "solely determines the pay rates paid to its" workers, the Agreement also provides that Leadpoint "shall not, without [Browning-Ferris's] approval, pay a pay rate in excess of the pay rate for full-time employees of [Browning-Ferris] who perform similar tasks." At the end of each week, Leadpoint workers must obtain the signature of a Browning-Ferris representative attesting to the accuracy of their

⁸ See *Sanitary Truck Drivers*, 45 F.4th 38, denying enf. to *Browning-Ferris Industries of California, Inc. d/b/a BFI Newby Island Recyclery* ("*Browning-Ferris III*"), 369 NLRB No. 139 (2020).

hours worked. Browning-Ferris may refuse payment to Leadpoint should a worker fail to obtain this signature. Leadpoint provides all benefits to its workers and maintains a separate human resources department.

In response to a local minimum wage increase, Browning-Ferris and Leadpoint executed a March 2013 Rate Schedule Addendum, where they agreed that Browning-Ferris would compensate Leadpoint based on that higher hourly rate after the minimum wage increase took effect.

D. Discipline and Discharge

Under the Agreement, Leadpoint “has the sole responsibility to counsel, discipline, review, evaluate . . . and terminate” workers it provides to Browning-Ferris. Browning-Ferris, however, “maintains the right to reject or discontinue the use” of any Leadpoint worker “for any or no reason.” Browning-Ferris Managers and Supervisors Keck, Mennie, Ortiz, and Sutter testified that they have never been involved in any disciplinary decisions involving Leadpoint workers.

The record, however, contains a June 5, 2013 email sent by manager Keck to Leadpoint CEO Frank Ramirez “request[ing] [the] immediate dismissal” of two employees Keck witnessed passing a bottle of alcohol at the jobsite. Following its own investigation, Leadpoint terminated one employee and reassigned the other. In that same email, Keck “hope[d]” that Ramirez “agree[d]” that another Leadpoint worker “should be immediately dismissed” after Keck’s review of video surveillance tapes revealed that the worker damaged Browning-Ferris property. Following its own investigation, Leadpoint suspended and later terminated that worker.

E. Scheduling and Hours of Work

Browning-Ferris establishes the facility’s daily schedule, which includes three eight-hour shifts. Before each shift, Browning-Ferris Supervisors Ortiz and Sutter hold meetings in the control room with Leadpoint supervisors to present and coordinate the day’s operating plan. During these pre-shift meetings, Ortiz and Sutter dictate which material streams will run, where workstations will be located along each stream, and provide Leadpoint supervisors with a target headcount of workers needed for each stream. Leadpoint supervisors decide which specific workers are assigned to each stream and where they should work along streams.

Browning-Ferris also determines whether a stream will work overtime and conveys that determination to a Leadpoint supervisor who, in turn, decides which employees will remain to work overtime. Browning-Ferris also dictates when streams stop running so that Leadpoint employees can take breaks. Sorter Andrew Mendez testified that during a meeting attended by Leadpoint workers,

Keck instructed workers to spend the first five minutes of their breaks cleaning up their work areas. Sorter Marivel Mendoza similarly testified that Browning-Ferris managers have told workers to clean up their work areas before going on break.

The record includes an August 2, 2013 email from Keck to Leadpoint manager Haas directing Haas to reduce by four the number of sorters on a specific stream. Keck instructed Haas to reposition those workers to specific locations on streams, identified specific materials the workers should prioritize, and asked Haas to consider placing left-handed workers in locations where they can be left-hand dominant. The email concluded, “[t]his staffing change is effective Monday, August 5, 2013.”

F. Work Processes

Browning-Ferris Manager Mennie testified that Browning-Ferris sets productivity standards by tracking how many tons of materials are processed per hour on each stream. Mennie explained that these productivity standards vary depending on the type of material being sorted, quality issues, and the proportion of running time to downtime on each stream.

Browning-Ferris has the sole authority to set the speed of material streams based on its ongoing assessment of the optimal speed at which material can be efficiently sorted. If Leadpoint workers cannot keep up with the speed of streams, Browning-Ferris makes adjustments by slowing the speed of the streams or changing the angle of screens. Leadpoint workers, however, are able to stop the streams by hitting an emergency stop switch.

The record includes testimony from Leadpoint workers that the speed of the streams and their use of the emergency stop switch have been sources of contention with Browning-Ferris supervisors and managers. Sorter and screen cleaner Travis Stevens testified that Browning-Ferris does not give Leadpoint workers sufficient downtime and that on “multiple” occasions, supervisor Ortiz has told Leadpoint workers that they overuse the emergency stop switch. Stevens further testified that “on more than [one] occasion,” Ortiz and manager Keck have held meetings with Stevens’ “whole line” of coworkers about these issues and have instructed them “to minimize the button pressing because we’re getting into downtime.” Former sorter and current housekeeper Clarence Harlin testified about an incident where supervisor Sutter stood across from sorters and instructed them how to sort materials. Harlin recounted that he told Sutter that he could only follow his instructions if the line was slowed down or stopped. Sutter responded by calling the entire line of workers into the control room, where Harlin repeated his concerns and Sutter instructed workers that “it’s not about stopping the line” but working more efficiently.

Browning-Ferris supervisor Sutter testified that he has given Leadpoint supervisors “specific” instructions on when it is appropriate for Leadpoint workers to use the emergency stop switch. Manager Mennie similarly testified that Browning-Ferris instructs Leadpoint supervisors as to when workers should use the emergency stop switch.

The record also includes testimony from Leadpoint workers concerning Browning-Ferris’s communications with them about other aspects of their job performance. Harlin testified that as a housekeeper, he receives work directions from Browning-Ferris representatives at least a “couple times a week.” Harlin explained that he has received instructions to clean up certain areas, like a fence line, and that recently, a Browning-Ferris representative handed him tools and instructed him to clean and cut bales. Sorter Mendoza testified that supervisor Sutter has “sometimes” instructed her how much plastic to sort and on “a couple” of occasions has moved her from one stream to another because of her speed and expertise in sorting certain material. Mendoza also testified that supervisor Ortiz has transferred her to a different stream “a couple of times.” Sorter and screen cleaner Stevens testified that on “multiple” occasions, Ortiz has instructed workers which specific items should be sorted from a stream. Stevens further testified that during a meeting held by Browning-Ferris, Ortiz, and Keck discussed how to prioritize sorting specific materials. Finally, Stevens testified that Ortiz has held “multiple” similar meetings, including a recent one where he walked “the whole plant” through the facility. During that walkthrough, Ortiz discussed the quality of sorting, criticized workers for presenting barrels with waste material, and explained that when a barrel is contaminated, its material must be returned to the stream and resorted by Leadpoint workers.

Browning-Ferris managers and supervisors also testified about their communications with Leadpoint supervisors and workers. Supervisor Ortiz testified that he spends about 25 percent of the workday in areas where Leadpoint workers are engaged in sorting. He later testified that he is in the sorting area “throughout the day” and spends about 40 percent of his time speaking with Leadpoint supervisors. Ortiz testified that he has no direct communication with Leadpoint workers about their work performance. Rather, Ortiz explained, if he sees a “quality” or “flow” issue on a stream, he reports it to a Leadpoint supervisor and lets the supervisor “decide what he wants to do.” Ortiz testified that he has held “about two” general “safety meetings” with Leadpoint workers. But he later acknowledged that during these meetings, he discussed quality issues and their impact on Browning-Ferris’s customers, including his observation that specific contaminants like textiles and Styrofoam remained in sorts that

should have only included recyclable material like water bottles and newspapers.

Supervisor Sutter testified that he spends about 15 percent of the workday in areas where Leadpoint workers are present and has no direct communication with them about their job performance. Instead, he testified that he has conversations with Leadpoint supervisors about matters related to workers, including tools, quality, cleaning, jams in screens, and workers “not picking up” properly, e.g., when they leave too much plastic on a stream. Sutter testified that he “lets them [Leadpoint supervisors] decide how best” to address a particular issue with workers. Sutter later acknowledged, however, that he has directly told Leadpoint workers “to slow down or pick more.” Sutter also testified that he has attended “educational” meetings with Leadpoint workers where manager Keck instructed them on the proper “technique” to remove plastic from a stream containing recyclable organic material.

Finally, Manager Keck testified that if he observes issues with the quality of sorted material, i.e., contamination, he brings that issue to the attention of Leadpoint supervisors in an effort to “get to the root cause.” Keck testified that Browning-Ferris is the only company in the recycling industry that processes organic wet material, i.e., cafeteria and restaurant waste. He explained that one of its customers has continually rejected this processed organic material because it has included nonorganic materials. Keck acknowledged that he has addressed this customer complaint by holding a couple of educational meetings in the control room with Leadpoint workers from two different streams. During those meetings, he instructed workers to target the removal of nonorganic items like bottles, cans, and plastic bags.

III. THE *BROWNING-FERRIS* I STANDARD

A. *The Restated Joint-Employer Standard*

In 2015, the Board held that it:

may find that two or more statutory employers are joint employers of the same statutory employees if they share or codetermine those matters governing the essential terms and conditions of employment. In determining whether a putative joint employer meets this standard, the initial inquiry is whether there is a common-law employment relationship with the employees in question. If this common-law employment relationship exists, the inquiry then turns to whether the putative joint employer possesses sufficient control over employees’ essential

terms and conditions of employment to permit meaningful collective bargaining.⁹

Overruling prior Board decisions, including *TLI, Inc.* and *Laerco*, the Board announced it would “no longer require that a joint employer not only *possess* the authority to control employees’ terms and conditions of employment, but also *exercise* that authority.”¹⁰ Rather, the Board explained, “[r]eserved authority to control terms and conditions of employment, even if not exercised, is clearly relevant to the joint-employment inquiry.”¹¹ The Board also held that it would no longer demand that a joint employer’s “control must be exercised directly and immediately” and not in a “limited and routine” manner.¹² Instead, the Board explained that evidence of indirect control, “such as through an intermediary,” is also relevant to the joint-employer inquiry.¹³

The Board adopted an inclusive approach in defining essential terms and conditions of employment to include a nonexhaustive list of bargaining subjects including wages and hours, hiring, firing, discipline, supervision, assigning work, determining the manner and method of work performance, scheduling, seniority, overtime, and dictating the number of workers to be supplied.¹⁴ Concerning the standard’s inquiry into whether a putative employer possesses sufficient control over employees’ essential terms and conditions of employment to permit meaningful collective bargaining, the Board stated, without clarification, that some control “might extend only to terms and conditions of employment too limited in scope or significance to permit meaningful collective bargaining.”¹⁵ Finally, the Board retroactively applied its restated standard, concluding that its “established presumption in representation cases like this one is to apply a new rule retroactively.”¹⁶

B. Application of the Restated Standard

The Board found that Browning-Ferris was a joint-employer under common-law principles and that the record demonstrated that it shared or codetermined matters governing essential terms and conditions of employment for the Leadpoint workers. The Board found that Browning-Ferris exercised control “both directly and indirectly” over the hiring, firing, discipline, supervision, direction of work, hours, and wages of Leadpoint workers.¹⁷

In doing so, the Board relied on numerous factors, which are fully set forth in *Browning-Ferris I*. We need only briefly summarize them here. Concerning hiring,

firing, and discipline, the Board found that the Agreement gave Browning-Ferris significant control over who Leadpoint could hire and the unqualified right to fire any worker, which it indirectly exercised on two occasions. As to supervision, direction of work, and hours, the Board found that Browning-Ferris “exercise[d] control over the processes that shape the day-to-day work” of Leadpoint workers and emphasized its control over the speed of the material streams, which had been a source of contention between Leadpoint workers and Browning-Ferris. The Board also found relevant Browning-Ferris managers’ daily determinations concerning the number of workers needed, where they should be positioned on material streams, and other matters, including workers’ shift times, breaks, and overtime. In addition, the Board found that Browning-Ferris “play[ed] a significant role” in determining Leadpoint workers’ wages as a result of the Agreement creating a “de facto wage ceiling” for Leadpoint workers by specifically preventing Leadpoint from paying workers more than Browning-Ferris employees performing comparable work. Given Browning-Ferris’s control over these matters, the Board found it “difficult to see how Leadpoint alone could bargain meaningfully about such fundamental working conditions as break times, safety, the speed of work, and the need for overtime.”¹⁸

IV. THE DISTRICT OF COLUMBIA CIRCUIT’S REMANDS

In 2018, the court upheld the core components of the Board’s restated standard. It held that the Board correctly determined that an employer’s reserved but unexercised control and indirect control over terms and conditions of employment are relevant considerations in determining joint-employer status under the common law.¹⁹ The court held, however, that in “applying the indirect-control factor . . . the Board failed to confine it to indirect control over the essential terms and conditions of the workers’ employment.”²⁰

More specifically, the court instructed the Board to take heed of the “common-law principle that a joint employer’s control—whether direct or indirect, exercised or reserved—must bear on the ‘essential terms and conditions of employment,’” and not the “common and routine decisions that employers make when hiring third-party contractors and defining the terms of those contracts.”²¹ The court elaborated, “evidence that simply documents the

⁹ *Browning-Ferris I*, 362 NLRB at 1600 (internal quotation marks omitted).

¹⁰ *Id.* (emphasis in original).

¹¹ *Id.*

¹² *Id.* at 1600, 1613–1614.

¹³ *Id.* at 1600.

¹⁴ See *id.* at 1613.

¹⁵ *Id.* at 1614.

¹⁶ *Id.* at 1600.

¹⁷ See *id.* at 1616–1618.

¹⁸ *Id.* at 1616–1617.

¹⁹ See *Browning-Ferris Industries*, 911 F.3d at 1209–1213.

²⁰ *Id.* at 1209.

²¹ *Id.* at 1219, 1221 (quoting *Dunkin’ Donuts Mid-Atlantic Distribution Center, Inc. v. NLRB*, 363 F.3d 437, 440 (D.C. Cir. 2004)).

routine parameters of company-to-company contracting’ and the “types of employer decisions that set the objectives, basic ground rules, and expectations for a third-party contractor cast no meaningful light on joint-employer status.”²² This global oversight, the court explained, is a routine contractual feature that does not establish a joint-employer relationship because “such supervision is inherent in any joint undertaking.”²³ Citing some of the factors relied on by the Board in *Browning-Ferris I* to find joint-employer status, the court observed:

The Board’s analysis of the factual record in this case failed to differentiate between those aspects of indirect control relevant to status as an employer, and those quotidian aspects of common-law third-party contract relationships. For example, the Board treated as equally relevant to employer status (i) evidence that Browning-Ferris supervisors ‘communicated detailed work directions to employees on the stream,’ which may well have dictated a term or condition of employment, and (ii) Browning-Ferris’s and Leadpoint’s use of a ‘cost-plus contract,’ a frequent feature of third-party contracting and sub-contracting relationships.

...

[U]se of an intermediary either to transmit Browning-Ferris directions to a Leadpoint sorter . . . or to implement Browning-Ferris-influenced disciplinary measures . . . may well be found to implicate the essential terms and conditions of work. On the other hand, routine contractual terms, such as a very generalized cap on contract costs, or an advance description of the tasks to be performed under the contract, would seem far too close to the routine aspects of company-to-company contracting to carry weight in the joint-employer analysis.

²² Id. at 1216, 1220.

²³ See id. (citing *Radio City Music Hall Corp. v. United States*, 135 F.2d 715, 718 (2d Cir. 1943)). In *Radio City Music Hall*, the Second Circuit found that a theater owner did not control the “details of [actors] performance,” but instead decided how different performances “must be timed, and how they shall be fitted together.” 135 F.2d at 717. The court observed that the theatre owner did intervene to some degree; but so does a general building contractor intervene in the work of his subcontractors. He decides how the different parts of the work must be timed, and how they shall be fitted together; if he finds it desirable to cut out this or that from the specifications, he does so. Some such supervision is inherent in any joint undertaking, and does not make the contributing contractors employees.

Id. at 718.

The District of Columbia Circuit’s decision in *North American Van Lines, Inc. v. NLRB*, further illustrates the concept of “global oversight.” See 869 F.2d 596 (D.C. Cir. 1989). There, the court found that a trucking company’s incentive system did not “control the manner and means” of drivers’ performance because it was designed to induce drivers to haul more loads and ensure “the drivers’ overall performance me[t] the company’s standards.” Id. at 602–603. The drivers, in contrast, had near

...

Whether Browning-Ferris influences or controls the basic contours of a contracted-for service—such as requiring four lines’ worth of sorters plus supporting screen cleaners and housekeepers—would not count under the common law.²⁴

In sum, the court remanded this “aspect of the decision to the Board for it to explain and apply its test in a manner that hews to the common law of a agency,” including an explanation of “what facts proved dispositive in the Board’s determination that Browning-Ferris is a joint employer.”²⁵

Although the court’s formal remand was limited to these expressed concerns, the court also stated that the Board had failed to meaningfully apply the second prong of the *Browning-Ferris I* standard.²⁶ The court instructed that should the Board continue to find that Browning-Ferris is a joint employer under the common law, the Board should not “neglect to (i) apply the second half of its announced test, (ii) explain which terms and conditions are ‘essential’ to permit ‘meaningful collective bargaining,’ and (iii) clarify what ‘meaningful collective bargaining’ entails and how it works in this setting.”²⁷

Finally, the court observed that it would be “premature” to determine whether it was appropriate to retroactively apply the *Browning-Ferris I* standard because “the lawfulness of the retroactive application of a new decision cannot be evaluated reliably without knowing with more precision what that new test is and how far it departs (or does not) from reasonable, settled expectations.”²⁸

In 2020, the Board responded to the court’s 2018 remand by finding that retroactive application of any clarified variant of the *Browning-Ferris I* standard would be manifestly unjust. Accordingly, the Board adopted the

“absolute control” over the manner and means of their performance because they were in “control over their performance in the cab, their dress, the course they follow in hauling the load, when they work . . . , and where and when they stop, dine, or rest in the midst of driving.” Id. at 600.

²⁴ 911 F.3d at 1220–1221.

²⁵ Id. at 1209, 1221.

As the court explained, this case does not present two questions. First, because the Board in *Browning-Ferris I* “relied on evidence that Browning-Ferris both had a ‘right to control’ and had ‘exercised that control,’” the court observed that “this case does not present the question whether the reserved right to control, divorced from any actual exercise of that authority, could alone establish a joint-employer relationship.” Id. at 1213. And because the Board’s decision in *Browning-Ferris I* “tuned on its finding that Browning-Ferris exercised control ‘both directly and indirectly,’” this case does not present the question whether evidence of indirect control, alone, can be “dispositive.” Id. at 1218.

²⁶ Id. at 1221.

²⁷ Id. at 1222.

²⁸ Id.

Acting Regional Director's 2013 determination that Browning-Ferris was not a joint employer under pre-*Browning-Ferris I* precedent, amended the certification to exclude Browning-Ferris as a joint employer, and vacated the Board's decision in the unfair labor practice case.²⁹ Subsequently, the Board denied the Union's motion for reconsideration.³⁰

In 2022, the court rejected the Board's 2020 retroactivity analysis, vacated *Browning-Ferris III* and *IV*,³¹ and remanded this case to the Board for a second time.³² Having accepted the court's 2018 and 2022 remands, the court's decisions are law of the case.

V. ANALYSIS

A. Clarification of the *Browning-Ferris I* Standard

We continue to hold that two or more employers of the same particular employees are joint employers of those employees if they share or codetermine those matters governing essential terms and conditions of employment. As noted, the Board held in *Browning-Ferris I* that an employer shares or codetermines those matters governing essential terms and conditions of employment if the employer possesses or reserves the authority to control (whether directly, indirectly, or both), or exercises the power to control (whether directly, indirectly, or both), one or more of the employees' essential terms and conditions of employment. We apply that holding solely as law of the case and only insofar as it was affirmed by the court of appeals.³³

Consistent with the court's remands, which are also law of the case, we adopt and incorporate into the *Browning-Ferris I* standard the court's views regarding the forms of control that are relevant to the joint-employer inquiry. These clarifications apply to all forms of control, whether indirect, direct, or reserved. Evidence of control that is

relevant to the joint-employer inquiry must bear on essential terms and conditions of employment. Evidence of control that does not bear on essential terms and conditions of employment and thus, is not relevant to the joint-employer inquiry, includes a putative employer's: (1) control that is an ordinary incident or routine component of a company-to-company relationship, dealing, or contract; (2) control established by the terms of a third-party contract that sets objectives, expectations, or basic ground rules for the production or delivery of goods or services; and (3) efforts to monitor, evaluate, and improve the results or ends of a worker's performance. In contrast, evidence of a putative employer's ability to control the manner, means, and details of a worker's performance is relevant to the joint-employer inquiry under the *Browning-Ferris I* standard.

The court's remand also requires us to clarify the "meaningful collective bargaining" component of the *Browning-Ferris I* standard. As noted above, *Browning-Ferris I* adopted a nonexhaustive list of essential terms and conditions of employment that would be considered in determining whether joint-employer status had been established. In that context, the Board recognized that "it is certainly possible that in a particular case, a putative joint employer's control might extend only to terms and conditions of employment too limited in scope or significance to permit meaningful collective bargaining."³⁴

As explained below, Browning-Ferris exercises direct control over Leadpoint workers' wages, work assignments, and the manner, means, and details of their performance. We hold that Browning-Ferris's direct control over these essential terms and conditions of employment, or any one of them, is clearly sufficient, without more, to permit meaningful bargaining within the meaning of

²⁹ See *Browning-Ferris III*, 369 NLRB No. 139.

As noted above, the Board in 2020, before responding to the court's remand, also promulgated a final rule that reinstated the "direct and immediate" control standard, which effectively overruled *Browning-Ferris I* prospectively from the rule's effective date. See the "2020 Rule".

³⁰ *Browning-Ferris Industries of California, Inc., d/b/a BFI Newby Island Recyclery* ("*Browning-Ferris IV*"), 370 NLRB No. 86 (2021).

³¹ The court labeled these decisions "*Browning-Ferris II* and *Browning-Ferris III*," but that nomenclature inadvertently overlooks the Board's decision reported at 363 NLRB 883 (2016).

³² See *Sanitary Truck Drivers*, 45 F.4th 38.

Also in 2022, after the court's second remand, the Board issued a notice of proposed rulemaking regarding the joint-employer standard, which, among many other issues, invited public comments on the court's 2018 opinion. See *Standard for Determining Joint-Employer Status*, 87 Fed. Reg. 54641 (Sept. 7, 2022). In 2023, the Board promulgated a final rule which stated that joint-employer status could be based on indirect control or reserved right to control. See *Standard for Determining Joint Employer Status*, 88 Fed. Reg. 73946 (Oct. 27, 2023) (the "2023 Rule"). The 2023 Rule also rescinded the 2020 Rule. *Id.* at 73957. On March

18, 2024, the United States District Court for the Eastern District of Texas vacated the 2023 Rule, including its rescission of the 2020 Rule. See *Chamber of Commerce v. NLRB*, 723 F. Supp. 3d 498 (E.D. Tex. 2024). The Board did not appeal the District Court's decision.

³³ Members Murphy and Mayer believe that the Board's 2020 Joint Employer Rule sets forth the proper standard for determining whether an entity is a joint employer. However, that Rule, which applies only prospectively from its effective date, April 28, 2020, is not applicable in this case. For the purpose of deciding this case, they apply the *Browning-Ferris I* standard solely for institutional reasons and as law of the case. They emphasize that this decision will not impact any other case arising after the effective date of the 2020 Rule.

Member Prouty agrees that the Board's 2020 Rule is not applicable in this case. However, Member Prouty was not a member of the Board when it issued the 2020 Rule and, for the reasons set forth in the preamble to the Board's now-vacated 2023 Rule, he does not believe that the 2020 Rule sets forth the proper standard for determining when an entity is a joint employer.

³⁴ *Browning-Ferris I*, 362 NLRB at 1614.

Browning-Ferris I.³⁵ This determination is consistent with the Board’s discussion of essential terms and conditions of employment in *Browning-Ferris I*, which listed such matters relating to the employment relationship as hiring, firing, discipline, supervision, direction, dictating the number of workers to be supplied; controlling scheduling, seniority, and overtime; assigning work and determining the manner and method of work performance.³⁶ An employer that controls any of those essential terms or conditions of employment will necessarily be in a position to engage in meaningful collective bargaining over an issue of core concern to the employees involved under the *Browning-Ferris I* standard.

B. Retroactive Application of the Clarified *Browning-Ferris I* Standard

The Board’s “usual practice is to apply new policies and standards retroactively to all pending cases in whatever stage,” unless retroactive application would work a “manifest injustice.”³⁷ As the District of Columbia Circuit has explained, “while retroactive application may be appropriate for new applications of existing law, it may be unwarranted or unjust when there is a substitution of new law for old law that was reasonably clear, and on which employers may have relied in organizing their business relationships.”³⁸ Otherwise stated, retroactive application is not “manifestly unjust” where an agency’s prior rulings reflected a “highly fact-specific, case-by-case style of adjudication that did not create a clear rule of law.”³⁹ The Board considers these same, and related factors, when determining whether retroactive application would work a manifest injustice.⁴⁰ Consistent with the court’s remand in *Sanitary Truck Drivers*,⁴¹ which is law of the case, we find that it is proper to retroactively apply today’s clarified *Browning-Ferris I* standard in the instant case.⁴²

³⁵ See *Dunkin’ Donuts Mid-Atlantic Distribution Center*, 363 F.3d at 440 (agreeing with the Board that Dunkin’ Donuts was a joint employer based on its involvement in decisions concerning “discipline, assignment of work and equipment . . . and day-to-day direction of . . . employees.”); *Browning-Ferris Industries*, 911 F.3d at 1213 (citing the law of agency that “an employee is an agent whose principal controls or has the right to control the manners and means of the agent’s performance of work”); *International Chemical Workers Union Local 483 v. NLRB*, 561 F.2d 253, 257 (D.C. Cir. 1977) (user employer not a joint employer of supplied employees where the supplier, alone, set wage rates and had “general control over the . . . firing, assignment, and disciplining of its employees” and where the user “did not have authority to, and did not actually, direct the [] employees in the details of their work”).

³⁶ *Browning-Ferris I*, 362 NLRB at 1613.

³⁷ *SNE Enterprises*, 344 NLRB 673, 673 (2005) (internal quotations omitted).

³⁸ *Browning-Ferris Industries*, 911 F.3d at 1222 (internal quotation marks omitted).

³⁹ *Id.* (internal quotation marks omitted).

C. Application of the Clarified *Browning-Ferris I* Standard

We reassess the record evidence in its entirety and rely solely on the following factors to conclude that *Browning-Ferris I* is a joint employer of the petitioned-for Leadpoint workers. Within the meaning of the clarified *Browning-Ferris I* standard, which we apply here solely as law of the case, we find that *Browning-Ferris I* shares or codetermines those matters governing the essential terms and conditions of employment for the Leadpoint workers. As explained below, *Browning-Ferris I* exercises direct control over the assignment of Leadpoint workers’ duties to be performed and directions governing the manner, means, and methods of the performance of their duties. Alone, this evidence of direct control is sufficient to find joint-employer status under the clarified *Browning-Ferris I* standard. *Browning-Ferris I* also exercises direct control over Leadpoint workers’ wages, which further supports our conclusion. Finally, *Browning-Ferris I* exercises indirect control over directions governing the manner, means, and methods of the performance of Leadpoint workers’ duties and the grounds for their discipline. This evidence of indirect control provides additional grounds for concluding that *Browning-Ferris I* is a joint employer of the Leadpoint workers under the clarified *Browning-Ferris I* standard.

1. Evidence of direct control

Leadpoint provides all but one of the more than 240 sorters, screen cleaners, and housekeepers who are responsible for facilitating the sorting of recyclable materials, which is the essential function of *Browning-Ferris I*’s operations within the recyclery. *Browning-Ferris I* operators, in turn, monitor the streams and its supervisors’ presence on the work floor throughout the workday. The record shows that *Browning-Ferris I* has exercised direct

⁴⁰ See *Providence Health & Services-Oregon d/b/a Providence Portland Medical Center*, 369 NLRB No. 78, slip op. at 6 (2020) (finding no manifest injustice in retroactive application where relevant Board precedent had been “inconsistent, speculative, and subjective”); *SNE Enterprises*, 344 NLRB at 373 (in determining the propriety of retroactive application, the Board “considers the reliance of the parties on preexisting law, the effect of retroactivity on accomplishment of the purposes of the Act, and any particular injustice arising from retroactive application”).

⁴¹ 45 F.4th 38.

⁴² In its statement of position to the Board following the court’s 2018 remand, *Browning-Ferris I* broadly argued that pre-*Browning-Ferris I* law created a set of boundaries that contracting parties, like it and Leadpoint, relied on to “create the arrangements they desired.” In its statement of position to the Board following the court’s 2022 remand, *Browning-Ferris I* provided only a conclusory argument that “[i]t is clear [it] and Leadpoint sought to arrange their relationship in 2009 according to the then-extant pre-*Browning-Ferris I* ‘substantial and immediate control’ standard.” *Browning-Ferris I*, however, failed to present any specific evidence that it structured any component of its contractual relationship with Leadpoint based on pre-*Browning-Ferris I* law.

control over the assignment of Leadpoint workers' duties to be performed and directions governing the manner, means, and methods of the performance of their duties.

Critically, Browning-Ferris exercises unilateral control over the speed of the material streams that transport materials inside the facility and accordingly, controls the pace of work. The record reveals that the speed of the material streams, workers' use of an emergency switch to stop streams, and workers' resultant ability to properly sort materials have been a source of contention between Browning-Ferris and Leadpoint workers. Browning-Ferris managers and supervisors have repeatedly and directly instructed workers not to overuse the emergency stop switch and to work either faster or slower, and more efficiently. These direct instructions have occurred both on the work floor and in separate meetings led by Browning-Ferris and attended by Leadpoint workers.

Browning-Ferris managers and supervisors have directly communicated work instructions to Leadpoint workers about additional, specific details of their job performance. Browning-Ferris instructs workers to clean up their work areas before going on break. And on multiple occasions each week, Browning-Ferris has directed a housekeeper to complete specific cleaning assignments, including providing the housekeeper with the tools necessary to complete some of those assignments. The record reveals that Browning-Ferris has transferred a sorter to another stream based on her speed and sorting expertise. Significantly, Browning-Ferris supervisors have communicated detailed work directions to workers on the streams about the sorting process. To that end, Browning-Ferris has held multiple, separate meetings with Leadpoint workers to provide specific instructions about the sorting process.⁴³ Under these circumstances, Browning-Ferris could clearly engage in meaningful bargaining about the manner, means, and methods of Leadpoint workers' performance, such as contractual provisions setting minimum

and maximum line speeds or defining the specific duties of different classifications of workers.

While we find that this significant evidence of direct control is sufficient, alone, to conclude that Browning-Ferris is a joint employer, Browning-Ferris has also maintained direct control over another core aspect of employment—workers' wages. By virtue of the Agreement, Browning-Ferris prohibits Leadpoint from paying any of its 240 workers more than the single Browning-Ferris sorter who performs comparable work. This prohibition creates a hard wage cap, which plainly affects Leadpoint workers.⁴⁴ This impact was confirmed when Leadpoint could not unilaterally raise its workers' wages, even pursuant to a local minimum wage increase, without Browning-Ferris's direct involvement.⁴⁵

This wage cap differs markedly from a "very generalized cap on contract costs," such as a maximum reimbursable wage rate, a factor that is not relevant to the joint-employer inquiry.⁴⁶ Instead, the Agreement includes, and Browning-Ferris has enforced, a provision that stymies Leadpoint's ability to raise workers' wages, which has had a direct impact on an undoubtedly essential term and condition of employment.⁴⁷

2. Evidence of indirect control

In addition to its direct control over directions governing the manner, means, and methods of the performance of Leadpoint workers' duties, the record establishes that Browning-Ferris also exercises related indirect control over this same essential term and condition of employment. Browning-Ferris supervisors testified that they give Leadpoint supervisors specific instructions concerning workers' use of the emergency stop switch. Also, in the daily course of monitoring stream operations, these same supervisors testified that they identify specific problems concerning matters related to the job performance of Leadpoint workers, including the quality of sorting, screen

⁴³ While other topics arguably relevant to joint-employer status also were discussed at those meetings, we rely solely on the instructions about the sorting process for the purpose of deciding this case.

⁴⁴ This is so even though the sorter solely employed by Browning-Ferris was paid \$5 per hour more than the Leadpoint sorters at the time of the events in this case. While Leadpoint could have granted employees some wage increase without breaching this provision of the Agreement, it imposed a hard cap on how much wages could be increased all the same. Moreover, because Browning-Ferris has control over the wage rate of its sole sorter, it effectively has the ability to raise or lower the cap on Leadpoint workers' wages at its own discretion. Under these circumstances, meaningful bargaining over a contractual schedule of wage rates and annual increases, a common feature of collective-bargaining agreements, would necessarily require Browning-Ferris's participation if that schedule had the potential to result in the wage of any of Leadpoint's 240 employees exceeding that of Browning-Ferris's sorter at any time during the life of the contract.

⁴⁵ See *Dunkin' Donuts*, 363 F.3d at 441 (substantial evidence supported the Board's finding that Dunkin' Donuts was a joint employer where, among other evidence, Dunkin' exercised direct control over wages and benefits of workers supplied by a third-party contractor). See also *Quantum Resources Corp.*, 305 NLRB 759, 760-761 (1991) (finding user employer a joint employer because, in part, the user employer designated wage rates, authorized changes in wage rates, and pushed through raises for employees); *Hoskins Ready-Mix Concrete, Inc.*, 161 NLRB 1492, 1493 (1966) (finding user employer a joint employer where an operating agreement required the supplier employer to consult with the user employer before "changing pay rates or hiring new employees" at a rate above a specified level).

⁴⁶ See *Browning-Ferris Industries*, 911 F.3d at 1220-1221.

⁴⁷ To the extent the wage cap and Browning-Ferris's related involvement in the minimum wage increase could be characterized as evidence of indirect control, we would nonetheless rely on these factors as relevant evidence of Browning-Ferris's joint-employer status under the clarified BFI standard.

jams, workflow, tools, and cleaning. These supervisors explained that they communicate these specific concerns to Leadpoint supervisors, who, in turn, are expected to remedy them with workers. This “use of an intermediary [] to transmit Browning-Ferris directions to a Leadpoint sorter” concerning the details of workers’ performance is further probative of joint-employer status under the clarified *Browning-Ferris I* standard.⁴⁸

Finally, Browning-Ferris has exercised indirect control over the grounds for disciplining Leadpoint workers. Although the Agreement makes Leadpoint ultimately responsible for disciplining workers, it also grants Browning-Ferris the authority to “reject any Personnel, and . . . discontinue the use of any personnel for any or no reason.” To that end, Browning-Ferris Operations Manager Keck twice emailed Leadpoint supervisors to report three workers’ misconduct and, in each case, requested their immediate dismissal. Following its own investigation, Leadpoint agreed with Keck’s requests by reassigning one worker and discharging the other two. This influence over the discipline of workers is further probative of joint-employer status under the clarified *Browning-Ferris I* standard.⁴⁹

In its 2018 remand, the District of Columbia Circuit stated that *Browning-Ferris I* “overshot the mark” by “failing to distinguish evidence of indirect control that bears on workers’ essential terms and conditions from evidence that simply documents the routine parameters of company-to-company contracting.”⁵⁰ The court also stated that “routine contractual terms, such as a very generalized cap on contract costs, or an advance description of the tasks to be performed under the contract, would seem far too close to the routine aspects of company-to-company contracting to carry weight in the joint-employer analysis.”⁵¹ As is evident from the foregoing discussion, we have not relied on any evidence of that character in our decision today. In this respect as well, we have been responsive to the court’s remand.

VI. CONCLUSION

For all these reasons, we find that Browning-Ferris is a joint employer of the petitioned-for Leadpoint workers under the *Browning-Ferris I* standard, which we apply here solely as law of the case. Accordingly, we reaffirm the Board’s prior decision, reported at 363 NLRB 883

(2016), finding that Browning-Ferris violated Section 8(a)(5) and (1) by refusing to recognize and bargain with the Union, and we will issue an appropriate Supplemental Order.⁵²

ORDER

The National Labor Relations Board orders that the Respondent, Browning-Ferris Industries of California, Inc. d/b/a BFI Newby Island Recyclery and FPR-II, LLC d/b/a Leadpoint Business Services, a joint employer, Milpitas, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Sanitary Truck Drivers and Helpers Local 350, International Brotherhood of Teamsters (the Union) as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time employees employed by FRP-II, LLC d/b/a Leadpoint Business Services and Browning-Ferris Industries of California, Inc. d/b/a Newby Island Recyclery, joint employers, at the facility located at 1601 Dixon Landing Road, Milpitas, California, excluding employees currently covered by collective-bargaining agreements, office clerical employees, guards and supervisors as defined in the Act.

(b) Within 14 days of service by the Region, post at its facility in Milpitas, California, copies of the attached notice marked “Appendix.”⁵³ Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices

⁴⁸ *Browning-Ferris Industries*, 911 F.3d at 1220.

⁴⁹ See *id.* (The “use of an intermediary . . . to implement Browning-Ferris-influenced disciplinary measures . . . may well be found to implicate the essential terms and conditions of work”); *Al-Saffy v. Vilsack*, 827 F.3d 85, 97 (D.C. Cir. 2016) (evidence that a putative employer “had recommended [employee’s] dismissal” supported joint-employer finding).

⁵⁰ *Browning-Ferris Industries*, 911 F.3d at 1216.

⁵¹ *Id.* at 1220.

⁵² We substitute the attached notice for the notice attached to the Board’s original Decision and Order.

⁵³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 21, 2015.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 32 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 23, 2026

David M. Prouty, Member

James R. Murphy, Member

Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Sanitary Truck Drivers and Helpers Local 350, International Brotherhood of Teamsters (the Union) as the exclusive collective-bargaining representative of our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time employees employed by FRP-II, LLC d/b/a Leadpoint Business Services and Browning-Ferris Industries of California, Inc. d/b/a Newby Island Recyclery, joint employers, at the facility located at 1601 Dixon Landing Road, Milpitas, California, excluding employees currently covered by collective-bargaining agreements, office clerical employees, guards and supervisors as defined in the Act

BROWNING-FERRIS INDUSTRIES OF CALIFORNIA, INC. D/B/A BFI NEWBY ISLAND RECYCLERY AND FPR-II, LLC D/B/A LEADPOINT BUSINESS SERVICES

The Board's decision can be found at <https://www.nlr.gov/case/32-CA-160759> or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940

