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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

April 8, 2026

ORDER DENYING MOTION FOR RECONSIDERATION

BY CHAIRMAN MURPHY AND MEMBERS PROUTY AND MAYER

Respondent Browning-Ferris's motion for reconsideration of the National Labor Relations Board's Second Supplemental Decision and Order reported at 374 NLRB No. 46 (2026), is denied.[1] Browning-Ferris has not identified any material error or demonstrated extraordinary circumstances warranting reconsideration under Section 102.48(c)(1) of the Board's Rules and Regulations.

In the underlying test-of-certification decision, the Board, pursuant to instructions on remand from the United States Court of Appeals for the District of Columbia Circuit, clarified 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, applying the clarified standard as law of the case only, concluded that Browning-Ferris is a joint employer of employees in the petitioned-for unit. 374 NLRB No. 46, slip op. at 1. Accordingly, the Board reaffirmed its 2016 conclusion[2] 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 those employees. Id. The Board ordered the standard remedies in test-of-certification cases, including that Respondents Browning-Ferris and Leadpoint Business Services shall, on request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the specified appropriate unit concerning terms and conditions of employment, and, if an understanding is reached, embody the understanding in a signed agreement. Id., slip op. at 10.

In its motion for reconsideration, Browning-Ferris contends that the Board's Decision and Order constitutes material error and denies it due process because the Order does not limit its bargaining obligations to those employment terms that the Board found Browning-Ferris to actually control or co-control in the context of the Board's joint-employer analysis. Browning-Ferris proposed modifications to the Board's Order consistent with that view.[3]

This contention is without merit because, as the Board has observed elsewhere, the question of whether an entity has a duty to bargain as a joint employer of the employees of another entity is analytically prior to, and distinct from, the question of what one must bargain about if one has a duty to bargain.[4] The Board's decision in this case addresses the question of whether Browning-Ferris has a duty to bargain as a joint employer of Leadpoint's employees. To be sure, the Board stated in *Browing-Ferris I* that "as a rule, a joint employer will be required to bargain only with respect to such terms and conditions which it possesses the authority to control." 362 NLRB at 614. But the precise scope of Browning-Ferris's bargaining obligation is not before the Board in this proceeding, and, in any case, could not be fully answered based solely on the limited record produced for the purpose of the representation proceeding underlying the Board's decision.

Having determined that Browning-Ferris is a joint employer of employees in an appropriate bargaining unit, the Board ordered Browning-Ferris to bargain with the Union using the same affirmative bargaining order language with which the Board, with uniform enforcement by the courts of appeal, has long required any employer, including joint employers, to bargain in test-of-certification cases.[5]

[1] In response to the Respondent's motion for reconsideration, the Charging Party filed a brief in opposition.

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

[3] The Order with the proposed modifications would read, in relevant part:

> (ii) Browning-Ferris Industries of California, Inc. d/b/a BFI Newby Recyclery: On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning wages, the grounds for discipline, assignment of workers' duties to be performed, and directions governing the manner, means and methods of their performance; 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.

[4] See, e.g., Joint Employer Status Under the National Labor Relations Act, 85 Fed. Reg. 11184, 11207 (Feb. 26, 2020).

[5] See, e.g., *Retro Environmental, Inc./Green JobWorks, LLC*, 365 NLRB 1327, 1329 (2017) (joint employers), enfd. 738 Fed.Appx. 200 (4th Cir. 2018); *Snell Island SNF d/b/a Shore Acres Rehabilitation and Nursing Center, LLC*, 356 NLRB 115, 117 (2010) (joint employers), enfd. 451 Fed.Appx. 49 (2d Cir. 2011); *Parkwood Developmental Center, Inc.*, 325 NLRB No. 89, slip op. at 2 (1998) (joint employers), affd.

Browning-Ferris failed to cite any of that precedent, much less distinguish it. The procedural history of this case does not distinguish Browning-Ferris's current bargaining obligations from those of any other joint employer subject to a Board order to remedy a violation of Section 8(a)(5) by refusing to recognize and bargain with its employees' certified representative. Accordingly, the motion for reconsideration is denied.

Dated, Washington, D.C. April 8, 2026

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James R. Murphy, Chairman

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David M. Prouty, Member

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Scott A. Mayer, Member

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165 F.3d 41 (11th Cir. 1998) (Table); *Western Temporary Services, Inc.*, 278 NLRB 469, 470 (1986) (joint employers), enfd. 821 F.2d 1258 (7th Cir. 1987); see also *Greyhound Corp.*, 153 NLRB 1488, 1497 (1965) (ordering joint employer respondents to bargain "with respect to rates of pay, wages, hours, and other terms and conditions of employment" after Supreme Court joint-employer decision in *Boire v. Greyhound Corp.*, 376 U.S. 473 (1964)), enfd. 368 F.2d 778 (5th Cir. 1966). Moreover, the Board's prior bargaining order in this case also did not include the limiting language that Browning-Ferris now proposes.