

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16-1028

September Term, 2017

NLRB-32CA160759

Filed On: April 6, 2018

Browning-Ferris Industries of California, Inc.,
doing business as BFI Newby Island Recycling,

Petitioner

v.

National Labor Relations Board,

Respondent

Teamsters Local 350,
Intervenor

Consolidated with 16-1063, 16-1064

BEFORE: Millett and Wilkins, Circuit Judges; Randolph*, Senior Circuit Judge

ORDER

Upon consideration of the motion of the National Labor Relations Board (“Board”) to recall mandate based on exceptional circumstances, the opposition thereto, and the reply, it is

ORDERED that the motion be granted. The court notes that recalling the mandate is appropriate only because this case presents “extraordinary circumstances.” *Calderon v. Thompson*, 523 U.S. 538, 550 (1998). It is

FURTHER ORDERED, on the court’s own motion, that this case be held in abeyance pending prompt disposition by the Board of the pending motion for reconsideration in *Hy-Brand Industrial Contractors, Ltd.*, 365 N.L.R.B. No. 156 (2017). The Board is directed to file status reports at 21-day intervals, beginning 21 days from the date of this order.

The parties are directed to file motions to govern future proceedings within 7 days of the completion of the agency proceedings in *Hy-Brand*.

The Board is requested to return the mandate forthwith.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Amanda Himes
Deputy Clerk

* Senior Circuit Judge Randolph would deny the motion. A separate dissenting statement by Judge Randolph is attached.

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Randolph, *Senior Circuit Judge*, dissenting:

I would deny the motion to recall the mandate. If the Board grants the pending motion for reconsideration of the order vacating *Hy-Brand*, this case would be in the same posture as it was when we remanded it to the Board. If the Board denies the reconsideration motion, the Board would again have before it the question whether *Browning-Ferris* should be overruled. I therefore believe that this court should stay its hand until the Board finally decides *Hy-Brand*, either by granting the reconsideration motion or on the merits.