voter, the challenge to her ballot is hereby overruled, and we shall direct the Regional Director to open and count her ballot. As the factual issue raised by the Petitioner's contention is immaterial to our resolution of the challenge, the request for a hearing is denied.

In the circumstances, as certain of the objections may be rendered moot by the revised tally of ballots, we shall not pass upon any of the objections to the election until the ballot of Betty Moss has been opened and counted.[3] Accordingly, the Board expressly reserves herein its disposition of all other recommendations of the Regional Director as contained in his report, and all exceptions filed by the parties with respect thereto, until such time as the Regional Director serves his revised tally of ballots.

[The Board directed that the Regional Director for the Second Region, shall, within 10 days from the date of this Direction, open and count the ballot of Betty Moss, and serve upon the parties a supplemental tally of ballots.]

[3] See *Hoffman Hardware Co*, 112 NLRB 982.

Aluminum Furniture Manufacturers Association *and* United Steelworkers of America, AFL–CIO, Petitioner. *Case No. 12–RC–491. September 4, 1959*

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Herbert N. Watterson, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Jenkins and Fanning].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent certain employees of the Employer.

3. The Employer and the Intervenor, Upholsterers' International Union of North America, AFL–CIO, contend that a contract bars this proceeding. On April 23, 1956, the Employer and Teamsters Local 290 [1] executed a contract effective to September 1, 1960. This contract

[1] Building & Construction Material, Alcoholic & Carbonated Beverages, Processing & Distribution Drivers and Employees, Local Union 290, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, herein called Teamsters Local 290, was served with notices of hearing, but did not enter an appearance at the hearing.

was serviced on behalf of Teamsters Local 290 by John Thalmayer as its representative. In October 1958, Thalmayer, while continuing to service the contract for Local 290, became a business agent for Local 300 of the Intervenor. In November 1958 Thalmayer informed the Employer that he was soliciting membership cards for the Intervenor, and that he had signed up a large number of its employees. Early in December 1958, Thalmayer and the Employer's attorney met on several occasions during which the Employer agreed to recognize the Intervenor and proceeded to negotiate terms of a contract. During these meetings, the Employer requested that it be furnished by Teamsters Local 290 with some type of assignment or transfer of rights to the Intervenor in order to insure the Employer against a continuing claim by the Teamsters. On or about December 8, 1958, the executive board of Teamsters Local 290 voted to assign and set over to Local 300 of the Intervenor all its rights and obligations to the aforementioned contract together with dues checkoff authorizations. On December 15, 1958, the Employer and the Intervenor entered into a contract, effective from the execution date to September 1, 1961, which makes reference in the preamble to the assignment of the Teamster contract to the Intervenor. The Intervenor's contract contains new provisions, *inter alia*, for wage scales, holiday pay, seniority, layoffs, and a health and welfare plan.

The Petitioner contends essentially that the Intervenor assumed the Teamsters' contract, that it merely obtained modifications of the same, and that the contract could not operate as a bar because the employees had no voice in its assignment to the Intervenor. We find no merit in such contention. It is clear, and we find, that the Intervenor executed a *new* contract with the Employer on December 15, 1958. The undertaking by the Teamsters to assign its contract amounted merely to a withdrawal on its part of representation and contract claims, at the Employer's request, which in effect terminated that contract and left the Employer free to deal with Intervenor's independent claim of majority representation. It was not material in these circumstances that the employees did not specifically approve the assignment steps taken by the Teamsters.[2] We also reject the Petitioner's further contentions relating to the validity of the contract. It is evident from the record that Thalmayer, who signed for the Intervenor and deleted from the agreement the initial draft inclusion of Local 300 as a party, was duly authorized to act on behalf of the Intervenor as well as its Local 300. As the contract expressly provides that the Intervenor shall be the bargaining representative for all employees in the unit, we find it is not a "members only" contract. Nor do we find any basis for removal of the contract as a bar by reason of the insurance fund

[2] Cf. *Cleveland Decals, Inc.*, 99 NLRB 745.

provision, as the contract in no way limits eligibility for insurance benefits to members of the Intervenor. Accordingly, we hold that the Intervenor's contract effectively bars the petition, which was untimely filed subsequent to the contract's execution. We shall therefore dismiss the petition.

[The Board dismissed the petition.]

Mississippi Lime Company, Petitioner *and* Local 829, International Hod Carriers, Building and Common Laborers Union of America, AFL-CIO *and* Ste. Genevieve Local 169 affiliated with United Glass and Ceramic Workers of North America, AFL-CIO. *Cases Nos. 14-RM-193 and 14-RM-192. September 4, 1959*

DECISION, ORDER, AND CLARIFICATION OF CERTIFICATIONS

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, a consolidated hearing was held before Ray E. Breckenridge, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Rodgers and Bean].

Upon the entire record in these cases the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. Local 829, International Hod Carriers, Building and Common Laborers Union of America, AFL-CIO, referred to herein as Hod Carriers, and Ste. Genevieve Local 169, affiliated with United Glass and Ceramic Workers of North America, AFL-CIO, referred to herein as Glassworkers, claim to represent certain employees of the Employer.

3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. However, the parties agree that the petitions are tantamount to requests for clarification of certifications held by the Hod Carriers and the Glassworkers. As the Board will consider and decide requests for clarifications of certified units, the following decision is issued even though no questions concerning representation exist.[1]

The Employer is engaged in mining limestone and manufacturing lime and related products at its facilities at Ste. Genevieve, Missouri.

[1] *The Bell Telephone Company of Pennsylvania,* 118 NLRB 371, 373.