

# National Association of Broadcasters

1760 N STREET, N. W. \* \* \* \* \* WASHINGTON, D. C.

January 22, 1943

SPECIAL A. F. of M. BULLETIN

No. 15

## Petrillo Hearing Before Senate Sub-Committee

This issue contains excerpts from the official record of 515 typewritten pages of testimony given by James C. Petrillo, President of the American Federation of Musicians, and Joseph A. Padway, counsel for the Union, at the hearing before the Subcommittee of the Interstate Commerce Committee of the United States Senate on January 12, 13 and 14th. While the record has necessarily been shortened, every effort has been made to have the excerpts accurately reflect the testimony as a whole, and a reading of these excerpts will reward every broadcaster.

Informed broadcasters will also find in the testimony numerous misstatements and inaccuracies which, in the interest of expeditious circulation of this bulletin, the NAB is not at this time attempting to point out or to contradict. The NAB has been assured by the Senate Committee that it will be afforded an opportunity to set forth its side of the controversy, and at this time the industry's position with respect to Mr. Petrillo's ban and to his "unemployment problem" will be made known.

Mr. Petrillo frankly admitted that he called a strike and withdrew the services of all his musicians from recordings without ever having formulated or made demands, and that, if the affected people had sought to find out what he wanted, all that he could have said to them was that he wanted more employment and it was up to the affected industries to find some way of giving that employment. For this, and for his ignoring of the public position in the controversy, Mr. Petrillo, as the record shows, was strongly criticized by members of the Committee.

The basic theory which underlies Mr. Petrillo's action was indicated by his testimony. He admitted that he had no information as to what percentage of the members of his union were primarily engaged in crafts and occupations other than musicianship, although he admitted that the number was substantial. He admitted that radio had furnished employment opportunities for musicians, and was unable to give any concrete examples of musicians who had been displaced or supplanted as a result of radio. Under these circumstances, his claim would appear to be that the broadcasting industry has an obligation to men whom it does not employ, never employed, and did not supplant. Obviously, the members of Mr. Petrillo's union today are not the same persons who were members of the union when the phonograph was invented over fifty years ago. Mr. Petrillo's union has grown since that date from a membership of less than 10,000 to 138,000; and the membership has increased by 20,000 during the last decade when commercial broadcasting made its greatest strides.

The Committee pointed out that the demand for more employment came with particularly bad grace at a time when our nation is struggling with a shortage of manpower. Mr. Petrillo himself admitted that if the war continued for only a few months more, his union would be unable to meet even the present basic needs of broadcasters for musicians, and that 18% of his union membership was already in the armed forces.

In the course of his presentation, Mr. Petrillo made a number of concessions:

1. He agreed to formulate his demands in writing after meeting with his Executive Committee on February 1st, and to deliver a copy of these demands to the Senate Subcommittee, as well as to make

them available to any parties who might be named in the demands. Mr. Padway pointed out that these demands would be addressed to specific users of music, including members of the NAB, and that the union would not deal with the NAB as an association.

2. He conceded that there were many small stations which could not be expected to employ musicians.

3. He admitted that his present order excluding all amateurs from the air required modification so that amateur organizations could be heard on the air, albeit on a basis satisfactory to the A. F. of M.

4. He stated that he might have been mistaken in the tactics he pursued and agreed that there was some justice in the position of employers.

5. He agreed that certain practices of the union in connection with standbys had gone too far and conceded that such practices as demanding the employment of union musicians as "pancake turners" were basically unsound.

6. He admitted that in issuing his order against recordings he had not given full consideration to the effects of this order on private, educational and commercial use.

Despite these admissions, Mr. Petrillo maintained his basic position without substantial change. He reiterated his refusal to permit records to be made and refused a request of the Committee that he withdraw the ban even for a short time. He charged that the public feeling against him was due to an "expensive publicity campaign composed of nothing but false issues and personal abuse" initiated by the National Association of Broadcasters, overlooking the fact that the widespread editorial condemnation and news comment which followed Mr. Petrillo's actions, and which were reflected in thousands of newspaper items, preceded the earliest date upon which the NAB took any action whatsoever with respect to this matter.

Readers of the excerpts from the testimony will note how Mr. Petrillo shifted his position on what he wanted during the course of questioning.

It may be of interest to broadcasters to note that Judge Barnes has set January 25th as the date for hearing arguments on Mr. Petrillo's motion to dismiss the government's new complaint against him, and that a date in February will be set for hearing the Government's argument for a preliminary injunction against Mr. Petrillo and his union.

## Senator Clark's Opening Statement

When this order was first published on the 25th of July, 1942, it excited the alarm of the War Department, the Navy Department, the Marine Corps, the Office of Civilian Defense, the Treasury Department, and the Office of War Information. Consequently a staff meeting was held, or at least a meeting was held, at which representatives of each of these departments were present. Among others attending that meeting there was present Mr. Elmer Davis, who was the director then and is now

of the Office of War Information, one of the functions of which office is to disseminate throughout the United States and throughout the personnel of troops abroad, all information pertinent to the war and therefore vitally interested in maintaining a free, open and efficient communications system in the United States.

Consequently, three days after this meeting, namely, on July 28, 1942, Mr. Davis, speaking for himself and for the Army, the Navy, the Marine Corps, the Treasury Department, and the Office of Civilian Defense, addressed a letter to Mr. James C. Petrillo, President of the American Federation of Musicians, in which letter he, first, set out a letter which Mr. Petrillo had previously written to the President of the United States. That letter was written shortly after Pearl Harbor, namely, on December 27, 1941.

Mr. Davis called Mr. Petrillo's attention to the fact that in that letter he had stated that each and every member of the American Federation of Musicians and its officers:

"pledge themselves on this occasion to do everything possible to aid in the fight for freedom."

There are other quotes, but the letter of Mr. Petrillo to the President ended up with this new slogan, and I quote him again:

"To this new slogan, this new theme for the New Year, then, the Federation dedicates itself: Music For Morale."

After Mr. Davis had quoted the letter of Mr. Petrillo to the President which I have adverted to, he then stated in his letter to Mr. Petrillo:

"Despite this public and published pledge you sent a communication on June 25, 1942, to all companies engaged in the making of phonograph records, electrical transcriptions, and other forms of mechanical recording of music, advising them as follows:"

And then he set out the order of June 25, 1942. He further called Mr. Petrillo's attention to the fact that if this order remained in force and effect three serious consequences would ensue, all as he viewed it detrimental to the morale of the people at home and to the morale of the armed forces on the far-flung battle-fronts of the world.

Mr. Davis ended up his letter to Mr. Petrillo with this paragraph:

"Therefore, on behalf of the people of the United States and on behalf of the War Department, the Navy Department, the Marine Corps, the Coast Guard, the Treasury Department, the Office of Civilian Defense, and the Office of War Information, I sincerely urge that you consider it your patriotic duty to stand by your pledge of December 27, 1941, and withdraw your ultimatum of June 25, 1942."

On July 31, 1942, three days after the dispatch of the letter I have just referred to, Mr. Petrillo replied to Mr. Davis at some length. He set out that the American Federation of Musicians would make recordings directly for the armed services; that is, if the Army put on a show or wanted a recording of its own band or something of the sort, the American Federation of Musicians would permit the making of recordings of such music. He further stated that they would make recordings, and I quote from his letter:

"at the request of the President of the United States."

As far as I know there has been no such request made directly by the President of the United States. In any event, after some explanatory material in which he set out the part that the American Federation of Musicians was playing in the war effort, he ended up his letter as follows:

"I cannot grant your request to cancel the notice that the American Federation of Musicians' members will not play for transcriptions or records."

Then he again mentions the two other exceptions. So the ban went into effect but certain exceptions were made for about a month, and certain special permissions given to make recordings during the month of August. Later, without notice so far as I know, these special permits were refused further. So that with the exception as I say of two or three specially permitted recordings we have had to subsist on cold storage music since the first day of August, 1942.

\* \* \* \* \*

Mr. James Lawrence Fly, Chairman of the Federal Communications Commission, addressed a letter to Mr. Petrillo in which he too asked that the ban be lifted, and was met with a rather lengthy letter explanatory, neither of which I will read now because both will be made a part of the record; but the substance of it was a refusal to lift the ban or to rescind or modify the order of June 25th.

Naturally this ban excited considerable comment in the press and considerable apprehension among many persons whose financial investments and one thing and another depended upon a continuous flow of free music to the American people.

\* \* \* \* \*

I personally do not care who is to blame. If the blame does not attach either in full or in part to Mr. Petrillo and his American Federation of Musicians, then it is the purpose of this subcommittee if possible to find out to whom it does attach. I do know this, that I am willing to take the word of Mr. Davis and the representatives of our armed services, and the Federal Communications Commission, and the Department of Justice, that this ban is going to become progressively detrimental, and probably suicidal, to our American communications system and to the morale on the home front as well as on the battlefield.

\* \* \* \* \*

Mr. Fly's testimony is replete with charts and graphs and figures showing very conclusively and beyond dispute that a large number of the radio stations of this country are absolutely dependent upon the continuous and free flow of commercial recordings for their very existence. I think he held no particular brief for the network stations, who probably can take care of themselves, because the networks, as a rule, rely upon live musicians for their programs. But there are several hundreds of little stations, with no network affiliations, that depend for as much as 80 to 100 percent of their music time on recorded music, who will unquestionably, in his judgment, be forced to the wall if this ban stays in effect.

Mr. Petrillo. Mr. Chairman and members of the committee, my name is James C. Petrillo. I am President

of the American Federation of Musicians, an affiliate of the American Federation of Labor. I was elected to the office of President in June, 1940.

I am pleased to respond to your invitation to appear before this Committee and give you such help as I can.

Let me say at the outset that in order for the Committee to be properly and fully informed on the subject of the Resolution, it is necessary to make a full investigation of the industry. Only by such investigation can the tremendous control of the entire music industry, including record making, radio broadcasting and the like, be shown to be in the hands of a few giant corporations who have become powerful and prosperous on the original work, and at the expense of, the live musician. The American Federation of Musicians respectfully requests this Committee to look into the charges frequently made, and which we believe to be true, of monopoly, interlocking arrangements and large profits.

This information can only be obtained by a thorough inquiry by this Committee into the inner workings of the industry and a complete examination and cross-examination of the higher officials managing the industry, as well as a full and complete examination of all records, data, and information gathered by the FCC.

Much has been written and said about this controversy by those whose interests are opposed to the interests of the American Federation of Musicians and its members. What has been said has not been for the purpose of enlightening the public, but for the purpose of abusing and insulting the American Federation of Musicians and its officers, on the theory that "if you cannot answer a person's arguments, you can still call him dirty names".

The worst offender in this regard has been the National Association of Broadcasters and some of its officials. The American Federation of Musicians has not adopted similar methods by way of defense. I hardly think that the members of this Committee can be unaware of the fact that the National Association of Broadcasters has engaged in an expensive publicity campaign composed of nothing but false issues and personal abuse.

In so far as the American Federation of Musicians is concerned, we welcome an investigation, providing it is full and complete and will investigate the entire industry in all its operations. Unless this is done, the Committee cannot obtain a thorough understanding of the problem.

I believe that I can be of most service to this Committee by dealing with the practical side of the question, and I think that this can best be done by answering such questions as you may desire to put to me. I shall try to answer such questions to the best of my ability. In so far as legal and economic information is concerned, our Counsel, Judge Padway, will present a full statement on these matters.

**Mr. Petrillo's Testimony**

SENATOR WHEELER. I would like to ask Mr. Petrillo a question. What proposal have you got for the settlement of the problem? WHAT DO YOU WANT?

Mr. Petrillo. Senator, this is not a problem, in our opinion, that can be settled by the American Federation of Musicians by itself. This is a problem, Senator, that

can only be settled by the recording and transcription companies and the American Federation of Musicians sitting around a table and both being fair with one another. Then and then only can this problem be settled.

Senator Wheeler. What do you want and whom do you want it from? The committee is entitled to know that.

Mr. Petrillo. I will give the committee whatever information I can, Senator.

Senator Wheeler. You ordered a strike of your men, or it amounted to a strike. First of all, I have not seen any place just what you are striking for and what you want. The committee is entitled to know, first, what you want and from whom you want it.

Senator Tobey. Mr. Chairman, may I put in a word?

Senator Wheeler. Certainly.

Senator Tobey. I was interested in Mr. Petrillo's partial reply to the question. In his answer he said, "This can only be settled if the musicians' union and the broadcasters sit around a table together."

I think he is laboring under a false and incomplete premise. That is not all there is to it, as I understand it. There is a person in this country to whom we refer as John Q. Public. We are interested in Mr. Public in this matter and we propose to study it from that standpoint also and have something to say about what is coming out of the situation. That is why you are here and why we are here today. So, please bear in mind that it is not only the musicians' union and the broadcasters, but the public of America, the armed forces, individuals and radio stations, that we are representing, as well as you.

Mr. Petrillo. Senator, I did not know that the committee would like to sit around the table; I did not know that.

Senator Tobey. The interests of all the people have to be taken care of.

Mr. Petrillo. We understand that; and the American Federation of Musicians is going to do nothing to take away music from the public.

Senator Wheeler. But you have taken it away from the public; and that is the problem that this committee is interested in. After all, it seems to be the philosophy of some of the labor leaders and some of the leaders of industry in this country that all they have to do is to get together, and to hell with the public. The public has an interest in all these matters, just the same as the industry and just the same as labor. What I want to know—and I will repeat it—is, what do you want? Why did you go on strike? What do you want and from whom do you want it?

Mr. Petrillo. That is sort of a hard question to answer. I will do the best I can. Up until this moment, Senator, we have not been asked why we have gone on strike against the machine. That is what it amounts to.

\* \* \* \* \*

Senator Clark of Idaho. When you call a strike, do you not think that the American people are entitled to know what you want?

Mr. Petrillo. The American people we always keep in mind. But we have an economic problem here. When a musician makes a machine that destroys himself it is a question of who is going broke first, the radio stations, the recording companies, or the American Federation of Musicians. We say that we do not believe that anybody

should go broke. We say we do not believe that the radio stations should dry up, and we will not, gentlemen, make canned music under conditions formerly made by our people, because to continue, I dare say there would be no livelihood for the professional musician in two years.

\* \* \* \* \*

Senator Wheeler. What do you want?

Mr. Petrillo. We want more work.

\* \* \* \* \*

Senator Clark of Idaho. The very fact that those transcriptions go out through the country and that tune is plugged and plugged and plugged in every phonograph and coin-operated phonograph and on every radio program in the country by electric transcriptions, enables him (Paul Whiteman) to clean up, he and his musicians and other musicians playing that same tune.

Mr. Petrillo. You are right; but we are not interested in making Paul Whiteman richer than he is. We are interested in using Whiteman as a club to put some of our unemployed people to work.

Senator Clark of Idaho. But the fact that he makes this recording which is plugged, because people will listen to it because it was made by Paul Whiteman, puts thousands of other dance bands playing that tune. The other dance bands could not put it over themselves unless it was put over in this way.

Mr. Petrillo. I cannot agree with you there. Partially, yes. But that is the trouble with the industry. There are only a few bands doing all the jobs.

\* \* \* \* \*

Senator Clark of Idaho. Why are they (the musicians) not in defense industries?

Mr. Petrillo. They do not want to go into defense industries. They want to be musicians. We will all get into defense industries if Uncle Sam sends for us.

Senator Clark of Idaho. You mean, they would rather walk the street?

Mr. Petrillo. After all, these people practiced music for ten or fifteen years and they have a right to make a living in their profession. But if Uncle Sam said, "You are all going to make munitions and get off the street"—

Senator Clark of Idaho. The automobile dealers have gone out of business.

\* \* \* \* \*

Senator Wheeler. But I do want to know, and I think the public wants to know, because nobody has stated what you want and from whom you want it. You have given a great deal of thought and study to the subject, and your organization ought to have something in mind so that you could tell the committee. I think you owe it to yourself, because, frankly, whether it is propaganda or whatever it is, the fact is that the American public is very much disturbed and a great many people feel that by your actions you are doing a great disservice to the labor movement in this country. Can you not give us just exactly what your solution is? It may not be one that will be accepted by the industry or the broadcasters or somebody else; but you ought to have in mind what your views are as to what the solution of the problem is, what you want and from whom you want it. Tell us that, if you will.

Mr. Petrillo. Of course, Senator, I believe you know by this time in the few minutes that I have been sitting here that I am not trying to duck anything; I don't want to say anything that I will have to retract. That I don't want to do. I told you in the beginning that it is a hard question to answer. It seems to me that the people we have got to do business with are the recording companies. But the radio companies have taken on the fight instead of the recording companies. Of course I can understand that they will be hit indirectly if the recording companies don't make any records because of the action of the American Federation of Musicians. Naturally it is going to hurt the radio stations, and I can understand why they are in this fight. But if the recording companies come to the Musicians' Union and ask us the same question that you just asked me, Senator, the only thing I can say would be that under the conditions that those records were formerly made by the musicians, they will not be made in the future unless the recording companies and the musicians can get together with the public, like Senator Tobey said, or anyone else that would like to sit in. I believe that the problem could be solved. You know, Senator, there is work involved in this thing. There is no use in beating around the bush, as far as I am concerned. We want more work. We are the only labor organization that makes the instrument that destroys itself. Everybody has been fighting machinery, but mostly everybody who has attempted to fight machinery has been unsuccessful because they have no control over the situation, any more than the ice man who delivered the ice found himself out of business because the Frigidaire was installed in the home. But the ice man had nothing to do with the making of the Frigidaire. I feel sure that if the ice man had had something to do with it, knowing that he would be put out of business, I don't think he would have made it.

Senator White. Do you mean that you are against the recording instruments and electrical transcriptions because they compete with the live musicians, as you call them?

Mr. Petrillo. That is right.

Senator White. Is that the only reason you have?

Mr. Petrillo. Because it competes with us and takes our work away; yes.

Senator White. Is that the only reason?

Mr. Petrillo. Yes.

\* \* \* \* \*

Senator Wheeler. We have got to the point where you stated that they were putting your people out of business. How many men in that union also work on the side, throughout the country?

Mr. Petrillo. Senator, that is a pretty hard question to answer. We have lawyers, doctors, and what not who play their violins or other instruments and earn a few dollars and go to school, and after they get their diplomas they drop their instruments; but some remain in the union.

\* \* \* \* \*

Senator Wheeler. I have represented a lot of unions and have been attorney for a lot of unions, and if a union goes on strike it has some idea in mind about what it is asking for. It is asking for higher wages or shorter hours or for some specific thing, so that there will be something upon which they can bargain. The company says, "We

don't want to give you shorter hours," or they say, "We can't give you higher pay." You ought to have some plan formulated in your mind so that you can sit down with people and tell them what your plan is. Do you want more money? Do you want shorter hours? Do you want these recording companies to pay a royalty on all of these recordings to the Musicians' Union, or just what is it you do want?

Mr. Petrillo. We are in a very peculiar position. We had a man here by the name of Thurman Arnold who has been after me ever since I have been president of this Federation, and he has been attacking me, since I have been president, in most of his speeches around the country. \* \* \* Anything we put in writing, Mr. Thurman Arnold says is a secondary boycott; it can't be done. You can't do this, you can't do that. We had a \$3,000,000 contract with broadcasting companies signed in 1937, and on the expiration of the contract we were told, not by Mr. Arnold, but by the broadcasting company, that Mr. Arnold said, "If you do that we will put you in the can for five years." And we had to drop the contract.

\* \* \* \* \*

Mr. Petrillo. If you want me to make a direct answer, the only thing I can say is that we want more work or we will not make the recordings.

Senator Clark of Idaho. More work from whom?

Mr. Petrillo. From the recording companies.

Senator Wheeler. How are they going to give you more work?

Mr. Petrillo. That is up to them.

Senator Wheeler. No. That is where you are making a serious mistake. You are simply saying to the industry, "You have got to make more work." You do not tell them how. You are going on strike and you say, "We want more work." But you do not tell them how you are going to get it. You put yourself in a perfectly untenable position, in my judgment, before the American public. When you put yourself in that position you are not only doing yourself a disservice and your union a disservice, but you are doing the labor movement in the United States a real disservice, in my judgment, because you are putting it in bad. If you do not know you ought to know that there is at the present time, because of certain situations that exist in this country, a feeling not only on the part of business people, but on the part of farmers in this country against labor. There is a tremendous sentiment growing against labor unions. I am not one of those in favor of destroying labor unions. But if some of these labor leaders keep on in the way they have been doing in the past they are going to destroy themselves. I do not want to see the labor movement destroyed simply because temporarily they feel they are in a position of power. That is no reason to create public sentiment to such an extent that labor unions are going to be destroyed.

Mr. Petrillo. Let me see if I can't answer you this way. I have a note here that says we have 201 stations in the United States today that receive chain programs. They receive our finest symphonies and orchestras over the air without any cost. They receive our name bands from the hotels and cafes without any cost. They buy and play all the recordings.

They not only get all this free of charge from the musicians, but the chain companies pay them for taking commercial programs. Now, in 201 stations in the United

States we haven't got one live musician on the pay roll, and certainly not one of these 201 stations could live without the American Federation of Musicians. Now, we haven't got one man in the radio stations. Now, gentlemen, certainly that is not fair.

Senator Wheeler. Well, now, you are getting away from the proposition that you made a while ago. Now you are saying, as I gather it, that you want these 201 stations in the United States to employ musicians. Is that all you want?

Mr. Petrillo. Yes.

Senator Wheeler. Well then, you are not asking that the recording companies put more men to work, are you?

Mr. Petrillo. The thing is so complicated, Senator, that a direct answer is nearly impossible, because they are all together, the recording companies, the transcription companies, and the radio stations.

\* \* \* \* \*

Senator Clark of Idaho. Have you asked either the recording companies or any representatives of the radio broadcasting institutions or the coin phonograph industry to meet with you and discuss terms?

Mr. Petrillo. No.

Senator Clark of Idaho. Have you ever heard of a strike, in all your experience in the labor movement, that has been called without previously making certain demands upon the people against whom you struck?

Mr. Petrillo. No, but we are in a unique position.

Senator Clark of Idaho. Why are you in a unique position?

Mr. Petrillo. Because we make the instrument that destroys the musician.

\* \* \* \* \*

Mr. Petrillo. Suppose we have in mind not making recordings at all any more.

Senator Clark of Idaho. Do you have that in mind?

Mr. Petrillo. No, but suppose we did.

Senator Clark of Idaho. Well, I do not think we are interested in hypothetical cases.

Senator Wheeler. Let me say, if I may interrupt, if you did have that in mind, if you simply said that you would, you would soon find your labor organization out of business in this country—do not make any mistake about that—because you would get legislation in Congress to take care of that situation.

\* \* \* \* \*

Senator Wheeler. So, Mr. Petrillo, the American public is not going to stand for any union, I do not care what it is, what union it is, or how powerful it is—the American public is not going to stand by and simply say or let a union come in and say, "We are going to stop industry; we are going to stop the manufacture of this particular thing; we are going to stop progress in this country."

Mr. Petrillo. I agree with you.

Senator Wheeler. I think that your first obligation, not only to your own union, but to the people at large, is to have some formula that you can submit and say "This is what we want," and then see if it cannot be worked out upon a practical basis so that your union won't suffer and so that the industry won't be put out of business and so that the general public can get the benefit of good music throughout the United States.

\* \* \* \* \*

Senator Tunnell. Mr. Petrillo, what percentage of the musicians of the country belong to your union?

Mr. Petrillo. Senator, I will say right now that every professional musician in the United States and Canada belongs to the American Federation of Musicians.

Senator Tunnell. Every one does?

Mr. Petrillo. Yes, sir.

Senator McFarland. Now, is not that your unique position that you are talking about?

Mr. Petrillo. I will say yes.

Senator McFarland. Now, if that is correct, following up Senator Wheeler's question, is it not absolutely necessary that you stop all recordings in order to accomplish your purpose?

Mr. Petrillo. Yes.

Senator McFarland. And that is the only answer?

Mr. Petrillo. That is right.

Senator McFarland. That is all.

\* \* \* \* \*

Senator Clark of Idaho. Now, the fact of the matter is, your strike was called without giving anybody, either the industry or this Congress or the public any intimation of what demands you were after, was it not?

Mr. Petrillo. Well, I didn't think, in the beginning, we were going to run up against like this, to be frank with you.

\* \* \* \* \*

Mr. Petrillo. We made demands on the recording companies in 1937.

Senator Clark of Idaho. What were those demands?

Mr. Petrillo. The same kind of demands that we would probably make now if we got into a meeting, and that was to try and solve the problem whereby the musician was committed to be destroyed in making these records.

\* \* \* \* \*

Senator Clark of Idaho. But now, in your 1942 ban, did you make any demands on the recording companies or any member of the industry affected, before you struck?

Mr. Petrillo. Not as yet.

Senator Clark of Idaho. Not as yet. So, since August 1st you have had in force and effect a ban here, which all of the officers of the Government charged with conducting this war say is injuring the national morale, and as yet you have not told either the public or the industry what you want; is that not true?

Mr. Petrillo. That is true.

\* \* \* \* \*

Senator Tobey. One of the incidents which has aroused widespread hostile comment to your order is in that instance where you prohibited the broadcasting by a high school orchestra at Interlochen, Michigan, and my mind is not quite clear as to that situation. I have seen some justification and some adverse comment.

\* \* \* \* \*

Mr. Petrillo. It is also necessary for the self-protection of the professional musician. Since the outbreak of the war, Army and Navy bands are on the air any number of times each day. This of course you can easily understand has taken up much music time on the air, so much so that the American Federation of Musicians was beginning to wonder whether there was going to be any work left for the professional musician. It is easy

to understand that the more free music the radio stations receive, the less need for the professional. That was the primary reason for opposing the broadcasting of the concerts from Interlochen. It will be a sorry day for the professional musician if two-thirds of the air time is taken up by nonprofessionals. You must remember that this already is an overburdened profession.

\* \* \* \* \*

Mr. Petrillo. In some of our locals unemployment reaches 60 percent; in some 75 percent; and in other locals as high as 90 percent. If this continues, there will be no incentive for our children to become professional musicians, because after having studied for many years they will find themselves in a starving profession.

\* \* \* \* \*

Let us see what the American Federation of Musicians has done for the happiness of the home in supplying good music. Today, as in the past, its symphony orchestras are permitted to go over the air without any charge to the broadcasting companies. Its name bands are also permitted to go over the air without any extra charge to the broadcasting companies. The final result is that the public gets the benefit. I can truthfully say that for every dollar the broadcasting companies pay for musicians they receive \$4 worth of music gratis.

\* \* \* \* \*

Senator White. An amateur band is not a broadcasting band.

Mr. Petrillo. But all the music they give free of charge is still music to the radio stations, and the more music they can get free the less work there is going to be for the professional musician.

Senator Clark of Idaho. Does that follow at all? I think it would help the professional musician, by keeping up listener interest in music.

Mr. Petrillo. Senator, if they get a lot of music free of charge and our musician sits there in the studio and has nothing to do, then the time comes when the broadcasting company says, "We don't need those men any more. They are sitting around all year doing nothing." That is what we are worrying about.

Senator Clark of Idaho. Well, a lot of your men are sitting around doing nothing and getting paid too, aren't they?

Mr. Petrillo. That is because the broadcasting company is going to use that against us as a club some day and say, "We don't need those men; we can't use them."

Senator Clark of Idaho. That is highly speculative.

\* \* \* \* \*

Senator Wheeler. You have control over your musicians, do you not?

Mr. Petrillo. Yes; I do.

Senator Wheeler. Why do you not work it out with your union so that the musicians would have to divide up their time, so as to help support the poorer people or see that they get a larger share of the business?

Mr. Petrillo. Senator, I don't think that can happen, because these people play for advertising agencies. An advertising agency won't go on the air unless he can get Whiteman's band, and if he can't get Whiteman's

band, he will probably go and advertise in the magazines or the newspapers.

\* \* \* \* \*

Senator Tunnell. I would like to ask about this. I am getting, and I suppose every other member of the committee is getting letters along this line: when he bars children, educational institutions and even service bands from the air—what does that mean? How can you bar them from the air?

Mr. Petrillo. Well, as I stated before, Senator, we have a closed shop contract with the chain broadcasting companies.

Senator Tunnell. You just won't let them use the facilities?

Mr. Petrillo. We simply say to the broadcasting companies that if these bands play, we withdraw our services.

\* \* \* \* \*

Senator McFarland. Going back to Senator Wheeler's original question just a few moments ago, you stated a little bit ago that the real, unique position that you were in was the fact that you do control the musicians of the country. In that way you have prevented the recording of music; that is right, is it not?

Mr. Petrillo. That is right.

Senator McFarland. And you state, as I understand your position, what you want is more work and more money; is that true?

Mr. Petrillo. I won't say more money. I will say more work.

Senator McFarland. Well, you cannot work without money, can you?

Mr. Petrillo. That is right.

Senator McFarland. You can do plenty of work without money. It is the money you want.

Mr. Petrillo. What I mean is this: We don't want more money and more time on top of it.

Senator McFarland. Well, coming back to this question that I wanted to ask you, this ban—and I will call it "ban" instead of "strike"—this ban that you have made upon recording of music has been in effect about six months, has it?

Mr. Petrillo. Since August 1st.

Senator McFarland. Has that helped your organization up to the present time?

Mr. Petrillo. No.

Senator McFarland. Are you satisfied with your position at this time?

Mr. Petrillo. No.

Senator McFarland. Well, what are you doing about that situation?

Mr. Petrillo. Well, by the time we get through with the Federal Courts and the Senate investigation and another Federal Court case Monday, we don't know where we are at.

Senator McFarland. Well, the ban has been in effect for six months. Now, the people have suffered during that time, have they not?

Mr. Petrillo. I don't know whether they have suffered or not, Senator, because the live musicians are giving the people over the radio and over the chains all the popular tunes that they desire.

Senator McFarland. But you know, do you not, Mr. Petrillo, that there are a large number of stations that do

not even have hook-ups with these broadcasting companies?

Mr. Petrillo. Yes, I know that.

Senator McFarland. They are little stations. And the only type of music that they can get, good music, is from the chain broadcasting companies. Now, you would not want one of your good orchestras barred from the little towns out in the country, to those people, would you?

Mr. Petrillo. I don't know whether there is a station or city in the United States that hasn't got chain broadcasting.

Senator McFarland. Well, I can tell you that there are lots of them.

Senator Wheeler. Oh, yes, lots of them.

Senator Clark of Idaho. Lots of them.

Senator McFarland. Now, you would not want one of your good orchestras barred from one of those little stations, would you? They probably could not afford to hook up now.

Mr. Petrillo. They could not afford to pay it.

Senator McFarland. Did you stop and take into consideration that you were depriving the people in that little community of good music?

Mr. Petrillo. That may be so.

Senator McFarland. And do you think, Mr. Petrillo, really, now, that that is helping the cause of music, to deprive those people that happen to live in those localities, who are doing important work, mind you, in the United States of America, to help win this war right now—do you think that depriving those people of the benefit of good music that you put out is doing your cause any good?

\* \* \* \* \*

Mr. Petrillo. It isn't doing any good, no, not for the musicians nor the community. But now, let me say this: Are we to continue making records, knowing that we are going out of business? How about that angle of it? Are we to be considered at all as the makers of the music?

Senator McFarland. Now, I will answer you that question in this way: As has been said here many times, ordinarily when a man goes on a strike and he says, "Well, we are not going to do this", he has some object in mind. Now, that is what Senator Wheeler was trying to find out, what you are driving at; what you expect to accomplish. Now, you have admitted here that you haven't helped your cause by just putting the ban on. Where are you going? Where are you headed for? Maybe you are headed for a pitfall. Did you ever stop and figure that?

Mr. Petrillo. That may happen.

\* \* \* \* \*

Senator McFarland. I was trying to find out your position, because if you won't help, how in the world can you expect anyone to help you if you don't know what you want? That is what I am trying to get down to.

Mr. Petrillo. Senator, I might say this to you. If it was not for the Senate investigation, for the Federal courts, and certain department heads didn't interfere with this controversy, I believe we would have had a settlement by this time.

Senator McFarland. All right. If you had started to try to get a settlement before you put the ban on, maybe you would have gotten a settlement, but you did not do it. And, you stated a minute ago that you never made your wants known up to this date.

\* \* \* \* \*

Senator Wheeler. But, Mr. Petrillo, I did send for you and suggested that you and the industry get together, with some of the members of this committee, and see if we could not work out some program, and you sent word back to us that you did not want to meet with us, because of the fact that you felt you were going to get together. However, you never showed up. Now, it was not this committee, because I personally tried to get the industry and you together to try to work out something rather than have an investigation, or pass some law, because I do not want to see laws passed which are going to put labor organizations out of business. But, unless labor unions can work out their problem on a fair basis, you are very apt to get some laws which will be a great detriment to the labor organizations. Now, as the Senator said, you have not as yet stated what you want or how you expect to get it. Now, take your recordings. What arrangements can you work out with the recording companies that will give your men more work? Can you work out anything? Is there any possible way that the recording companies can give your men more work, if you suggest that that is what you want?

Mr. Petrillo. I think so.

Senator Wheeler. Tell us how.

Mr. Petrillo. Well, if we take the instance here of the 201 stations who employ no musicians—

Senator Wheeler. We are talking about recording companies now.

Mr. Petrillo. But the recording companies get the records and we make the records for them, and they push them out.

Senator Wheeler. All right, they push them out. But, you suggest, first, that the recording companies ought to be the ones to settle it. Now, as to the matter of the recording companies giving more work to your people, that is not possible, is it? They are giving all the work that they can give and using all the recordings that they can use, aren't they, so they cannot use more men. Now, that was your first proposition.

Secondly, you say that the local stations ought to use more musicians. Now, in the first place, a lot of these small stations cannot afford it. For instance, I know a station in Montana that had to move from one locality to another because of the fact that it could not make enough in that community to keep it going. I know other little stations just hanging on by a thread. Some of these stations could not hire more musicians if they wanted to and, in the second place, if they hired more musicians, the musicians in some of these communities would not be anything that would be satisfactory to the general public, like Paul Whiteman's orchestra or some of the other orchestras that are on the air. Now, I do not know just how you are going to do it, unless you make the stations employ some men, regardless whether they want to use them or not, or can use them.

You might go to a station and say, "Now, you have to employ so many musicians, whether you can use them or not, and let them sit around," but I do not believe the general public would stand for it.

Mr. Petrillo. I am in agreement with you, Senator, that there are many stations that can't afford any more of a payroll, whether it be musicians or anybody else. Those are not the stations we are after; I mean, if there is no money there, you certainly can't get it, and we know there

are a lot of them that can't pay. I am in agreement with you.

\* \* \* \* \*

Senator Wheeler. Here is the President's Report, 1940, in which he says: Our membership consists of fully one-half of non-professionals who are not entirely dependent on music for a livelihood but are of exceedingly high value to the American Federation of Musicians as a whole, that is, very valuable to the Musicians Union, because they pay dues to it, I presume. But, he says: Our membership consists of fully one-half of non-professionals who are not entirely dependent on music for a livelihood.

Mr. Petrillo. Now, there is probably thirty thousand of those men, whom we don't question as professionals now, that can't get a job in the music business. They just can't get a job. For instance, Senator, when the Movietone and the Vitaphone were installed in the theatres, we had twenty-two thousand professional men working in the theatres. Of those twenty-two thousand, today we probably have four thousand. Now, there are about eighteen thousand men who were thrown out on the streets, and I would say that most of those men today are working at something else, but still hold a card in the Federation, because they can't get a job in the music business.

\* \* \* \* \*

Senator McFarland. Mr. Petrillo, you admit that people out in outlying places who dicker around radio broadcasting stations, where they are deprived of this music it is a detriment rather than a benefit to your industry, do you not?

Mr. Petrillo. Well, I say that, Senator McFarland, for the reason that we do not want to deprive these people in such neighborhoods as have been discussed here so much all morning, of popular music.

\* \* \* \* \*

Senator McFarland. I understand that various schools, in order to teach students to appreciate music, particularly good music, play records for their benefit in classes. I am quite sure that is done.

Senator Tobey. Of course it is done. It is the common practice.

Senator McFarland. Mr. Petrillo, you by this ban have deprived such schools of that privilege. Do you not think that injures the music industry rather than helping it?

Mr. Petrillo. Frankly speaking, we never went into that. But we have never had any requests since the ban for the making of such records.

Senator McFarland. Then you will admit that before you issued your order placing a ban upon such recordings you did not carefully consider the far-reaching effect it might have upon your own industry as well as upon the people of the United States.

Mr. Petrillo. Of course, primarily we were thinking of the musician himself. I want to be fair with you about it, and will say, that that is what we had in mind.

Senator McFarland. But you have to have an audience, do you not?

Mr. Petrillo. Yes, we have to have an audience.

\* \* \* \* \*

Senator McFarland (continuing). Really I cannot understand the situation. I am trying to determine in my own mind where you are headed for. What is it really that you are asking for?

Mr. Petrillo. Let us indulge in this supposition: Suppose the musicians' union has made a mistake in not making a demand and the people are suffering for want of music. Now, do two things that are wrong make a right? Does that mean that the recording companies can say: If you don't make a demand we will not talk to you, but will go on about our business.

Senator Clark of Idaho. They have not said they would not talk to you, have they?

Mr. Petrillo. They have not said they would.

Senator Clark of Idaho. And you call a strike without asking them.

Mr. Petrillo. That is right, but what I am trying to get at is this, that if there has been a mistake made here, two mistakes do not make a right. I will tell you why these people do not come to see me. They are depending upon Congress to take care of them. They are depending upon the courts to tie us up. This is big business.

Senator Clark of Idaho. Haven't you got to the point of pretty big business by this time?

Mr. Petrillo. The workingman should get a part of the profits, surely. For instance, the violinist is entitled to a reasonable return for all of his efforts. He has practiced for 15 or 20 years to get a job.

Senator McFarland. I do not know what they are depending on. This much is sure, that you placed a ban upon the recording of music, which you yourself admit has hurt some people. You admit that some people have suffered by reason of it. You also admit that it has not gotten you anywhere, that you have not accomplished anything by it. It may be that we will have to find out from someone else what you want, but it seems to me you are the man from whom we should learn what you are asking for and what you expect to accomplish.

Mr. Petrillo. We expect to get more work.

Senator McFarland. And yet you admit that you have not gotten it by what you are doing.

Mr. Petrillo. I am satisfied we will get it if there is no interference.

Senator McFarland. You have not had any interference up to date.

Mr. Petrillo. Oh, yes, we have.

Senator McFarland. From whom do you hope to get work?

Mr. Petrillo. Well, it is a combination of people. For instance, the recording man says, "We cannot give you any more work because you make a record and it is put on the market and anybody can buy it." The radio fellow says, "You cannot work for us because you make a record and it goes on the market." So it is just a vicious circle. We do not know where to go.

Senator Clark of Idaho. And in the meantime you call a strike without knowing what you want.

Mr. Petrillo. That is our prerogative. We are not going to make canned music, and that is what it is called, under former conditions unless the Government makes us do so. I do not think the Government will do that because there is the musicians' side of the question. I told you this morning and I tell you now again, and repeat it and repeat it, that we do not want to put anybody out of business because that is neither sound practice nor good business. However, we do want to live, and we do want industry to live.

Senator McFarland. But you do say that as far as the record goes up to the present time, the only solution is to

stop making records so that people in the various localities will have to hear musicians personally?

Mr. Petrillo. We did that because we felt the recording companies would come in and ask, "What do you want?" which is just what you gentlemen are asking me here today.

Senator McFarland. And, I take it, you would not be able to tell them, just as you seem unable to tell us.

Mr. Petrillo. I would say, "Gentlemen, we need your help." I would say, "We would like to have you solve this problem with us."

\* \* \* \* \*

Senator Clark of Idaho. Mr. Petrillo, there are three major industries involved, apart from the public, with whom you are going to have to negotiate or they negotiate with you, if you make your demands known. There is the immediate objective of your ban, the transcription or recording companies. Next comes the people who buy records for radio use, the radio industry; and, third, is the coin phonograph industry. Now, I am not mentioning the home record industry, which is the right of the public to use records, but let us take these three seriatim: What do you want the transcription companies to do in order to change the conditions under which you have refused to make records?

Mr. Petrillo. We now come back to the same question that Senator McFarland asked me.

Senator Clark of Idaho. Whose question remains unanswered. In the hope of facilitating an answer I am trying to break it up into three parts. Under present conditions how can the transcription companies give more employment to members of your union?

Mr. Petrillo. The first thing a transcription company makes is the master record, and then they make thousands of additional transcriptions. But if they are able to say to a small radio station, such a station as we are trying to help here: You may have this transcription for a show tomorrow afternoon but it is going to cost you \$100, and after you are through with it for that use you must ship it back to us so we may put it back in our library service, you can see where you are. Well, right there is one fee, and they probably get a thousand fees out of that record. Why is it that we cannot make a thousand fees out of the record? We make the record in the first place.

Senator Tobey. Is it not possible that a plan can be developed whereby those who produce the music, your union members, through the medium of recording, can have some licensing plan or some rental plan, may receive some increment more commensurate with their services as professional musicians?

Mr. Petrillo. We think that should be done.

Senator Tobey. Can you accomplish that?

Mr. Petrillo. I think so.

Senator Tobey. And some such plan would please you?

Mr. Petrillo. Yes, sir.

Senator Tobey. And would please your musicians?

Mr. Petrillo. Yes, sir.

Senator Tobey. And would please the recording companies?

Mr. Petrillo. Yes, sir.

Senator Tobey. And out of some such plan you would all be able to live?

Mr. Petrillo. Yes, sir.

\* \* \* \* \*

Senator Clark of Idaho. Then I take it you are willing to state to this subcommittee that at the request of the President of the United States you will lift the ban which you have heretofore imposed.

Mr. Petrillo. After explanation to the President of the United States of our position in the matter and he finally decides, especially now, in wartime, that it should be done, to lift the ban and continue the making of transcription recordings for the duration of the war, yes, I say the request will be granted.

\* \* \* \* \*

Mr. Bingham. What survey was made by the American Federation of Musicians to determine the extent of unemployment, either in June of 1941, or June of 1942, or July of 1942, before the ban went into effect?

Mr. Petrillo. Well, the only survey we have is that of resolutions that came in at every convention, and the introducer of a resolution will always start off by saying "You know, we have to go back home, and we must bring something back home to our boys. We cannot sit idly by in convention and merely pay bills and reelect officers. We have so many men out of work." For instance, we are every year taking so much money out of our treasury to feed the unemployed. In New York City in the last three years the treasury spent something like \$900,000 to feed unemployed musicians in that jurisdiction. In Chicago we spent \$90,000 for the same purpose last year. That is our survey. But we have some figures here if you would like to have them.

Mr. Bingham. I should like to have whatever your survey may show. As I understand the situation no survey has ever been made; that all that you have done is to take resolutions introduced at conventions and used those as a basis for unemployment.

Mr. Petrillo. That is right.

Mr. Bingham. Then you have no definite idea as to the extent of unemployment among your members?

Mr. Petrillo. Yes, we have an idea, such as speeches made in conventions, and so on.

Mr. Bingham. Of your 138,000 members, how many are permanently unemployed?

Mr. Petrillo. That is a hard question to answer.

Mr. Bingham. I mean, not engaged in any gainful occupation.

Mr. Petrillo. That is hard to answer.

Mr. Bingham. In other words, you do not know?

Mr. Petrillo. I could make a guess, but you do not want that.

Mr. Bingham. You have no survey?

Mr. Petrillo. We have a survey made in the last three days.

Mr. Bingham. Then, I take it, you made a survey in January, 1943, to substantiate a guess on your part that would justify you in placing a ban on all recording of music in general, effective as of August 1, 1942.

Mr. Petrillo. I will say, if it will do you any good, that at one time we had 16,000 musicians on W. P. A.

Mr. Bingham. When was that?

Mr. Petrillo. About 1938. Then it went down to 12,000, and 9,000, and 6,000, and I think the last figure showed 4,000 because the budget was being cut.

Mr. Bingham. What is it now?

Mr. Petrillo. It is 4,000 musicians working for W. P. A.

\* \* \* \* \*

Mr. Petrillo. We have many such musicians who play Saturday night and Sunday. They have a job of work in the daytime and use music as a sideline.

Senator Clark of Idaho. On your own statement of this morning over 50 percent of your membership is comprised of musicians of that kind.

Mr. Petrillo. I do not think that was my statement. I think perhaps that was the statement of the former president, in 1940.

Senator McFarland. Perhaps a great many of those people would use it as a sideline, but not by choice.

Mr. Petrillo. No, not by choice, and a great many of them—and I want to be perfectly fair with you, so I will say, a great many of them do use it by choice.

\* \* \* \* \*

Mr. Bingham. Was anybody benefited by your ban of the Interlochen orchestra?

Mr. Petrillo. No.

Mr. Bingham. Will you tell me who did benefit?

Mr. Petrillo. As I told you this morning, it is the employers' idea of getting as much free music as possible, so that the day will come when they will say to Petrillo or his executive board, we have 75 men in the New York studio. They haven't worked 14 days out of 52, and we are not going to pay them any more, and we don't need them any more.

Mr. Bingham. That is the fear that you have?

Mr. Petrillo. Yes.

Mr. Bingham. But nobody has made that statement to you, that this is the proposal of N. B. C.?

Mr. Petrillo. No. But I have been dealing with employers too long not to know that they do not pay for nothing.

\* \* \* \* \*

Senator White. If you are applying the principle you enunciated and which you said dictated your action in the Interlochen case, that you took them off the air because they interfered with professional musicians, why wouldn't the application of that rule take off the air all these thousands of school and Legion orchestras and bands?

Mr. Petrillo. There are no more amateur school bands on the air. They are all off. That is an answer to your question if I understand you correctly.

Senator White. Do you mean to say there are no school bands now broadcasting at all?

Mr. Petrillo. None today. They are all off the air.

Senator White. When did that happen?

Mr. Petrillo. In the past four or five months.

Senator White. Was that at your instigation?

Mr. Petrillo. Yes, sir.

\* \* \* \* \*

Mr. Petrillo. There are no amateur bands or orchestras on the air today.

Senator White. And they are off the air because of your orders or representations or whatever you may choose to call them?

Mr. Petrillo. That is right.

Senator White. And you have taken them off the air because you do not want them to interfere with professional musicians?

Mr. Petrillo. That is right.

\* \* \* \* \*

Mr. Steeper. There are 11,059 out of these twenty Locals that are represented, who are employed full-time. Then there are 3,972 employed part-time. The balance is 48,245 unemployed. We took 15 per cent off for men in service, leaving a balance of 41,209.

Mr. Bingham. Unemployed as musicians?

Mr. Steeper. Yes, sir.

Mr. Bingham. Mr. Petrillo, your position is that anybody who joins your Union is entitled to earn his living as a musician?

Mr. Petrillo. No. We have some bad musicians.

Mr. Bingham. How many?

Mr. Petrillo. Well, I don't know how many.

Mr. Bingham. You have been doing some guessing, could you make a guess?

Mr. Petrillo. I could only answer that question by telling you what I told you this morning, that a musician is listed according to his ability by the employer and his director and not by the Union.

\* \* \* \* \*

Mr. Bingham. With reference to the Detroit Symphony Orchestra which you talked about this morning, I again quote Variety of October 28 to the effect that musicians are good mechanics, that their expert fingers are valuable in war work; and the next item mentions the names of members of the Detroit Symphony Orchestra who are now working in war plants, and it is estimated that 60 percent of Motor City musicians are doing full time defense work in war plants.

Mr. Petrillo. Don't we come back to music culture again? What is going to happen to our music culture?

Senator McFarland. Music culture is going to disappear if we do not win this war. That is the first and most important thing.

Mr. Petrillo. I agree with you. That is the first. I will not argue with you there.

\* \* \* \* \*

Senator Clark of Idaho. Of course the impact of the war has dislocated our economy in many respects. For instance, automobile salesmen, who would like to remain at that profession which they have followed during a period of years have also been injured. I think all industry, probably, and professional and business men have been injured, with a few exceptions, by the war. I am just wondering if musicians can be obtained today; that is, good musicians, musicians that would measure up to the standards that would be required of them and which you require of them.

\* \* \* \* \*

Senator White. I wondered if there was anything to show what number of live musicians had been displaced at any given time by records and electrical transcriptions.

Mr. Petrillo. The only way I can answer that question is that wherever a musician is put out of work, canned music comes in as a substitute. If the public don't want any more music, we are out of business, like anybody else. But canned music always comes in, always shows up when a musician is put out of a job.

\* \* \* \* \*

Senator McFarland. Perhaps it would be a good thing if you told us what those (movie) "tones" are. What kind of recording is the vitaphone?

Mr. Petrillo. It is put on a film and played with the picture, put in the operator's booth with the picture, and as the picture is shown on the screen music is played.

Senator Tobey. It is synchronized?

Mr. Petrillo. Yes.

Senator Tobey. Have you put a ban on that, too?

Mr. Petrillo. Not yet. You would bring that up!

Senator Stewart. Are you opposed to that method of producing music, the synchronization method?

Mr. Petrillo. Yes; very much opposed to it.

Senator Stewart. You think they ought to have live musicians playing in the orchestra?

Mr. Petrillo. Or they should at least put back 22,000 men they put out of jobs.

Senator Clark of Idaho. That is, the moving picture industry?

Mr. Petrillo. Yes.

Senator Stewart. How many moving picture theaters are there in the United States?

Mr. Petrillo. About 17,000.

Senator Stewart. How many in small towns would be unable to perhaps afford live musicians?

Mr. Petrillo. We would leave them out. Even in the heyday, when we had plenty of musicians working, we did not have musicians in those 15 or 25 cent theaters. What they had in those days was an organ.

Senator Stewart. Do you want to put them back to that?

Senator McFarland. You would not want to put them back to the organ again, would you? I come from one of those little towns.

Mr. Petrillo. I will give you special permission.

Senator McFarland. Seriously, you would not want to put those theaters back to where they were, would you?

Mr. Petrillo. But I do think that the first class theaters, where they charge anywhere from 50 cents to 85 cents or \$1 or \$1.25 admission could certainly afford an orchestra.

Senator Stewart. That charge how much?

Mr. Petrillo. Fifty, 75, 85 cents, \$1 or \$1.25 admission.

Senator Stewart. Do you know of any small towns that charge that much?

Mr. Petrillo. No; but I say that is the kind of theaters I am speaking about which could certainly afford an orchestra. We permit 300 of our people in Hollywood to play all that music that you hear in all the theaters in the United States; and we are again depriving ourselves of work.

\* \* \* \* \*

Senator White. What increases have been brought about by that ban since you put it into operation?

Mr. Petrillo. I might put it this way, Senator, that there are more commercial programs on radio today, by far, played by canned music than by live musicians. If you will listen in on the stations every morning—

Senator White. That has been true always with respect to certain stations, has it not?

Mr. Petrillo. That was because we were very lenient and permitted them to do it; but now we find ourselves in a position where we need that work.

Senator White. Can you give us any figures on which we can rely?

Mr. Petrillo. No; I cannot.

Senator White. Have you a hope as to the number which will be added, of live musicians, if your ban is con-

tinued? Have you anything on which to base an estimate?

Mr. Petrillo. I would say that if the recording companies and the radio companies, if you please, are willing to sit down with the Federation—

Senator White. That is not what I asked.

Mr. Petrillo. Then I misunderstood you.

Senator White. I want to know if you have any present judgment or any present estimate that you could give us as to the number of live musicians added to the previously existing number of live musicians as a result of your ban?

Senator McFarland. I think he answered this morning that the ban had not done any good so far; that it had done harm.

Senator White. I wanted to know to what extent this ban was absorbing and making use of the 138,000 musicians which make up your organization; whether it was a really effective instrument in your own behalf or whether it was chiefly an annoyance to the public.

Mr. Petrillo. Why, there is one case in particular, now, of "Singing Sam." He sings for Coca-Cola, I believe. He was on transcriptions, but since the transcriptions have been shut down he is on a live program. I know of a few cases in Chicago where the house band comes down a little bit earlier to play some popular tunes because they can't get them on the records. I don't think it is enough of a gain to speak about.

Senator White. It does not seem to me to be enough of a gain to compensate the public for the loss of the service they have been enjoying.

Mr. Petrillo. Not as far as we have gone; I agree with you.

\* \* \* \* \*

Mr. Bingham. While we are talking about commercial transcriptions, you said, I believe, in your letter to Mr. Elmer Davis, that you had no objection to the making of the commercial transcription that was used one time and one time only?

Mr. Petrillo. Yes.

Mr. Bingham. You told Mr. Davis that you would permit that to be done, and then on September 3 you placed that under the ban also; is that correct?

Mr. Petrillo. Yes.

Mr. Bingham. Why?

Mr. Petrillo. Because up to that time I was of the opinion that only one master record was made of a recording, so that if they turned the master over to the American Federation of Musicians and they would not make any more transcriptions, only the original—play it once and break it—I could see no harm. But after I sent that letter I found that they could make five or six or ten master records, so that the one they sent to the American Federation of Musicians did not make any difference. They could still go out and press those transcriptions, which I was ignorant of when I sent that letter to Mr. Davis.

\* \* \* \* \*

Mr. Bingham. And that is the type of record you were talking about when you wrote to Mr. Davis in July, when you stated that electrical transcriptions used as intended, once only, are not detrimental to the American Federation of Musicians if destroyed after such use?

Mr. Petrillo. That is right.

Mr. Bingham. And then you repudiated that on September 3?

Mr. Petrillo. That is right; because they make transcriptions with music only and no name of the musician on the transcriptions. Those are the records that I have been telling you about that they send out and print.

Mr. Bingham. Let us get back to this one-use-only advertising message that is on a wax disk, and used once only. You say that somebody violated that provision?

Mr. Petrillo. I say they could,

Mr. Bingham. Did they?

Mr. Petrillo. No; they did not.

Mr. Bingham. How do you know that they could?

Mr. Petrillo. They could, because any record, even a Singing Sam Record, even though it is played for Coca-Cola—they can dub the music out of that record and leave Singing Sam out.

Mr. Bingham. And you thought that was sufficient reason to repudiate your statement?

Mr. Petrillo. I thought it was a good reason. I had no guarantee that they would not do it.

Senator Clark of Idaho. After saying you would permit it, do you think it was at all fair to arbitrarily withdraw your permission because they could do it and had not done it?

Mr. Petrillo. I was ignorant of the fact that they could do it. Had I known that I would have told Mr. Davis the same as I am telling the committee.

\* \* \* \* \*

Mr. Petrillo. I am in hopes that very shortly we will be able to show this committee, or the Congress or whoever wants the record, that many of the small stations now make records of our orchestras coming over the air and sell those records to smaller stations. They go farther. We will give them a remote control band out of a hotel, which we give them free of charge, and while you listen to that band some fellow down in a small town, or in a large town, will say, "Don't forget to buy your drugs at So and So's drug store on the corner"—commercializing the band that we give them free of charge.

Senator Stewart. Does not somebody pay for the band?

Mr. Petrillo. No, no one. They pick it up at the hotel.

Senator Stewart. It is paid up at the hotel, is it not?

Mr. Petrillo. They pay the hotel price, but not the radio price.

\* \* \* \* \*

Mr. Bingham. It is a fact, is it not, Mr. Petrillo, that you just issued this ban without knowing anything about the impact on your musicians or the impact on the public at large, without having made a survey of unemployment or a survey of the effect on the war effort? That is a fact, is it not?

Mr. Petrillo. Frankly speaking, we didn't know that we were going to be crushed by newspaper publicity and a lot of speeches and court proceedings and all that. I thought we were just striking against a machine, and let it go at that. But I am a much wiser man now. I see that everybody is taking exception, or most people have. But I believe that is only because they do not understand our problem.

\* \* \* \* \*

Mr. Bingham. I am talking about radio putting a musician out of work, a radio broadcasting station putting a musician out of work somewhere.

Mr. Petrillo. I say we can prove that. Of course you

must understand that I didn't come here fully prepared for everything. I didn't know what the questions were that I was going to be asked.

\* \* \* \* \*

Mr. Bingham. Let me ask you this. Is it not a fact that at the 1941 convention in Seattle a chart was prepared showing the income of musicians from recordings and transcriptions from 1935 down to the estimated income of 1941? That is correct, is it not?

Mr. Petrillo. That is right.

Mr. Bingham. And did it not show that in 1935 the income to musicians from recordings and transcriptions was some \$600,000, and that in 1941 it was about \$3,000,000?

Mr. Petrillo. That is right.

\* \* \* \* \*

Mr. Bingham. Do you see any distinction between putting on Singing Sam alive over a network and transcribing the same program and sending it by United States mail to 30 or 40 or 100 stations?

Mr. Petrillo. Only that we prefer the entertainment in the flesh rather than in the can.

Senator McFarland. While you are right on that subject, how efficient is the recording of this music?

Mr. Petrillo. It is very good.

Senator McFarland. Is it sufficiently efficient so that you would say there would be no difference between the recording and the live music?

Mr. Petrillo. There is only one thing I have got against it—it is too good.

\* \* \* \* \*

Senator Clark of Idaho. I have a theory. I do not know whether it is accurate or not, and I want to get your slant on it. My theory has been, without knowing the official figures, that the widespread dissemination of music by recordings, if you please, and by the phonograph, both in the home and commercially, has of itself so popularized and plugged music that the musicians must be better off, by and large, as regards employment because of it. Does that gibe with your thought at all in the matter?

Mr. Petrillo. You see, Senator, on that phase of it most people would think as you are thinking. But it is in the hands of a very few bands. I don't suppose—I am just guessing now—I don't suppose there are more than twenty name bands that have made records and transcriptions. Of those twenty name bands you probably had a membership of, we will say, twelve to a band. That would be 20 times 12 or 12 times 20. That is 240 musicians, all told, doing this job for all this recording.

Senator Clark of Idaho. I follow you there, but I guess I did not make my point quite clear. These comparatively few name bands make recordings; one hundred million of them a year, I think?

Mr. Petrillo. About 120 million.

Senator Clark of Idaho. And about 120 millions are circulated throughout the length and breadth of the country. They are played on home phonographs, coin-operated phonographs, they are played on the smaller radio stations which use recorded music. Consequently these bands through that medium do what is called, I believe, plugging a tune?

Mr. Petrillo. That is right.

Senator Clark of Idaho. Take a tune like "Praise the Lord and Pass the Ammunition." If that had only cir-

culated by sheet music throughout the country I cannot conceive of its being a popular tune. My only thought was this, that by popularizing it they get everybody to hum it. They hear it on the radio, and hear it not once but ten times, and pretty soon they get into the rhythm and the spirit of it, and then little dance bands throughout the country that employ musicians pick it up. They not only pick up that tune, but they pick up other tunes that have been plugged largely through canned recordings of that music, and people go to dance and they want the band to play "Praise the Lord and Pass the Ammunition" or, say, "Sleepy Lagoon" or some other popular thing that these bands have popularized.

I am wondering if the very plugging of such a tune does not popularize it so that it gives employment to musicians throughout the land who would not otherwise be employed, because it makes the thing attractive for people to hear.

What is your thought on that, if I make myself reasonably clear?

\* \* \* \* \*

Mr. Petrillo. Suppose we put it this way: a symphonic record is made by the Chicago Symphony Orchestra. I would say that 98 per cent of those records are for home consumption. In my talk with the manager of the Chicago Symphony Orchestra once, he said that he thought he would see the day when they would stop making records because it didn't increase the attendance at the symphony hall. While it did give them some revenue to maintain the orchestra, he said, "There is three and a half million people in Chicago and five million within the suburbs, and the actual people out of the five million who hear the Chicago Symphony Orchestra, in all these years, is not more than eight thousand." I wonder if that doesn't clear your question up a little bit.

\* \* \* \* \*

Mr. Padway. If we sit down with these companies around the table—it doesn't merely involve the radio companies alone, it doesn't merely involve the record maker because the record maker, perhaps, hurts us the least and employs musicians—but as Mr. Petrillo said in his statement this morning, if you look at the interlocking directors you will find, exclusive of Decca, they are all tied up together. Their stock interests and all are owned by the radio companies. The recording companies and the radio companies are one.

Now, we find that by the combination of the record manufacturer and the sale of these records to the companies, that our economic interests are hurt. The whole answer to this question is not a simple one. You asked questions this morning and Senator Wheeler asked questions this morning, and when you put questions and you have just an isolated answer, you don't get the situation. It is a very simple story, once you get the whole answer. You asked Mr. Petrillo this morning to answer it, but by disconnected questions you did not get the complete answer.

What is it we want and whom do we want it from? The answer of Mr. Petrillo was: We want more employment and more money spent on that employment. Mr. Petrillo said he didn't want more money. He didn't mean more money in the sense of more money spent. We want more money. We don't want more money on

the scale. That is either made now, or we can sit down on a collective-bargaining basis.

Senator Tobey. What you mean is, you want more money to go into the hands or pocketbooks of the musicians themselves?

Mr. Padway. Exactly. In 1937 and 1938 the problem was up. Now, to say that unemployment is the result of or, rather, whether unemployment is the result of recording records, is something not to be questioned, because we will show you by the contracts made at that time, the acknowledgement of the companies themselves, that unemployment is the result of these records.

\* \* \* \* \*

Mr. Padway. I want to leave one thought with you. What we want is more men employed and more money spent on everyone of those unemployed. That can be done. That is not an impossibility.

You say: Why haven't you made that proposition or those demands on the company before you issued the ban? Now, let us not kid ourselves. Let us not be youngsters. These companies knew what we wanted all the time, because in 1938 that was the solution of the problem. We entered into contracts. We entered into contracts for two years. Then, at the end of that time the companies themselves said that you can't renew those contracts. Why not? Because Mr. Thurman Arnold said it was a violation of the antitrust laws so therefore that proposition, if made again, we believe, would be confronted with that answer.

Now, it is not a question of Mr. Petrillo going to the company or the company to us. They know what we want and they know we will sit down and discuss these things, but we believe there has not been any good faith on the part of these companies. They would rather engage, as the ASCAP engaged in with the National Broadcasters Association, in a war of attrition, to beat us down. Maybe, they will beat us down. But, every time they want to sit down with us, we will sit down, if they show good faith, and listen to their problem. And it means money to them. If they spend \$15,000,000—and I can show you that they would spend that very easily—do you know what they can do with \$15,000,000? They can put 15,000 musicians to work at probably from twelve- to fifteen-hundred dollars a year. Look what a tremendous thing that would be.

Mr. Bingham. Just a moment. Just so the record will be straight, I think we ought to have the companies identified. You mean the radio broadcasting companies, the record companies, the transcription companies, or all of them?

Mr. Padway. Radio broadcasting, to some extent records.

\* \* \* \* \*

Mr. Padway. And, to answer the small-station unfairness, we eliminated every station earning \$20,000 or less, and every dependent that first didn't gross \$15,000, we eliminated them entirely from any demand for live musicians. And, we are willing to do that now. We are not desiring to put the small station out of business.

\* \* \* \* \*

Mr. Padway. We want to get employment, but we do believe that an industry that is probably grossing a hundred million or more and spending but little for musicians should see to it that more of our musicians, more than

are now employed, will be employed and that some of that money should lead to us.

\* \* \* \* \*

Senator Clark of Idaho. At the outset of this morning I wish to say that a book was called to my attention yesterday evening entitled "America's Symphony Orchestras and How They Are Supported," written by Margaret Grant and Herman S. Hettinger. There are two or three things of interest in this book, but at the moment I wish to call the subcommittee's attention, and Mr. Petrillo's attention for such comment as he may desire to make, to the following, found on page 22, under the title of "Periods of Development."

I understand that this work is authoritative; that is, that Mr. Hettinger is a professor at the University of Pennsylvania and an excellent research man, and that Margaret Grant occupies an outstanding position in the field of music:

"Although the development of symphony music in the United States has exhibited its most spectacular phases during the last 20 years, its roots go deep into the past."

Then there are two or three sentences going back to 1842, which I will not read, and I quote again:

"Then followed three fairly distinct periods, each representing an accelerated tempo of development. From 1900 to 1920, 29 orchestras, six major and 23 secondary, were organized. The next decade produced 55, only two of which rank as major orchestras; and, finally, the decade since 1930 has witnessed the formation of 84 orchestras, or nearly as many as were founded during the entire previous century."

And then there is a table setting out all major orchestras and the dates of their establishment. If that statement is correct, and it seems to be borne out by the table, it would indicate that even up to now and despite canned music and all technological developments in the music field, the symphony orchestras of the country have prospered and increased. Would you care to make any comment on that, Mr. Petrillo?

Mr. Petrillo. No.

Senator Clark of Idaho. It would seem on its face to indicate that canned music perhaps, even if it were not a factor in so popularizing music as to make people desirous of forming these symphony orchestras in increasing numbers, at least was not a deterrent; and that is the reason I asked if you cared to make any comment, Mr. Petrillo.

Mr. Petrillo. No.

Senator Clark of Idaho. Also on page 47, under the title "Forces Underlying Recent Expansion," and I presume referring to music, it goes into the matter of amateur musicians in high schools throughout the country, and in grade schools, particularly contests among high school bands and orchestras, whereby the winners would go to Interlochen and such camps as were established. That is fairly lengthy and I will not read that part of it, but assure you it shows the organization of various bands, and how they have increased tremendously throughout high schools and grade schools of the country under this system. And then, on page 37, it says:

"The national high school orchestra and band camp at Interlochen, Michigan, is the outgrowth of the largest movement. This camp, offering young students

courses in the playing of band and orchestral instruments under expert instruction, has been so successful that it has led to the organization of similar camps throughout the country. The effect of school music education upon symphony orchestra development has been two-fold. Hundreds of professional musicians have come up through high school orchestras and summer camps, and are now in regular symphony orchestras throughout the country. Probably no major symphony orchestra is without one or more graduates of the Interlochen Camp alone. For years such developments in high schools have been even more important in the hundreds of secondary orchestras."

Then I skip a little because it need not be repeated here, and quote the following:

"Out of this process come a very considerable supply of symphony orchestra players. Equally important, however, was the unprecedented number of young people who had become acquainted with symphony music, under continuing and stimulating circumstances, and representing a great new audience to support the professional and semi-professional symphony orchestras which were being formed."

Would you disagree with that, Mr. Petrillo?

Mr. Petrillo. No.

\* \* \* \* \*

Senator Andrews. Mr. Petrillo, the greatest number of objections I find to the course you have taken is from music clubs in the United States. There are thousands of music clubs in this country. They are organized for the purpose, as you doubtless know, of cultivating a taste for music, and for better music. The membership of such clubs approximate 450,000, and they are very much opposed to the course you have taken in prohibiting playing over the radio—and, I presume, the use of other means of getting the benefit of recordings—records which have been made, particularly by professionals. That applies not only to instrumental music but to vocal music as well. Frankly, I do not understand the theory behind this prevention of advancement in music, or how it could possibly help your cause. If you could get all the people of the United States, the children of high schools, educated to the point where they appreciate fine music, you would lay the foundation for an even greater desire for first-class orchestras.

\* \* \* \* \*

Mr. Petrillo. Senator Andrews, I stated yesterday that we were not opposed to amateur boys and girls going on the air.

\* \* \* \* \*

It is just a question of whether or not we are going to lose our means of livelihood. If we could get guarantees from the broadcasting companies, the chains, I should say, and there are four chains, that they will not discharge our people, then we would be getting some place.

But I do not think the sacrifice should come entirely from the American Federation of Musicians. If we are going to have these children play in a manner whereby there will be no loss of a means of earning a livelihood to musicians, then there can be no harm.

\* \* \* \* \*

Senator McFarland. You do not know what you want, and therefore you could not ask for any help.

Mr. Petrillo. Well, we know what we want, and so do they.

Senator McFarland. Well, we do not know what you want, or at least I do not know. I have been unable to find out.

Senator Clark of Idaho. What do you want?

Mr. Petrillo. More work.

Senator Clark of Idaho. From whom?

Mr. Petrillo. From the whole crowd—from radio, from the recording and transcription companies. If we all got together we would find a way.

\* \* \* \* \*

Senator Andrews. What I am getting at is that the people of the United States, and particularly the young people in the schools—and there is a music club in practically every high school—are the people who will listen to the future orchestras of the country, and they are the ones who are going to be your support if they are satisfied, and if dissatisfied they will turn down the instrumentality through which it is given to the public.

\* \* \* \* \*

Senator Andrews. Can it properly be contended that whenever a person chooses a profession he or she may say, "I am going to stick to that profession and the public owes me a living"? Is it not a fact that the person has to take the risk? Perhaps half the men on this subcommittee started out to teach school to pay their way through college. I taught school for about six years. I found that I could not make a living at teaching school, but I could not go on strike. So I studied law and took up the practice of law. In other words, the people of America do not owe anybody a living. That is a matter for him to work out. If a person finds he cannot earn a living by following the line he first chose, then the duty is upon him to seek other or supplemental means toward earning a living.

Now, this question arises: Must this subcommittee, whose members represent the public and represent you and your organization as well as other organizations, enact legislation that will prohibit what you have been doing, or shall we take the other viewpoint?

\* \* \* \* \*

Senator Tunnell. As I understand it, you are not asking for any relief. You do not expect any relief from Congress, do you?

Mr. Petrillo. From who?

Senator Tunnell. From Congress, or this committee.

Mr. Petrillo. No.

Senator Tunnell. This order of yours is simply a part of your strategy to accomplish your purpose.

Mr. Petrillo. That is right.

Senator Tunnell. Do you now think that you need any assistance from Congress or this committee?

Mr. Petrillo. Well, we would like to have assistance, yes. If the Congress of the United States can do a job for everyone concerned and the public, we certainly would welcome it.

Senator Tunnell. Well, what is it that you want them to do?

Mr. Petrillo. Well, we want more work.

Senator Tunnell. Well, I know, but do you want an Act requiring that you be given more work; an Act of Congress?

Mr. Petrillo. Well, I would like to have, an Act that would permit me to make demands on the recording companies and the broadcasting companies, whereby I won't be indicted for secondary boycott, or something. That is what put us in this position. That is why you gentlemen keep hammering away here, "What do you want? You have made no demands." Now, it is some of the laws that put me in the position that I couldn't make any demands.

\* \* \* \* \*

Senator Tunnell. Well now, coming back to the same proposition that Chairman Wheeler asked about, is there nothing that you want us to do here?

Mr. Petrillo. Well, as I said before, of course, there is something that you could do.

Senator Tunnell. Well, what is it?

Mr. Petrillo. If you could pass some laws, like the ASCAP organization has, whereby we would get some kind of revenue from every record that was sold, that was made by the musicians, that would be a great help.

Senator Tunnell. But, would that not be a matter of contract?

Mr. Petrillo. Between the recording companies?

Senator Tunnell. Yes, and the musicians.

Mr. Petrillo. They won't sit down with us and won't talk to us about it.

Senator Tunnell. But, you say you did not attempt that.

Mr. Petrillo. In 1937, Senator, we did.

Senator Tunnell. That was six years ago. Well, there was a long time between that request and your order.

Mr. Petrillo. Well, they are much tougher now than they were then, because they have got more money, and the more money they make, the tougher they get.

\* \* \* \* \*

Mr. Petrillo. Senator, if this ban stays on for two or three years, which I am satisfied it won't, we would have plenty of work.

Senator Tunnell. Just how do you arrive at that conclusion?

Mr. Petrillo. Because, as Chairman Fly stated to this committee, the new records, the popular records, dry up, and the advertising agencies will not go along on the old records unless they can get the new ones, and if they can't get the new ones, I am satisfied that they will hire musicians in the flesh instead of the can. But, I think that is too drastic. I think we should get to the point whereby all of us could live; the recording companies, the radio companies and the musicians.

\* \* \* \* \*

Senator Tunnell. You simply want more work. That is what you mean by that, is it not; you want more money for your people?

Mr. Petrillo. Well, more work, I suppose is more money.

\* \* \* \* \*

Senator Clark of Idaho. Would you give the survey (showing musicians unemployed as musicians) by the AFM to the reporter so that it can be made a part of the record?

Mr. Petrillo. Sure.

Local Number	Member-ship	Full Time	Part Time	Unemployed
802: New York City	22,000	3,500	282	16,718
1: Cincinnati, Ohio	876	265	120	491
2: St. Louis, Mo.	955	228	72	655
3: Indianapolis, Ind.	526	67	40	419
4: Cleveland, Ohio	1,417	350	60	1,007
5: Detroit, Mich.	3,365	609	103	2,653
6: San Francisco, Cal.	3,100	580	391	2,129
8: Milwaukee, Wisc.	1,294	133	173	988
9: Boston, Mass.	1,595	400	400	795
10: Chicago, Ill.	10,000	1,100	1,200	7,700
16: Newark, N. J.	1,010	130	150	730
30: St. Paul, Minn.	928	114	0	814
34: Kansas City, Mo.	657	129	60	477
40: Baltimore, Md.	936	244	0	692
43: Buffalo, N. Y.	622	175	0	447
47: Los Angeles, Cal.	6,451	2,000	350	4,051
60: Pittsburgh, Pa.	1,653	201	0	1,452
66: Rochester, N. Y.	604	95	190	319
73: Minneapolis, Minn.	1,226	250	150	826
140: Wilkes-Barre, Pa.	700	8	6	686
526: Jersey City, N. J.	660	31	25	604
161: Washington, D. C.	759	258	34	467
655: Miami, Florida	578	109	38	431
123: Richmond, Va.	184	47	7	130
99: Portland, Ore.	514	71	58	385
257: Nashville, Tenn.	196	53	40	103
71: Memphis, Tenn.	236	39	12	185
80: Chattanooga, Tenn.	95	13	0	82
20: Denver, Colorado	506	54	36	416
	66,335	11,703	4,147	50,494
Less 15% in service				7,574
				42,920

\* \* \* \* \*

Senator Tunnell: How many are out of employment, would you say, in the whole membership?

Mr. Petrillo. Well, this survey shows 41,000 out of 63,000.

Senator Tunnell. Well, how many out of 138,000 is what I am trying to get at.

Mr. Petrillo. Well, if there is no more than 41,000 out of 138,000, that is a great number of musicians out of work.

Senator Tunnell. Well, there are more, though, are there not?

Mr. Petrillo. Yes; there are.

Senator Tunnell. That is, two-thirds of your survey are out of employment, from what you say; 41,000 out of 63,000, or about two-thirds. Now, would you say that runs throughout your whole membership, of the 138,000?

Mr. Petrillo. Yes.

Senator Tunnell. You cannot long retain your membership under that condition, can you?

Mr. Petrillo. Well, it would not be a healthy condition, no.

Senator Tunnell. It is your idea that by preventing the use of records for two or three years, that this condition can be remedied, but in the meantime, what is going to become of your so-called unemployment?

Mr. Petrillo. Well, as I said before, the unemployed would go to work in two or three years, but we are in

hopes that this thing would be settled, and the sooner, the better, so far as we are concerned. We don't want to hold this thing up for two or three years. We want these records to go on, but we want these gentlemen to share their profits with us.

\* \* \* \* \*

Senator Tunnell. As I understand it, you have a tremendous unemployed membership now, but certainly they cannot remain unemployed for two or three years and live, can they?

Mr. Petrillo. Well, they have no alternative. They probably will have to go to work in the factories. Some of them are doing that now.

Senator Tunnell. Well, that is an alternative now, is it not?

Mr. Petrillo. As I told you yesterday about the Detroit Symphony Orchestra, one hundred men are out, with no finances. Ninety-five per cent of those men are out of work. Where are they going? They are all professional musicians.

Senator McFarland. Do you not think that factory work is more important now than music? We have a war to win now, and this is no time for people to be striking and saying, "We have to have work along a certain line," when we need men to turn out planes and ammunition to win a war with.

Mr. Petrillo. We are not objecting to that, but we have been pushed and pushed around for twenty years.

Senator McFarland. But, we must have manpower in the United States. We are short of manpower, and you are trying to make it shorter.

Mr. Petrillo. No, that is not so.

Senator McFarland. Well, why is it not? You are complaining because you say too few people are doing the job; that you want to spread that work out and make more people do the same work that the few are doing now, when they are crying for men in the United States, and our boys over on the other side are crying for ammunition and crying for planes. That is the reason this public sentiment has built up against you, Mr. Petrillo; because our boys are dying on the other side; because we are not giving them sufficient planes and we are not giving them sufficient ammunition. The reason why the people have built up sentiment against this ban is because of the boys on the other side.

Mr. Petrillo. The people didn't build up the sentiment. The National Association of Broadcasters, with their hundreds of thousands of dollars, built up the sentiment.

Senator McFarland. Well now, that is going back to the old proposition. You are assuming that the people are not intelligent, and I do not agree with you.

Mr. Petrillo. No; I won't say that, but they have only heard one side of it; one side of the question.

Now, these people have got hundreds of thousands of dollars to advertise me and my organization as a czar, but they won't sit down and give the musician what he has rightfully coming to him.

Senator McFarland. Now, Mr. Davis argued for the sake of the war effort and for the sake of our country. He asked you to lift this ban, as I understand it, for the duration of the war, and then you could do anything you pleased. But, you have chosen a time right here in the midst of a conflict when we are needing every ounce

of manpower that we have, to put this ban into effect.

Mr. Petrillo. Senator, the President said in his speech that this year it would cost one hundred and nine billion dollars to operate this war. Every union is in that one hundred and nine billion dollars but the musicians. The Government every day is asking our men to play gratis, and every day our people are playing gratis.

Senator McFarland. Well, what I am saying to you is, you have not asked for money.

Mr. Petrillo. Today, Senator, I will say to you that the American Federation of Musicians is spending for the Government, in services of its musicians, anywhere from twenty-five to \$50,000 a week.

Senator McFarland. Well, we are not complaining about what you are doing and what you are not doing.

Mr. Petrillo. Well, now, Senator, there you go. Now, the American Federation of Musicians hasn't got a good side here at all. Everything we do don't mean nothing. I say it does. The minute a soldier gets on a train, you pay his transportation, you buy his uniform, you buy his shoes, you buy his food, you buy everything from A to Z, but when it comes to the musician, for the selling of the bonds, for the entertainment of the soldiers, not one dollar. And, by God, men, I want to tell you the musicians are working men. They studied their violins, not to be pushed around, and they have been pushed around for forty years. We want to stop it. Why put the burden on us? Let us get these fellows together here. They got the money. They are making the money. Let them share some of their profits with our boys, which we are entitled to. We are not burglars. We are not racketeers.

Senator McFarland. Well, I do not know what you are, because we have not been able to find out what you are.

\* \* \* \* \*

Senator McFarland. And I am telling you that all over the United States they are crying for people to do work. They are crying for them to put out planes. They are crying for them to put out ammunition. They are crying for them to put out everything. And, it is not the money, you say. We have not been able to pin you down here and find out just what you want. You said, "No; we want more work." What we need in the United States is more men right now to do the work, but you want to do the work, the same work, with more men, and therefore increase the shortage of manpower in the United States.

Mr. Petrillo. Senator, you know as well as I—

Senator McFarland. Pardon me. Now, the chances are that Mr. Davis and a lot of people who are criticising you are familiar with this situation. I do not know what your problems are. I am not a musician. And, do not misunderstand me that I am taking any sides in this thing. But, the proposition is that you have come here and you have put out a proposition of wanting to increase the shortage of manpower by making it necessary to have more musicians do the same amount of work than are doing it now, when we need men and are crying for men to win a war.

Mr. Petrillo. Senator, the American Federation of Musicians is second to none in patriotism, and if any of our people are needed for the factories, including myself, we are ready at any time.

Senator McFarland. Well, you are needed.

Mr. Petrillo. Well, if we are needed, we will go. You know that as well as I do.

Senator McFarland. But, that was not the tone of your testimony yesterday. You said, "No; we are musicians."

Mr. Petrillo. Well, no. If we are going to lose this war, we are not musicians. And, we are not going to lose this war. Now, we will throw the fiddles away and the trumpets away to do that.

Senator McFarland. We do not want you to throw the fiddles away or the trumpets away. We want you to use them, but we do not want anything to occur in the midst of the war which would in any way hinder the war effort. And, you have had the people who are responsible, I repeat, placed in charge of the responsibility, to tell you that you are hindering the war effort.

Mr. Petrillo. Well, I am certainly sorry to hear that.

Senator McFarland. Well, that is what Senator Clark explained to you yesterday. You are not hearing it now for the first time.

\* \* \* \* \*

Senator Andrews. The musicians are professionals. The Government is not guaranteeing a living to hundreds of other professionals.

Mr. Petrillo. That is right.

Senator Clark of Idaho. Mr. Petrillo, all we are able and have been able to elicit from you is that you have not made any demands known either to this committee or to the public or to the industry up to this time. And, when pressed, your response is that you want more work. Now, there are only three people, three groups, that can give you more work. One is the recording companies. Do you want more musicians hired by the recording companies?

\* \* \* \* \*

Mr. Petrillo. I will answer your question in this way: We are ready now to make demands, if that will clarify the situation, and go into negotiations and settle this thing as fast as possible.

Senator Clark of Idaho. I think that would immeasurably aid in clarifying the situation.

Mr. Petrillo. Will that clear up the thing?

Senator Clark of Idaho. That will.

Mr. Petrillo. That is fine.

Senator Clark of Idaho. That will. It will clear it up. Would you mind presenting those demands in the course of the day?

Mr. Petrillo. Well, I will have to get my executive board together. They all have ideas.

\* \* \* \* \*

Senator Clark of Idaho. Now, of course, I do not blame you, because you are in a fight with the National Association of Broadcasters, by continually saying, "Well, they have got all the money." I think I explained the situation last night for this committee, which has had no connection with the National Association of Broadcasters, either in the introduction of the resolution or in the prosecution of these hearings, and I think that that should be perfectly clear. But, on the other hand, your Union has plenty of money too, does it not?

Mr. Petrillo. Well, I don't like to go into the Treasurer's department, but I think we have about two and a half million dollars.

Senator Clark of Idaho. Well, that is quite a substantial sum of money. And, I am glad you got it; I mean, I think you probably will handle it wisely. I do not think the condition in that respect is so unfair, but this committee is not interested in that condition. We are interested in the musicians and in the industry. It is a great industry. And, we are interested in the public, which does not belong to either of those groups.

Could you give this committee now, then, any idea of approximately when you would be able to formulate some specific demand, something that the industry can work on and something that we can work on, along the lines of what you think you ought to have?

Mr. Petrillo. That is right. If it is the consensus of opinion of this committee that we get together and negotiate immediately, I will assure this committee that we will make our demands.

Senator Clark of Idaho. Well, I do not want to speak for the committee, but I know for my part I think it would be immeasurably helpful.

Senator McFarland. As far as I am concerned, Mr. Chairman, I would be willing to quit and let them make their demands and see what they can work out.

Mr. Padway. Senator, may I interject one remark, and that is on the subject of demands. We are not going to get away from that point. Now, you probably wonder when we sit here and tell you we can't tell you what we want. Now, we have thought of the problem, because it affects us, and yet there is a good deal of truth in it, and I will show you why, because we don't want you to think we are sparring with you or not acting in good faith. You ask one question: Do you want more money from the people you want money from? Do you want more money from the recording companies? Do you want more employment from them? Yes. Then you say: How do you expect to get it? They are employing everyone that they need for the making of records. That is true. So, the increase in personnel in the record-making industry itself is not available, or would not be received.

Well now, you have to sit down with these record makers and figure something like this out. Senator Tobey at a point yesterday said it may be good or it may be bad. We don't know whether it ought to be accepted or discussed. Suppose these record makers would by law, or be able to by agreement, or agree to put a cent on a record, or two cents. They make 120,000,000 records. Suppose we say that is allocated to some general fund in the hands of the American Federation of Musicians, or someone else; we don't care, and that you were taking up that fund from these record makers and put a little band in the town where you live, where people will come to the park, families, with their lunch baskets, and listen to live musicians. That will give us some employment.

So, while the record-maker himself may not be able to take into his organization an additional man, he will nevertheless be setting up a fund whereby through the record-maker and through the profits he makes, he will be able to furnish employment. And, we will show you he is making plenty of profits; tremendous profits. I don't know of an enterprise that compares with it.

\* \* \* \* \*

Senator McFarland. My idea or my thought was this, and I think this was the thought of the committee, that before you call a ban or strike, whatever you want to call it—I call it “ban” because I think that is a little

less offensive to you—before you put a ban on the making of this music, you ought to first sit down and work out a program which you are going to try to put into effect, the thing that you want to try to accomplish, and not just put a ban on and say, “We are going to quit.”

Why did you not first work out what you wanted to accomplish, if you had something in mind? Of course, if it was just an idea, and that is what a lot of people thought that you were trying to accomplish, you would just say, “We will do away with the making of records altogether. We will just stop it, and that is what we intend to try to accomplish.” Now, if that is what you intended to accomplish, well, you have done a pretty good job of it, but if you had something else in mind, it seems to me that you should have worked out your program before you put your ban into effect.

Mr. Padway. Now, let me say this in answer to that, Senator. This problem of canned music is not one of the date of the ban. The problem of canned music goes far back. We will show you that the organization spent millions of dollars in advertising and encouraging the public to treat with live music rather than with canned music, which has been going on. Now, the problem has been discussed as a problem with the organization, with the radio broadcasting companies, with the record makers and management and with their officials, all along the years. It has been discussed. They know what we have in mind as a solution for the problem. Whether it is agreeable to them or not or whether it is a practical one, they know it. Now, they have unofficially let us know that will never go.

For instance, if we ask the record maker to put two cents additional price on a record, whereby a fund can be created for musicians, we don't need to sit down to the conference with them to know that they won't go for it.

In 1937, when they gave us an increase of a million and a half dollars and guaranteed three million additional dollars on staff bands—I wasn't in the other conferences, but I was told at the time they talked for months and months, and finally they were able to add a million and a half extra. In truth, it was only a million, and then, of course, guaranteed three million extra. Now, we know that they have stated unofficially, time and again, if Petrillo comes around and asks for a dime more, we won't accept it. Now we know that the proper plans we have had in mind they won't go for. And, the only way to do that was to let them know in 1941, not in 1942, “Gentlemen, you have got to sit down and you have got to work out this problem with us. You know there is a problem. You recognize there is a problem. You wrote it into your preamble in 1937.” And yet we got no rights, except we were told, “You will get nothing. We will do nothing for you.”

What happened then? In 1941, at the Seattle convention, they let it be known from the rostrum, and it was heralded throughout the papers, and they knew it, because they were out there that sometime we would put a ban on records. Did they come to us and endeavor to solve the point? Unofficially there were conversations back and forth. Now since this ban has been on, representatives of the large companies have unofficially spoken to President Petrillo and myself. Now, that is true. But, we got nowhere.

\* \* \* \* \*

Senator Clark of Idaho. Mr. Petrillo, when do you think you can get your executive board together to present to this committee your demands?

Senator McFarland. He is going to present it to the other people, as I understand it.

Senator Tunnell. Senator Clark asked him to present it to us.

Senator Clark of Idaho. Well, to both.

Senator McFarland. Pardon me for interrupting. I misunderstood him. I thought he was going to start negotiating with them and try to settle the proposition.

Mr. Petrillo. That is what I thought, Senator. I thought we would negotiate with these people, and then if we couldn't get together, why, then I could come back here and tell you that I kept my word with you and we can't get anywhere.

Senator Clark of Idaho. Very well.

Mr. Petrillo. But I am in hopes we will get somewhere if we sit down. I am satisfied now during the investigation here and the court procedures, that these men will finally get down to their level and finally will talk about the matter in a manner that I think the time has come that we have got to do business with these boys, because there is a problem to be solved. And, they have some justice on their side. I am beginning to feel now that this investigation is going to do the job.

\* \* \* \* \*

Senator Clark of Idaho. Let me read you just one sentence from this book which I quoted from a minute ago. It says, "The influence of the phonograph"—this is under the title "Recorded music",—"in widening the general audience for classical music began to be felt even before the use of records in education became widespread."

It goes on to say that recorded music, along the theory I was commenting on yesterday, has been a great thing for the live musician. I know you disagree, but it says here also on page 50, "The development of recorded music has been another important force in the growth of symphonic orchestras and their audiences."

This, apparently, is an impartial book.

Then it says, "The greatest agency available for the dissemination of fine music, however, is radio." That is found on page 53, and contains considerable dissertation on that.

\* \* \* \* \*

Senator Tobey. I have two or three questions that I want to ask Mr. Petrillo. In the first place, there is an article in the United States News of the current issue under "Labor" on page 29:

"Chicago and St. Louis radio stations are required under their contracts to hire members of the musicians' union as 'pancake turners.' This job consists of changing and turning phonograph records. Actually the work is done by technicians and the AFM members are used as errand boys to bring records from the files. The scale in these cities is \$90 for a 25-hour week."

I read that, with no prejudice, as a news item, and it raised a few questions in my mind, which I would like to ask. In the first place, is the article substantially correct?

Mr. Petrillo. That is correct.

Senator Tobey. Now, here is what comes to a layman's mind, as he reads it, the familiar John Q. Public, that we have to have a group of men particularly charged with

the duty of changing records in the radio stations, and nothing else.

Mr. Petrillo. Because the record is made of music.

Senator Tobey. Is made of what?

Mr. Petrillo. Music is on the record.

Senator Tobey. That is right.

Mr. Petrillo. And we feel if there is music on the record, that the man who puts the record on the machine should be a member of the musicians' union. Now, there is only two Locals that have that kind of an agreement, as that particular statement says.

Senator Tobey. Chicago and St. Louis.

Mr. Petrillo. Chicago and St. Louis, that is right. Now, the scale in St. Louis doesn't run \$90. I think it is about forty-five, something along that line. In Chicago it is \$90 a week, for 25 hours' work, five days a week.

Senator Tobey. Now, the turning of records is not a laborious job, is it? I am not talking about you now.

Mr. Petrillo. No.

\* \* \* \* \*

Senator Tobey. I could not put the record on myself.

Mr. Petrillo. No, sir.

Senator Tobey. I would have to have a separate employee, a pancake turner, they call them, and pay him from \$45 to \$90 to do that job; is that correct?

Mr. Petrillo. That is correct.

Senator Tobey. Now, how far does that theory go in the operation of union labor?

\* \* \* \* \*

Mr. Petrillo. Well, I can only say this to you. In Chicago I happened to negotiate the contract myself, and when I made the demands for the pancake turners, there was no opposition to it. They gave them to me, so I took them.

Senator Tobey. Well now, if it is a good thing for Chicago, why is it not a good thing everywhere else in the country?

Mr. Petrillo. Well, all of the unions are not powerful enough to make those demands, Senator. I probably would have dropped it myself if they said, "You will have to call a strike, because I am not going to give you the pancake turners." But, as I said, I put it in there and they gave it to me, and I couldn't turn it down.

Senator Tobey. But, the principle you believe in. You believe in the principle regardless. It all depends on the size and the power of the labor union.

Mr. Petrillo. Oh, yes.

\* \* \* \* \*

Senator Tobey. It is not the principle of fairness that you enunciated here to this group of men. It is simply that here is a chance to get this man, because we are powerful enough to get it done that way; is that not it?

Mr. Petrillo. Well, you might put it this way.

Senator Tobey. The point I make is this: if this is sound, then it ought to prevail all over the country, should it not?

Mr. Petrillo. It should.

Senator Tobey. That is, if it is sound economically.

Mr. Petrillo. But we can't get it.

Senator Tobey. But, if you could get them, you would.

Mr. Petrillo. We would love to have them all.

Senator Tobey. And that principle is sound, in your judgment, to do it this way?

Mr. Petrillo. I don't know whether it is sound, but I know it makes for more employment.

Senator Tobey. Now, that raises a question not of metaphysics, but something higher than that, perhaps. How long can we go along in this country with anything that is not sound? How long is it going to endure, whether it applies to music or anything else, provided it is not sound and is not economically feasible and with an expenditure that is not justified by the facts, just because you are powerful enough to do it? How long would you expect to continue in this country by that method?

Mr. Petrillo. Senator, I agree with you, in this particular case it is not sound.

Senator Tobey. I think you are a perfectly fair man. I read this merely as a news item, and I said, "I am going to ask Mr. Petrillo about it."

Mr. Petrillo. I try to be fair, but sometimes I make a mistake.

Senator Tobey. Yes, we all do.

Mr. Petrillo. But, in this case I made a mistake, but they O. K.'d it.

Senator Tobey. All right. Thank you. Now, another thing that troubled me a little bit, because I am only an amateur in these things, is the question of stand-bys. I only read this in Harpers Magazine, which was referred to by one of your men last night, about stand-bys. I don't know what it means. If I am running a radio station and I have an orchestra of 50 men there, and I use probably a large number, call it 30 men, and I put on a program with those 30 men, does that also mean that I have to have an orchestra of 20 men, potential men, that may or may not have their instruments with them, but they have to sit somewhere on these premises, so they are classified as stand-bys, and they are being paid as stand-bys?

Mr. Petrillo. That is right.

Senator Tobey. Now, what is the function of a stand-by beyond that?

Mr. Petrillo. Sometimes a stand-by reports on the job and sometimes he don't. The employer might say, "All right, we will agree to pay the stand-by. We don't want the men hanging around, but we will pay them."

\* \* \* \* \*

Mr. Petrillo. Now, we will take right now, the Government says that the Army and the Navy bands would not play any commercial engagements. But, they can go over the air as a sustaining program, playing over the air for the Army and the Navy in recruiting.

Now, Montgomery Ward or Coca Cola wants to employ the Navy Band on a commercial basis. We say, "All right, you engaged the band on a commercial basis, and if there is 30 men in the Navy Band, then you pay 30 men the union scale for what you call a stand-by." And, the employer agrees to do that and puts on the Navy Band. Sometimes he won't agree to that and then the program falls through.

Senator Tobey. What is the principle that initiated this so-called stand-by? Where did it come from? What is the thesis or philosophy behind it? Is it the purpose to give more men work?

Mr. Petrillo. Senator, in most cases it is to protect the local musicians. For instance, we will take Chicago again. Paul Whiteman was traveling through the country. He plays a job at the Palmer House at Chicago: probably has a job there for three months. While he is there, some

advertising agency will say, "Well, you are going to be here three months. How about playing a program every Tuesday night for half an hour for Wrigley's chewing gum?" Well now, we feel that Paul Whiteman has a job in Chicago. He has already taken a job in the Chicago jurisdiction. Now, he is going on the air in Chicago to take away work from the local musicians. I say to Whiteman, "You have a job and now you are going to take another job. If you want to do that, the employer must pay you the union scale and also a stand-by orchestra."

\* \* \* \* \*

Senator Tobey. My question is, Why a stand-by?

Mr. Petrillo. Because a man like Whiteman can come into the jurisdiction for three months, playing a hotel job or a radio job, and the local musicians would be just sitting around while one band would be doing all the work.

Senator Tobey. Suppose that my friend Clark were to make a radio speech in Chicago at \$300 for expenses, would you think that he would have to get some public speaker from Chicago to stand by?

Mr. Petrillo. No.

\* \* \* \* \*

Senator Tobey. You believe in the principle of stand-bys?

Mr. Petrillo. Not in all cases. Sometimes an employer will come to my office saying that a local in some town is trying to get more money out of him, supposedly for a stand-by, and he presents his case, and in many cases we turn the local down because we feel it is unfair. In some cases they are justified.

\* \* \* \* \*

Senator McFarland. You take the position that as to whether a stand-by is a good or bad thing it depends upon the reasonableness of the demand?

Mr. Petrillo. Yes. An employer can always appeal to the president's office from an action of a local, and in many cases we turn the local down. I will have to admit that some of the locals go out and try to put as many men to work as they can.

Senator McFarland. You admit, as I understand it, that there may have been—I will not say that there has been; I will not put you in that position—but you admit that there may have been unreasonable demands in the matter?

Mr. Petrillo: Many times.

\* \* \* \* \*

Senator Tobey. Is it a fact that the heart of this controversy which is bothering you and bothering us is the old question of whether or not society has an obligation to workmen whose employment is limited by technological improvements? That is true, is it not?

Mr. Petrillo. Yes.

\* \* \* \* \*

Senator Tobey. I asked you a question yesterday, and you did not answer it satisfactorily to my desires, about union membership in the American Federation of Musicians. I happen to play the piano for my own amusement. Assuming that I wanted to become a member of the Musicians' Union, could I as a very mediocre piano player qualify? Could I join if I had a desire to join

a union, without having to go through some examination as to my ability or my wage-earning capacity or whether or not I was a first-class musician?

Mr. Petrillo. There are many locals who take in anyone who has the desire. There is an examination board, but they never turn anybody down. It is only there as a matter of form.

Senator Tobey. In other words, anybody can join who has the desire?

Mr. Petrillo. Of course we can handle them better on the inside than we can on the outside.

\* \* \* \* \*

Mr. Petrillo. The American Federation of Labor of which Mr. Green is president has no control over any of the laboring people in the country. The only people who have control over the labor movement are the International presidents and their respective executive boards. Green could come to me and say, "Petrillo, I would like to have you do me a favor for Senator So and So or Congressman So and So"—

Senator Tobey. Is that a common practice?

Mr. Petrillo. I can't talk.

Senator Tobey. The power of suggestion is still pretty potent in this world.

Mr. Petrillo. You are all right. You touch on a very vital point there.

\* \* \* \* \*

Mr. Petrillo. We have what we call a delayed broadcast. We have not interfered with that, because if we did the smaller stations would probably go out of business. Here is where the Musicians' Union did a good job for the radio companies and advertising agencies and the smaller stations. Still taking the Jack Benny show, it goes over 148 stations. Out of that 148 stations there may be twenty stations that cannot accept that show in the locality in which they are situated, because they have another program at that time. So they will take the Sunday show, put it on a record and play it next Tuesday. We permit the radio companies to put that show on a record, transfer it to the small stations, and play that show on Tuesday, Wednesday or Thursday of the following week, without any extra compensation to the musicians. We call that a delayed broadcast. We could stop that, but we can't fight on all fronts.

\* \* \* \* \*

Senator Clark of Idaho. I want to leave a suggestion with you, Mr. Petrillo, and I want you to think it over during the noon hour and talk it over with your associates and your counsel. I am going to ask you a question upon reconvening, and that is this. Would you consider, at the request of this committee, lifting your ban on recorded music at this time, substantially, and then proceed to negotiate with the industry to see whether or not something cannot be worked out?

I merely ask you to consider that during the noon hour. Here is my reason for so asking you. It is my sincere belief, without holding any brief at all for the industry, because I have not heard their story, and I do not know—but it is my sincere belief that you would put yourself and your people in an infinitely better light all over this country if you would consider that. I do not think it would weaken your bargaining position. My candid opinion is that it might well improve it.

I do not want you to answer it now; I just want you to think it over.

Mr. Petrillo. I can answer it.

Senator Clark of Idaho. Very well, then.

Mr. Petrillo. I am satisfied that this committee wants quick action.

Senator Clark of Idaho. That is right.

Mr. Petrillo. And we do, too. I will tell you now, I have negotiated with these fellows from time to time for twenty years, locally and nationally, and if they are permitted to go back and make records while we are negotiating, the negotiations will go on for two or three years. That is my candid opinion, Senator.

Senator Clark of Idaho. I do not think that this committee or anybody else would require you to keep the ban off. We cannot require anything. You are acting within the law now, and you know it. So we are not investigating you as being a lawbreaker. The courts have held that you are acting within the law. What we are interested in is to find out whether such a situation is in the public interest and, if not, what can be done to change the situation which is having an impact on the people and on the war effort. You would not be required to do any unreasonable negotiating at all. If you cannot settle it in 30 days, put your ban back on, and we will go to work again.

Mr. Petrillo. Senator, there is another point I would like to make in connection with your suggestion, and that is that they could make records in thirty days of all the popular tunes that would last them for another year, and they would not be interested in our negotiations. The ban has been on now for five months, and it certainly won't hurt if we go on another two weeks, inasmuch as we are making all the records that the armed forces need. We are granting all requests every day from the Treasury Department, the Justice Department, and all the departments in Washington, without any charge.

Senator Clark of Idaho. Very well. That is an answer.

\* \* \* \* \*

Mr. Bingham. Have you made any check with any name bandleaders to ascertain whether or not they are having difficulty to get replacements?

Mr. Petrillo. No.

\* \* \* \* \*

Mr. Bingham. Referring to Mr. Padway's statement on page 163, he said, "If they spend \$15,000,000—and I can show you that they would spend that very easily—do you know what they can do with \$15,000,000? They can put 15,000 musicians to work at probably from twelve to fifteen hundred dollars a year. Look what a tremendous thing that would be."

You remember that statement?

Mr. Padway. Yes, sir.

Mr. Bingham. Now, Mr. Petrillo, do you know of any musician in any Local that would work for \$100 a month or \$125 a month; a union scale in the United States?

Mr. Petrillo. Well, I don't think you would get the good ones to work for that money.

\* \* \* \* \*

Mr. Bingham. Mr. Petrillo, I assume that you have familiarized yourself with the earnings of radio stations in order to arrive at the conclusion that all these radio stations, of which you have some complaint, have the

financial ability to hire musicians; am I correct in that assumption?

Mr. Petrillo. Only what I get in the financial sheets of the newspapers.

\* \* \* \* \*

Mr. Bingham. You have not familiarized yourself with the reports of the Federal Communications Commission as to the earnings of the radio-broadcasting industry?

\* \* \* \* \*

Mr. Bingham. Do you have any idea as to the amount of money spent for musicians by the radio broadcasting companies?

Mr. Petrillo. Yes.

Mr. Bingham. How much did they spend in 1941?

Mr. Petrillo. They averaged in 1941 about \$13,000,000.

Mr. Bingham. Now, is that by the radio broadcasting stations or by the sponsors?

Mr. Petrillo. No; that is by the stations themselves. This has got nothing to do with the sponsors.

Mr. Bingham. They spent about \$13,000,000 in 1941?

Mr. Petrillo. That is right.

Mr. Bingham. That figure, sir, is at variance with the Communications' figure, the Communications Commission's figure, in that your figure is high. The Communications' figure on the basis of one week, which was typical of the survey, showed that on an annual basis, about \$8,000,000-plus was spent by the radio-broadcasting stations themselves.

\* \* \* \* \*

Mr. Bingham. According to the Federal Communications Commission's report, the musicians received more money than any other group of employees, including executives, except the technicians. They received more than the managers, program department, script writers and officers; more than any other group. Did you know that?

Mr. Petrillo. Yes, but they do more work. The musicians are on the air morning, noon and night, especially on the chains.

Mr. Bingham. I thought you said that they worked twenty-five hours a week, five days a week?

\* \* \* \* \*

Mr. Bingham. So, you have no idea as to whether or not the industry, the broadcasting industry, can stand the burden of additional musicians' wages.

Mr. Petrillo. Well, we all know that the radio industry is not starving to death. I mean, if I knew—

\* \* \* \* \*

Senator Clark of Idaho. Well, I think the question goes as to whether before you put in effect your ban you had familiarized yourself through the published reports of the Communications Commission or otherwise with the earnings of the broadcasting companies; is that right?

Mr. Petrillo. You see, Senator, it is not hard to get these figures together.

Senator Clark of Idaho. No, but you undertook to take a definite course of action. You called a strike or ban, whatever you want to call it, and I think Mr. Bingham was merely attempting to find out whether at the time

you called that strike, you had made any investigation as to the earnings of the radio companies. Now, if you haven't, that is all right. You said you had not, at least.

Mr. Petrillo. That is right.

\* \* \* \* \*

Mr. Bingham. So that 537 stations of the 796 stations reporting upon which that chart was based, make less than \$25,000 a year.

Mr. Petrillo. Those are the stations that were exempted in our last agreement. Any station making \$20,000 or under did not come within the agreement of the American Federation of Musicians and the broadcasters.

Mr. Bingham. How many stations did you have signatory to that agreement, both from the chain and from the independent group?

Mr. Petrillo. Oh, about 280.

\* \* \* \* \*

Mr. Bingham. And did not those contracts have a clause to the effect that you would permit them to use phonograph records and electrical transcriptions, so long as they were in effect?

Mr. Petrillo. At that time, yes.

Mr. Bingham. And some of those contracts were renewed, were they not, and did not expire until the end of 1942?

Mr. Petrillo. No. They all expired in 1940.

Mr. Bingham. And were not some of them renewed to 1942?

Mr. Petrillo. There were a lot of them renewed, but not with that clause in it.

\* \* \* \* \*

Mr. Petrillo. After reading Mr. Fly's testimony here, I sent out a communication to all the Locals, asking them if they had any stations in their jurisdiction that were receiving chain programs and had no musicians employed in the station. And, the answer I received from the Locals was 2,121 men working in all stations; number of stations employing musicians, 296; number of stations not employing musicians, 201. That is the answer to 497 Locals. Now, I got these figures direct from the Locals in whose jurisdiction these stations are located.

Mr. Bingham. You mean, by not employing musicians, not employing full-time staff musicians?

Mr. Petrillo. That didn't employ anybody; not one musician.

\* \* \* \* \*

Mr. Bingham. Do you happen to know in how many cities there are broadcasting stations and in said cities there are no musicians' locals and no locals claiming jurisdiction over those cities?

Mr. Petrillo. That is a pretty hard question to answer. We have what we call neutral territory where there is no local in a jurisdiction, and there the Federation takes control of that jurisdiction. Why there is what we call neutral territory I don't know, but you have got to go back many years to our board records. It seems to me that all jurisdictions in the country some place ought to be given exclusive local jurisdiction; but that has never been done.

Mr. Bingham. If there is a broadcasting station in a city which has no local and no local claims jurisdiction over that city, how do you expect that broadcasting station to hire a union musician or union musicians?

Mr. Petrillo. I would say that if the station is in a neutral territory where there is no jurisdiction by any local of the Federation, it certainly would not have any radio station to fight about, because it certainly couldn't afford to pay anything.

Senator Clark of Idaho. Of course they are the ones that are really going to get hit by your ban.

Mr. Petrillo. That is right.

Senator Clark of Idaho. I do not think the big network stations are going to worry about your ban very much. I think it is only these several hundred little stations.

Mr. Petrillo. The smaller fellows.

Senator Clark of Idaho. They never hire musicians anyway.

Mr. Petrillo. It is the small fellow who suffers all the time; and in the canned music situation it is the smaller fellow who would suffer; I can't deny that.

\* \* \* \* \*

Mr. Petrillo. I would say, roughly speaking, that I believe 95 percent of those stations (in cities where AFM survey was made) in those jurisdictions all employ musicians. I think I am quite safe in saying that.

\* \* \* \* \*

Mr. Bingham. Just as a matter of record, Mr. Petrillo, according to the provisions of the constitution of the American Federation of Musicians, you as president have the power to set aside or annul or change the constitution if it is not adequate. In fact, you can do anything, under the provisions of Article 1, Section 1-B, of the constitution that you deem necessary to meet a particular situation?

Mr. Petrillo. That is right.

Mr. Bingham. Aside from being the president of the American Federation of Musicians, you are also the president of the Chicago local?

Mr. Petrillo. That is right.

Mr. Bingham. Will you please relate for the record the salary that you receive as president of the Chicago local and any other emoluments of office, anything else that you are entitled to by reason of being president, so far as the American Federation of Musicians is concerned, and also your salary and your emoluments of office as president of the American Federation of Musicians?

Mr. Petrillo. From the Chicago Local I get \$26,000 a year. From the American Federation of Musicians I get \$20,000 a year and a \$3,000 contingent fund of which I make no account.

Mr. Bingham. That is \$49,000 in cash?

Mr. Petrillo. Don't bring that up, because I just drew my salary, and the Government has fixed a \$25,000 limit.

Mr. Bingham. I thought there was a \$62,000 limit.

Mr. Petrillo. Sixty-seven thousand dollars.

Mr. Padway. But when you pay your tax, it leaves you with \$25,000.

Mr. Petrillo. As I understand it, all you can make is \$25,000.

Mr. Bingham. You have to earn about \$67,000 before you are cut back to \$25,000.

What else do you get? Do you get a car and chauffeur?

Mr. Petrillo. Oh, yes; I get a car and a chauffeur. I have not engaged the chauffeur since I have been president of the Federation.

Mr. Bingham. Let us talk about the Federation for a

moment. You are entitled to a car and a chauffeur as president of the Federation?

Mr. Petrillo. Yes.

Mr. Bingham. Are you entitled to anything else as president of the Federation? A car and a chauffeur and \$20,000 a year?

Mr. Petrillo. Expenses.

Mr. Bingham. That is, out-of-pocket expenses, money that you spend for traveling?

Mr. Petrillo. No; the Federation pays for the traveling. The Federation also pays for my room rent while I am in New York.

Mr. Bingham. That is, expense?

Mr. Petrillo. Yes.

Mr. Bingham. As president of the Chicago Local you get \$20,000 a year?

Mr. Petrillo. \$26,000.

Mr. Bingham. The \$20,000 is from the Federation?

Mr. Petrillo. Yes.

Mr. Bingham. What else do you get from the Chicago local?

Mr. Petrillo. I get a contingent fund when I believe it is necessary to have one.

Mr. Bingham. There is no set amount on that?

Mr. Petrillo. No.

Mr. Bingham. And that you spend as you see fit without accounting to the local?

Mr. Petrillo. That is right; and I pay income tax on it.

Mr. Bingham. Do you get a car and chauffeur?

Mr. Petrillo. Yes.

Mr. Bingham. And a residence, a place to live?

Mr. Petrillo. No. I did get a summer home.

Mr. Bingham. But that was a gift?

Mr. Petrillo. Yes. The Government said it was an income, and the tax went up and I could have bought the house out of my own pocket and it would have been cheaper.

Senator Clark of Idaho. Would you trade jobs with one of us?

Mr. Petrillo. Today I would.

\* \* \* \* \*

Mr. Bingham. Five hundred thousand coin-operated phonographs. That is the statement attributed to you, and it is in your letter. I am informed that only 445,000 have been built since 1932 to date and that of, that 445,000 there are only approximately 332,000 available for use at this time. I am further informed that they used approximately 30,000,000 records in 1942. Do you happen to have any figures on that?

Mr. Petrillo. No, sir.

Mr. Bingham. You do know that they use no symphonic records?

Mr. Petrillo. No; they are all dance records.

\* \* \* \* \*

Mr. Bingham. You do not find those machines in restaurants and places where they would be likely to employ musicians, do you?

\* \* \* \* \*

Mr. Petrillo. In some places there are juke boxes where they could employ musicians and where they have already displaced musicians.

Mr. Bingham. Do you know of any instances of that kind?

Mr. Petrillo. Yes. I can give you a record of it.  
Mr. Bingham. There are not very many, though, are there?

Mr. Petrillo. Not from the record of it, but if you made a survey you would be surprised how many jobs the juke box has taken away from musicians. Of course I do not mean an orchestra. Most of those places would use a piano player. They would not use a band of six or seven or eight or ten men. But musicians have been displaced from first-class places.

Mr. Bingham. Do you have any idea as to the number of coin phonographs found in or near army camps and naval training stations and what not?

Mr. Petrillo. No.

Mr. Bingham. Do you have any idea as to what the average gross per week per machine is?

Mr. Petrillo. Only what I told you a few minutes ago, what I got out of "Billboard"; and that was that they average about \$12 a week.

\* \* \* \* \*

Mr. Bingham. I am informed that the average is approximately \$5 per week, of which the location owner retains \$2 and the operator retains \$3, and the net income to the operator is approximately 90 cents a week.

Mr. Petrillo. I don't think it would pay at all to have a machine in there for 90 cents a week. I know that if I owned a place I would not want a machine there if I only got 90 cents a week, unless I just wanted to entertain people, and that would be a cheap way to do it. Probably that is what they had in mind.

Mr. Bingham. The location owner gets \$2 a week, that is, the man that owns the restaurant or the diner or the tavern; and the operator who owns the machine gets \$3 a week and nets 90 cents a week out of the operation after he pays for his records, his needles, servicing, and what not.

\* \* \* \* \*

Mr. Bingham. Yes. I am informed that there are approximately 8,500 operators who handle approximately forty machines apiece. In other words, it is a small business, and their weekly income is approximately \$40 per week, before taxes, on a \$12,000 capital investment.

\* \* \* \* \*

Mr. Bingham. I just wanted the record to show what the scale was. In addition to the scale the contractor makes an agreement, if I am correctly informed, with the recording company whereby he gets a royalty of 2½ cents a record. Is that correct?

Mr. Petrillo. Some of them do; yes.

Mr. Bingham. By some of them you mean the name bands?

Mr. Petrillo. Yes.

Mr. Bingham. They get a 2½ cent royalty?

Mr. Petrillo. Yes.

Mr. Bingham. Do you happen to have any idea as to the number of records that a name band might sell of a particular recording?

Mr. Petrillo. No.

Mr. Bingham. It might well run into thousands or hundreds of thousands?

Mr. Petrillo. I suppose it could. Do you mean the name band or the leader receives the 2½ cents?

Mr. Bingham. I understand that the leader gets 2½

cents, and the band members do not participate in that royalty.

Mr. Petrillo. They get scale, and that is all.

Mr. Bingham. They get the scale and whatever the leader happens to pay them by reason of their exceptional ability with a particular instrument?

Mr. Petrillo. That is right.

Mr. Bingham. So far as the records are concerned, there is a 2½-cent royalty to the leader, and he can make anywhere from \$5,000 to \$25,000 out of a particular recording, depending on the number of records sold?

Mr. Petrillo. I think it is very rare that he makes \$25,000.

\* \* \* \* \*

Senator Clark of Idaho. I may be wrong, but at this time, in any event, you are not complaining about the scale for musicians, are you?

Mr. Petrillo. No. That comes later.

Senator Clark of Idaho. You mean, when you renegotiate your contract?

Mr. Petrillo. Yes, sir.

\* \* \* \* \*

Mr. Bingham. I have heard any number of broadcasts which closed with the credit line that "The music has come to you through the courtesy of James C. Petrillo."

Mr. Steeper. "With the cooperation of James C. Petrillo."

Mr. Petrillo. We try to combat some of the publicity. In other words, we want to get a little credit. Everybody has been after us, and we thought, now we are doing a good thing we might as well be given credit for it. Those are mostly bands that put on a program of one hour every Sunday. The entire band plays in the studio free. They go into the studios and entertain soldiers.

\* \* \* \* \*

Mr. Bingham. I have in my hand page 16 of "P. M." of Monday, December 14, 1942, an article by Edward Angly, who has just returned from Australia, and in his closing paragraph he states (reading):

"The men at battle stations in the Pacific have little entertainment other than what they create themselves. The canned entertainment that is shipped to them could, I think, be a bit fresher."

That is dated December 14, 1942. Have you had any advice from any member of the armed forces as to the effect of your ban in the far flung battle stations that we are now attempting to man in our fight with the Axis?

Mr. Petrillo. No; I have not.

\* \* \* \* \*

Mr. Petrillo. I started (negotiations for the Boston Symphony) with the leader, and then I finished up with the treasurer, the fellow with the money, and he showed me a lot of figures.

Senator Tobey. They looked good to you, did they not?

Mr. Petrillo. Those figures were not so good. They were about \$180,000 short that year. So I told him that if he joined the union he could make it up. So he did. He joined up with the Blue Network and made a nice

piece of change out of that. The deficit will be wiped out. So we did some good to some people.

\* \* \* \* \*

Senator Clark of Idaho. How about the moving picture industry?

Mr. Petrillo. The moving picture industry too. There we have specific figures; there we can point to a specific number of men we have lost.

Senator Clark of Idaho. It occurs to me that the radio industry as an industry has really created opportunities for musicians, if you look at the overall picture. But the moving picture industry apparently has displaced them without creating any particular work for them. Would not that be about right?

Mr. Petrillo. That is correct, because they started out with a lot of musicians, brought a lot of musicians in the field, and then overnight they were all put out of a job.

Senator Clark of Idaho. Would it be a fair question to ask you why you have not banned sound track recording for the moving picture industry?

Mr. Petrillo. You cannot be fighting on too many fronts. If we started a battle with the moving picture industry at this time I don't know what would happen to us.

Senator Tobey. Is this present method of yours an illustration of the old dogma that coming events cast their shadows before them?

Mr. Petrillo. That is poetry. I don't understand poetry.

Mr. Bingham. Pursuing further that line of thought, Mr. Petrillo, the impact of the moving picture industry was felt by you in 1929, or shortly after that—say, 1930—and that has been something that has been in the back of your mind for some 12 years. The radio industry was not even in existence when the talkies came in.

Mr. Petrillo. Just slightly.

Mr. Bingham. But you moved against the recording industry, the radio industry, and the transcription industry first. Do you care to discuss the reasons for making that selection?

Mr. Petrillo. No. I don't think we have any reasons. We probably should have gone after the moving picture industry first, but we did not.

\* \* \* \* \*

Senator Clark of Idaho. I want to break in on this. I have been told by people who should know that there are a great many cities in the United States today, including Washington, where live musicians are very difficult to obtain, particularly at night time; that good live musicians sometimes can be obtained for one or two hours during the day, but that most of them, under present circumstances, have other positions and usually accept dance engagements and things of that kind at night. I have inquired about that since this came up. I wanted to get all the information I could and have it either verified or disputed in these hearings. Is that statement correct?

\* \* \* \* \*

Mr. Petrillo. Maybe the caliber of men they want are men who are working four or five nights a week, and possibly the radio station is only ready to offer these boys one or two sessions a week. So, if they are already making \$40 to \$50 a week they can't quit the jobs they have in order to go to a station and make \$10 or \$12

or \$14 or \$16 a week. You might find that condition. But as to a shortage of musicians that work in radio stations, we can supply all the men they want. They might say they are no good. They are not all Stokowskis and Toscaninnis and Petrillos, but they are all right.

\* \* \* \* \*

Mr. Petrillo. I would say to you, Senator, that today we can furnish all the musicians that are needed in radio stations, but I doubt, if the war goes on for four or five months, whether we will be able to do that job. That is a fair statement, because the way they are taking them in, I think our total membership now represents about 15 or 20 per cent in the Army.

Mr. Steeper. About 18 per cent.

Mr. Petrillo. About 18 per cent of our membership are in the Army or Navy, 25,000 men.

\* \* \* \* \*

Senator Clark of Idaho. Do you think it would improve the quality of your union if you had certain standards of musical excellence before membership would be granted?

Mr. Petrillo. We are in a very peculiar position. When I was a kid we went out and played weddings and picnics, and the union was after us all the time. The union was not so strong in those days. Unless we take them all in—I dare say if we stopped taking musicians in unless they are first class, in a period of three years we would have another union start, because you have either got to take those boys in or they are going to scab on the job. They are either going to live or they are going to fight. So we feel that they are better off in the organization. If they are qualified they will make a better living. If they are not qualified they will probably lose engagements they already have.

Senator Clark of Idaho. And pay dues for nothing?

Mr. Petrillo. Yes.

Mr. Bingham. I am going to attempt to summarize, if I may, Mr. Petrillo. So far as the radio is concerned, radio has actually made work for musicians, has it not?

Mr. Petrillo. There is no question about it.

Mr. Bingham. The phonograph was invented before the American Federation of Musicians held its first annual convention, was it not?

Mr. Petrillo. Yes.

Mr. Bingham. So far as the recording companies and the transcription companies are concerned, the musicians have made more money than they ever made before; that is correct, is it not?

Mr. Petrillo. It is only partly correct. Where does the recording go after it is made? Does it go for home consumption? Does it go into a place of business where there would not be any music if the record was not played there, or does it go, like the Ringling Brothers Circus, where they have taken a job away from forty men? That is the question.

Mr. Bingham. I think you will admit that the vast majority of records go into the home.

Mr. Petrillo. The finer records, the symphonic records.

Mr. Bingham. Practically all of the symphonic records?

Mr. Petrillo. Ninety-eight percent, I would say.

Mr. Bingham. And so far as the other records are concerned, I think you will admit that about 70 or 75 per cent go into the home?

Mr. Petrillo. And they go elsewhere.

Mr. Bingham. I will come to the rest of them in a minute. But about 75 percent go into the home?

Mr. Petrillo. I would say so.

Mr. Bingham. And as to the balance, there are about 30,000,000 records sold to operators of coin-operated phonographs? And I think you will admit that most of the places where you will find the coin-operated phonographs could not employ a musician if they wanted to. I think you will admit that. That is, the roadside diner, the tavern, the hamburg joint—they could not employ musicians?

Mr. Petrillo. Places like that, no.

Mr. Bingham. Very very few of the 300,000-odd locations could employ a live musician?

Mr. Petrillo. I would not say, very few. You might split that in half.

Mr. Bingham. How many would you say?

Mr. Petrillo. About 50 percent.

Mr. Bingham. You would think, half of them?

Mr. Petrillo. Yes. Not an orchestra.

Mr. Bingham. A live musician, at least one live musician.

Mr. Petrillo. Fifty percent could not afford to put on any musicians. We will push that aside. There are fifty percent that could. Out of the fifty percent that could there are probably 25 percent that would only employ a piano player, anyway. There are 25 percent left. There are about 16 percent that could employ a piano and a violin player, and maybe 15 percent that could employ a four or five-piece orchestra.

Mr. Bingham. That would be 45,000 establishments. Fifteen percent of 300,000 would be 45,000 establishments that could employ a four or five-piece orchestra, that now have a coin-operated phonograph.

Mr. Petrillo. If that is so.

Mr. Bingham. That is on your figures.

Mr. Petrillo. Even according to my figures we could not supply the men, because we do not have that many musicians. There are only 138,000.

\* \* \* \* \*

Mr. Bingham. So far as the radio broadcasting industry itself is concerned, that has furnished an opportunity for musicians to work, has it not?

Mr. Petrillo. Right.

Mr. Bingham. And since radio has come into existence your membership has grown. Since, we will say, 1934, except in the depression years, your membership has grown until today it approaches the highest figure in its history. Is that correct?

Mr. Petrillo. That is not correct, according to our figures. We probably had 158,000 at one time.

Mr. Bingham. When would you say radio broadcasting came into the big business class?

Mr. Petrillo. About 12 years ago.

Mr. Bingham. About 1930?

Mr. Petrillo. Yes.

Mr. Bingham. And since that time the membership of your union has grown and more musicians have been employed by radio broadcasting companies each year, except I believe Judge Padway said last year there were less employed than in previous years.

Mr. Padway. Yes. In 1939, 1940 and 1942.

\* \* \* \* \*

Senator Clark of Idaho. I want to clear up this matter that we were on this morning, because I think that maybe

we are getting some place; I do not know. Will you do this, Mr. Petrillo? As soon as reasonably possible will you get your executive committee together and formulate a program? I really think that you ought to formulate it in writing; otherwise we are going to get nowhere. This committee is busy and you are busy, and we are perfectly willing to spend such time as is necessary. It may be that we will not have to continue this investigation indefinitely, and that will help everybody. Will you get your executive committee together and formulate a program? It does not have to be an iron-clad program, but some kind of a program as to the basis upon which, from your standpoint, you think this controversy with the industry—and I use that as an overall term—can be settled, and then furnish this committee with a copy of it so that we can get something to start on. Will you do that?

Mr. Petrillo. I certainly will. I happen to have a board meeting beginning February 1. We will be in session two weeks. On account of this investigation I postponed it until February 1, because I didn't know how long I would be here. The board members come from coast to coast. We have one in Los Angeles, one in Texas, one in Des Moines, Iowa, and so on. We will be in session beginning the first of February, and I will promise you that on the first day we will go right into it. We are going to show this committee that we are in good faith in everything I have told you.

Senator Clark of Idaho. If I were you I would give it to the public. But that is up to you. We cannot compel you to do anything. We are going to rely on your formulating something that can be presented to the industry. Please furnish this committee with a copy of it, and I think you will get somewhere.

\* \* \* \* \*

Mr. Petrillo. Matters that I cannot handle myself I lay over for the board meeting.

Senator Tobey. Has there ever been a case where they did not meet your views in the last analysis?

Mr. Petrillo. Once in a while they get balky, but they come around all right. That is because I try to be reasonable.

\* \* \* \* \*

Mr. Petrillo. Mr. Chairman, may I at this time thank you and the rest of the committee for the courtesy shown me while I have been here for two days. Also the attorney has been very fair. You have all been very fair. I know that the Board will appreciate it when I tell them at the convention that this committee did nothing but try to be helpful. I am sure that something is going to come out of it. I hope so, anyway.

## Testimony of Mr. Padway

MR. PADWAY. The refusal of the American Federation of Musicians to make records and transcriptions is part of the fight to maintain the basic rights of labor.

\* \* \* \* \*

In the present instance workers are engaging in a simple refusal to work—that is all the action of the American

Federation of Musicians amounts to—because the musicians feel that it would be nothing short of suicide to continue, themselves to make the instruments which put them out of jobs.

\* \* \* \* \*

The attitude of the musicians has been—and is—and that was stated by Mr. Petrillo, too—one of “live and let live.” But that is hardly the approach of the corporations that have grown powerful and wealthy on “canned music.” Instead of recognizing their debt to the live musician they have completely ignored his plight and have shirked their plain responsibility to the human and economic problem of unemployment in their own industry.

They have preferred, rather, to add the power of the press and of various government agencies to their own great strength and to confuse the simple issue by an expensive—or should I say cheap—campaign composed of personal abuse and false issues.

\* \* \* \* \*

Mr. Padway. Except this, Senator. You have been wondering why we have not gotten together. You have also been wondering why we have taken the position as explained by President Petrillo. There are two ways of getting together. You get together with people who are reasonable and who formulate an intention of good faith collective bargaining. This indicates that there was no such disposition on the part of the National Association of Broadcasters, or some of its members, not all.

I should, in fairness, say that the officials of the Radio Corporation of America have not been unfair. Usually we disagree with them or they with us. But they have certainly not engaged in any abuse or vilification. The same is true of the president of the Blue Network. We must say that. And that is what Mr. Petrillo meant when he said there is some justice to their side. These people have unofficially made known the injustice of their side.

\* \* \* \* \*

Senator Clark of Idaho. If we complained about anything we complained about calling a strike or putting on a ban prior to presenting any proposals for negotiation. I do not know what the National Association of Broadcasters have done, but I am wondering if they did anything prior to the time this ban was placed.

Mr. Padway. No, they did not, that I know of; at least not publicly.

\* \* \* \* \*

Regardless of what the National Association of Broadcasters has done, public resentment has arisen. Look at this file (exhibiting). These are just letters from all over the country, from people who never heard of the National Association of Broadcasters. I do not think Elmer Davis' testimony was predicated upon anything that the National Association of Broadcasters said.

\* \* \* \* \*

The public got up in arms against a ban which it thought was unjust. The National Association of Broadcasters may be guilty of many sins, but I really think this tremendous building up editorially, if you please, by the press, and these letters from the federations of women's clubs, high school bands, and all of those things, were not controlled by the National Association of Broadcasters, to

my way of thinking. But perhaps we could argue on that until doomsday.

\* \* \* \* \*

Senator McFarland. I am more interested in this offer of Mr. Petrillo to try to get together and settle this matter. That is the thing that I am interested in.

Mr. Padway. I thought Mr. Petrillo made it very clear that he is going to call his board into conference. Senator Clark put it to him by way of direct questions, and I think direct answers were received. His board will be called together on February 1. Correct me if I am not stating that correctly. At that time the board and President Petrillo will formulate demands. Those demands will be presented to the Committee, and he is ready, upon the presentation of those demands, he and his associates, to sit down and confer with whatever representatives the industry chooses to see if they cannot settle this controversy.

\* \* \* \* \*

Senator Clark of Idaho. Does the American Federation of Labor have a publicity department?

Mr. Padway. It does.

Senator Clark of Idaho. How large is it?

Mr. Padway. It has got a nice active department. It has a director and several assistants, I think.

\* \* \* \* \*

Mr. Padway. Time and again our members have been called upon to offer their services for benefits for the armed forces, the Red Cross, Allied Relief, and war bond sales; and time and again they have responded generously, giving their talents without charge and often at considerable financial sacrifice.

\* \* \* \* \*

Senator McFarland. Here is the point that comes to us or, at least, the question comes to me. Let us just assume for the moment that you are entirely right in your controversy with these other people. Here is a ban that was placed in operation in the middle of the war. It at least did this: it caused a lot of confusion among the people, and it came at a time, you see, that you, as I pointed out yesterday, wanted more money and you wanted more employment, and it came at a time when the whole war program called for more employees. People have been forced to quit their jobs that they formerly held.

Take the automobile salesman. He just had to close down. It has been a great hardship. And he has had to go into other lines of work.

Now, the question is whether the musician was justified in having placed himself in this position, in the middle of a conflict, or whether he should have waited until the conflict was over, because there is plenty of work for everyone. There is plenty of work for everyone. Now, maybe that is not in his chosen profession, but take the automobile dealer, he is not able to work in his chosen profession, as well as a lot of others. We have had to inconvenience ourselves on account of the war.

Now, that is the question that is before me. Assuming you are right, you have picked out an inopportune time to place this ban in operation. The question is as to whether it would not have been better for you and been better for the nation, had you waited until the war was over.

Mr. Padway. Senator McFarland, there is certainly much logic and reasonableness in your exposition of the time when the ban was placed. But let me say this to you, sir, that in spite of all the war may do and in spite of all that the manufacturers may absorb, there will be thousands of musicians unemployed.

Now, many of our members are older members. The younger members are being taken away, and that is why some of these bands are being dissolved; not because they can't get musicians, but they can't get the young and attractive musician, the musician that is wanted in a dance hall like, we will say, the blue room of the Shoreham Hotel. Probably you have been there; I don't know. They want young musicians, attractive ones. I suppose, with the glamour of the dance and the sentiment of the song, they want to look at fine-looking young males—like you and me (laughter)—and they don't want the older ones.

Now, there are many of those that will not fit in a factory; they won't be taken, but if they take them, we will be glad to have them take jobs. We want them to take jobs. We will give the Government all the manpower it wants without any compulsion. And, after giving all the men to the draft and thousands that are in these factories, and after taking into the factories all those that are capable of work and willing to go there, still we will have thousands of musicians unemployed in this country.

Well, you say, the problem won't be acute. But, sir, we have to look out for another thing. You know what war did to the country with liquor. It brought prohibition, didn't it? These rules that are instituted as war measures, remain after the war. The principle remains. And it gives the employer of industry a hold to set up an adverse principle that cannot be removed after the war.

\* \* \* \* \*

Senator McFarland. But, here is one phase of the matter, regardless of what you do for the Army, that you are not doing now, and I do not know how it can be done without the records. There are people out on the little farms and out on the ranges that are producing the meat for the nation, if you please, and other important commodities, that depend entirely, because of their locations, upon the small radio stations.

Now, the city has become attractive to them. Their work is very important in the war program. And, we must try to see to it that they, at least, have all the conveniences that they have had in the past, but this ban is depriving those people of one of the conveniences that they have had, and that is, up-to-date music.

Now, these records, as you said yesterday, or Mr. Petrillo said, become old. Now, as they become older, why people will become more dissatisfied and will say, "Well, I can get out of this little old farm, I can get out of this ranch, I can go to the centers of population, and there I can get good wages and leave this thing and go to work, and I will have the conveniences of life." Now, those people, as Mr. Petrillo admitted, he did not take into consideration when the ban was placed on.

Now, it is things like that, in placing bans and in starting things now and then in the midst of a conflict that just adds to the problems which we already have and that our nation already has. They may seem small, but it is the small things that grow into large things

sometimes that make it more difficult, and that is just one example of how this starts a demand for new and different things, in the midst of a conflict, and how it hurts us.

\* \* \* \* \*

Mr. Padway. I have quite a good answer to that, but it will consume too much time to state it. I put it in two subheadings.

Number one: We will not only protect the small station when we come to a settlement but I assure you there will be no money demand or any demand made on the smaller stations to hire musicians or spend more money than they are spending now. Perhaps they are, as Mr. Petrillo said now, innocent victims of a greater struggle we have with some greater forces, and it is perhaps bad, but that happens in every strike. A strike of the engineers in this building would affect you Senators very much. You would not have any heat.

Senator McFarland. It is striking in the midst of a war, that is the thing we are trying to get away from; having strikes in the midst of the war.

Mr. Padway. We want to settle this strike, because we don't want to have it any longer.

\* \* \* \* \*

Senator Andrews. What you say in regard to the professional musicians being out of employment, does not that apply to all professions and trades? They are all in that situation.

Mr. Padway. Every one, Senator. Every one, Senator.

Senator Andrews. In other words, there is no exception.

Mr. Padway. No, except degree. Some are not affected as much as others, and then certain times others are affected more than others, but our problem has not been only acute—well, it is chronic, and it has been over a number of years, but it will get worse unless industry helps us find ways and means of solving it.

Senator Andrews. It seems to me that so long as every human being loves music and every human being tries to learn to play an instrument—I have played two or three myself.

Mr. Padway. I am not going to ask you whether you carry a card in the union.

Senator Andrews. It is a universal proposition, music is, and you can never hold it down.

Mr. Padway. We are the last ones to hold it down. We lift it up.

Senator Andrews. I know you do not, but you should not hold it down to any particular persons.

Mr. Padway. There is logic in that. This is not a one-sided affair. There are, of course, arguments on the other side.

Senator Clark of Idaho. Of course, I want to say this, Mr. Padway, and I think you will agree with me, that it has not only been the policy, but the very commendable policy, the popular policy, the stated policy of both the American Federation of Labor and the C. I. O. in their pledges to the President, to hold strikes to a minimum and, if possible, eliminate them for the duration.

Mr. Padway. That is correct. I think our pledge has been lived up to.

\* \* \* \* \*

Mr. Padway. Well, I think if what we had a right to expect reasonably would have resulted, this strike would

not have been enforced. It would have been settled even before the ban came on. That, of course, will cause a debatable subject, whether this side is wrong or that side is wrong. In this instance we maintain, if there had been the proper attitude on the part of the other side, it would have been settled.

\* \* \* \* \*

Senator Tunnell. How do you keep an amateur, for instance, from making a record and having it put on the air, one who is not a member of your union?

Mr. Padway. Well, in that instance, we keep it off in this way, Senator. We say to the broadcasting company, "You employ our musicians. That amateur's record is in competition with us. Now, instead of playing that, we want you to play live music." All the records were made by our musicians and played by unions of our musicians, but as a penalty for doing so we will say, "You must have live musicians to do that." And that is very effective, and that will keep them off.

\* \* \* \* \*

Mr. Padway. In some instances they have even done this: They have put amateur bands on the air and said they don't want the stand-by—that is where the employer agrees to the stand-by—saying, "We will pay you just the same." We don't want that. We don't want it for two reasons. First of all, we want to render music for the pay we receive.

\* \* \* \* \*

Mr. Padway. What must be done in the amateur situation is this: to approach or meet a happy medium. How can we give this talent free sway and opportunity to play and opportunity to cultivate their musical culture and the like, and at the same time not make economic inroads on any professional musician?

\* \* \* \* \*

Senator Tunnell. I ask you these questions, Mr. Padway, because on the first page of this paper you say:

"In the present instance workers are engaging in a simple refusal to work—that is all the action of the American Federation of Musicians amounts to."

Well, the resentment that I see reflected in my correspondence is not so much the refusal to work as it is the threat that you will refuse to work if the other fellow works.

Mr. Padway. At the present time that is correct. That is what we say.

\* \* \* \* \*

Well, I have not Mr. Petrillo's authority or the Board's authority, but from what I know, from general experience in talking to Mr. Friedman, Mr. Cluesmann, and others, who know the specific industry better than I do, I know they neither intend to do that or will do that. I know that amateur bands will be given a fair play on the air. Now, whether it should be twelve played by Interlochen or four or six, we will come to a happy understanding as to the medium, and will approach it with a spirit of liberality, with a spirit of at least giving these youngsters, call them that, a fair opportunity to present their talent by the best mechanical means now available.

Senator Tunnell. In each instance the thing complained about is the threat that you will not permit the union

members to work, provided either the record in one instance or the school band in the other, is used, as I understand the complaint.

Mr. Padway. Well, you can take this statement that I now make and excerpt it and send it to your constituents and tell them that you have it under oath. We will not place an absolute ban on amateur music. We will endeavor to reach an agreement with the broadcasting companies, reasonable in its form and extent, to permit amateur broadcasts within fair limitations.

\* \* \* \* \*

Mr. Bingham. Is it a fact that the musicians who now play in Command Performance have a special grade rate which is paid for by the Government?

Mr. Steeper. No. The American Federation of Musicians hasn't given a special rate. They have given gratis. If a local, in its own interpretation of the law, feels that some of their men are entitled to a remuneration, then it is up to the local, and the local gives authority to work out some problem.

Mr. Bingham. Just so long as this record is straight, as it now stands, there is an unequivocal statement in the record that the musicians are contributing gratis in the rendition of Command Performance.

\* \* \* \* \*

Mr. Bingham. It may be possible that locals are imposing a charge upon the Government for the Command Performance?

Mr. Steeper. That might be so. That I couldn't say, authoritatively, but as far as we are concerned, we give permission for those musicians to play these performances gratis.

\* \* \* \* \*

Mr. Steeper. On the Government programs 95 per cent of the music is donated. The name bands are donating their services. Where they are making transcriptions for the Department of Agriculture or Department of the Treasury, where they use an organ for bridge work, over a period of time, for transcriptions, then the organist, as I understand it, receives a remuneration, pay, some scale that is provided for, or in the local's jurisdiction, where he is making these transcriptions. But, that is only in a few instances and it only applies to one man.

\* \* \* \* \*

Mr. Bingham. I am informed that you have given permission to the musicians in all locals to render their performances gratis.

Mr. Steeper. No, that is not so. That is not so. We cannot step into a local jurisdiction and tell them what they must do in their jurisdiction.

\* \* \* \* \*

Mr. Bingham. Now, if I may ask Mr. Padway a question. It is your philosophy, as I understand it, as well as the philosophy of the American Federation of Musicians that everyone who becomes a member of the American Federation of Musicians has a right to earn his living as a musician, regardless of his musical ability.

Mr. Padway. No, that is not our philosophy.

Mr. Bingham. Will you please tell me why, then, you say that you have 138,000 members, and you point to the number of unemployed in each one of your locals and say that you must get employment for this number of

musicians, whatever the number happens to be, in each particular local?

Mr. Padway. I don't understand that that is even said, that you must give employment for 138,000 musicians. You understand we said a large number of these unemployed are professional musicians who wish to play their professional instruments and earn their living from the profession and don't have employment. And, we add—

Mr. Bingham. Do not have employment as musicians.

Mr. Padway. Do not have employment as musicians. And we add to that, do not have employment at all, many of them, and many of them have other employment.

Mr. Bingham. Let us stick to that point a minute.

Mr. Padway. Yes.

Mr. Bingham. You say they do not have employment at all?

Mr. Padway. Yes, sir.

Mr. Bingham. But yet the American Federation of Musicians has made no survey and has no idea as to the number of musicians who are gainfully employed, at least, part-time, and most of them full-time in some other occupation, other than as musicians.

Mr. Padway. Well, the American Federation of Musicians is not without knowledge on that. The American Federation of Musicians is with this knowledge. First of all, during the W. P. A. period, we could have supplied 50,000 musicians to the W. P. A. He couldn't take that many and wouldn't take that many. They did help us out with 15,000 at times. I think it amounted to 17,000 at one time, or 16,000. Anyway, they helped us out with them. But there were certain regulations concerning which they wouldn't do anything.

Now, the next thing is this: We have had musicians that lived during that time, who were not on W. P. A., on ten or twelve dollars a week. They played here and there at odd jobs. There wasn't any other job to be done or to be had for them.

We have now men—except for the war, which provides general industry for some of them—who could not get a job, because the moment they came to apply for a job and told the truth that they had been musicians for 15 years or 18 years, they would say, "We don't want you," if there is another man who had not been a musician who is eligible for the job. In other words, the very fact that he was a musician made him secondary and third and fourth on the list of being employed as a clerk in a department store or furniture salesman or truck driver, and others were given the job if there were others applying for it.

\* \* \* \* \*

Mr. Padway. There are, I think, 138,000. A few thousand, probably 10,000, who carry cards and who play sometimes. They are no problem. Cast out about 25,000 of them, we will say, and then we come down to 110,000 or 112,000, and of the 112,000 thousands are only employed part-time and can't get any other work of any kind.

Mr. Bingham. Mr. Padway, you are making statements of fact, and as I understand it, the American Federation of Musicians has made no survey as to how many of their musicians are unemployed at any gainful occupation; not as musicians, but at any gainful occupation.

Mr. Padway. Now, I will tell you why that is. The men are in the office. These men that are sitting around here are so well informed of the truth of this contention that they have not thought it convenient or even necessary to make the survey.

\* \* \* \* \*

Mr. Bingham. I am further informed that there is not a man available of sufficient competence for engagement in a radio station in Washington, D. C., and, furthermore, that all men who are employed as musicians by radio stations in Washington, D. C., hold more than one job.

Mr. Padway. The radio industry is very technical about the employment of musicians.

Mr. Bingham. What do you mean by "technical"?

Mr. Padway. Well, technical in the sense—probably I should say "particular"; that would be a better word. Thousands of musicians will not be employed by the radio stations, even if they apply. They won't take them. They feel they want the cream and the best. Now, the fact that the radio station won't take them, doesn't mean anything, because the radio industry I don't think employs 2,000 or better all over the country. You mean to say that only 2,000 musicians are competent for the industry? There are 8, 10, 12, 15, 40 thousand that can be selected, and yet they won't take them. They won't take them. I will venture to say—and I don't know much about this, this is only a guess—I will venture to say I can bring any radio station here in the city of Washington 100 musicians that live in Washington or the adjoining territory today, and the radio company will probably turn down 95 percent of them.

\* \* \* \* \*

Mr. Bingham. All laws, no matter what they may be, shall be referred to a convention committee consisting of the executive board, A. F. of M., and chairmen of all committees, who may sanction or veto same. And the president may annul, set aside the constitution. He may make a new constitution if he so desires, so long as it does not affect finances. That is the only restriction. Do you call that democratic?

Mr. Padway. If you wish to take that standing alone and base your question as you have based it, it is not democratic. There is no use equivocating about it.

\* \* \* \* \*

Mr. Padway. I do not know of a single instance, and have asked that question and no one was able to point to a single instance where a president of the organization has set aside any fundamental, substantive constitutional provision.

\* \* \* \* \*

But the fact that the membership have not found that to be a hindrance and it has not been withdrawn would, I think, indicate that it has not interfered with the democracy of the constitution. If they will take my advice about it they will remove it at the next convention.

\* \* \* \* \*

Therefore I say, you really cannot find in that situation a lack of democracy, certainly not other than it appears in writing and therefore is an undemocratic provision. And in that interpretation, and that interpretation only, I might go along with you. But as to any

exercise of it, and the practical effect of it, I say it is in most democratic form because it is not availed of.

\* \* \* \* \*

Mr. Padway. Technological displacement and unemployment are problems with which trade unions have had to cope for a long period of time. The efforts of trade unions to meet these problems constitute a proper and appropriate field of collective bargaining. To contend that the problem of the introduction and use of machines which displaced labor does not constitute a proper field for collective bargaining and has no relation to the "terms or conditions of employment" is to close one's eyes to the history of the American labor movement for the past one hundred years. The trade union seeks to protect its members against technological displacement.

\* \* \* \* \*

Mr. Bingham. While we are in the realm of philosophy let me say that admittedly the radio broadcasting industry displaced no musicians when it came into existence. Furthermore, as the radio broadcasting industry grew it employed more and more musicians until I believe in 1939 you said, and since 1939, fewer musicians have been employed. I take it to be your position that the radio broadcasting industry should support all who desire to become musicians, at least in some part, because in the course of their business they use records made by musicians. Is that your contention?

Mr. Padway. No. But I want to say that the factual premises upon which you base your conclusion are wrong, and your conclusion is certainly wrong. Let me tell you this: It is one thing to say that the radio broadcasting industry has not displaced musicians.

Mr. Bingham. Is that right or wrong? Am I wrong in that premise?

Mr. Padway. It is right if you put a period there, but is wrong if you put a semicolon there and continue on. That is the difference. Here is why it is wrong: When there was no radio industry there were no musicians engaged in the radio business. Then along comes the radio business and employs 400 and 600 and up to 2,000. And that is for nights. But here is what happens to us: The musician who would have found work one year after the radio industry came into being, ten years thereafter or twenty years thereafter—or probably it does not go back for a 20-year period—would have continued to have work except for the fact that the radio industry prevents it.

Mr. Bingham. How?

Mr. Padway. I will give you an illustration that parallels the radio industry. Certainly new restaurants and night clubs are opening up right now. There is the Del Rio and the Normandy and so on, and such other organizations as have sprung up as our population increased, and as they get into business they must have music, and would want musicians to play for them. If you take all of the new night clubs that have opened up, outside of the immediate downtown district where they make good money and want an orchestra, other means are employed. You take out-of-town places and instead of employing live musicians they employ wired music or something on that order.

Mr. Bingham. But I am speaking of radio stations.

Mr. Padway. That applies to radio stations.

Mr. Bingham. Do you mean that a radio station pipes music into restaurants downtown?

Mr. Padway. Oh my Lord, yes. If you will spend an evening with me—and I would enjoy nothing better than to spend one with you—I will take you to plenty of dance halls on the outskirts of Washington where soldiers and civilians go and dance around, and where there are large crowds. There are plenty of places where the music is all piped in through radio. And when the radio does not come across with the kind of music they want—and there is plenty of music on the radio—they pipe it in through a record played on a juke box or victrola and they dance.

Mr. Bingham. I have had the experience of seeing the coin-operated phonograph, but do not believe I have ever been in a place where they dance to music on the radio, except in a private home.

\* \* \* \* \*

Mr. Bingham. That is why I asked you the question as to radio broadcasting, because so far as I know, radio broadcasting, as an industry, has made work for musicians and has not thrown them out of work.

Mr. Padway. We are at issue, as you know, on that. In our experience we find that that is not just the fact. You may be right and I may be wrong. When I say "I," I mean the American Federation of Musicians.

Mr. Bingham. But you spoke from personal experience?

Mr. Padway. Talking about the proof of the pudding, we know it to be a fact from actual experience, and you probably believe it to be otherwise.

\* \* \* \* \*

Displacement of live musicians by "canned" music started fifteen years ago with the arrival of the sound motion picture, and since then the situation has grown steadily worse. In 1928 and 1929—the first two years of the rapid growth of sound pictures—approximately 10,000 theater musicians lost their jobs.

\* \* \* \* \*

Mr. Padway. The conditions created by this development were aggravated by the closing of many vaudeville houses and legitimate theaters throughout the country. As a result, instead of the 22,000 musicians employed in theaters in 1927 there are only 4,000 so employed today. Thus, the employment of a few hundred musicians out in Hollywood making mechanized music throws 18,000 other musicians out of work.

\* \* \* \* \*

Mr. Bingham. There are letters that have come to Senator Clark to the effect that locals make it tough on the traveling band that comes through to the small house, because the small house cannot, they claim, afford to employ an orchestra full time. They can bring in a traveling band that comes through with a radio show, we will say; but if they do that they also have to employ an equal number of local musicians. That is our old friend the "stand-by." They cannot pay for both, so they have neither.

Mr. Padway. All right, Mr. Bingham. I do not want to renege or shirk that question of the stand-by, but I justify the stand-by under certain circumstances and in certain instances. In other instances I think it is unjust. I think the stand-by in the building crafts ought to be abolished. I know Mr. Green feels the same as I do.

We think it is unjust and improper. It is improper in certain places where it is indulged in by the American Federation of Musicians locals.

Mr. Bingham. Have you any control over this?

Mr. Padway. Yes; we do have, and we do control them in certain instances. The control is limited, but there is some control. Where the stand-by is unjust and complaint is made, as was stated yesterday by Mr. Petrillo, and it has been brought to his attention, he passes upon it. He will disallow it and the executive board will disallow it. But in many cases it is just. But I want to say this to you, which may surprise you gentlemen, and I suppose the opponents can either dispute it or otherwise. It was originally brought into play by the employer, not by the unions. Suppose he has a band in a theater here, or a dance hall or a hotel. The Hotel Schraeder in Milwaukee employed a band for a long time. Barney's band has been up at the Shoreham for twelve years. It has never changed. Say Mr. Moore of the Shoreham Hotel suddenly gets a notion that he would like to put 50 cents extra or a dollar on a meal to get a large crowd. He sends for Eddie Duchin or Dorsey or Whiteman. You know what Barney is going to say. Barney will say, "Now, listen. I thought I was going to have regular employment. If you are going to go ahead and bring in Whiteman, what do you intend for me to do? I will lose my musicians. They will go elsewhere and they will play elsewhere, too." Moore says, "I can't keep this big band here and pay them \$5,000 a week for 15 or 20 weeks. You stay home and I will pay you."

That is the way it originally started, because the man did not want to lose his permanent employees. We have letters, and we will produce them, showing you where establishments have asked us to enforce the stand-by so they could get substitute entertainment for a short time.

That is one instance. However, that does not answer the problem. Mr. Barney and his musicians are here in this city. They probably bought homes here. They have children and they send them to high school. They probably have insurance premiums to pay on their lives. Regardless of brotherly love and membership cards and fraternalism and all that, primarily his interest is in his family; and when he sees a band come in here from out of town, getting a high price, he resents it in his heart and he complains about it. He says, "I am paying local taxes to the District of Columbia. I am a permanent resident, and here come these fellows." Just as the storekeeper resents the peddler on the street, the pushcart selling oranges and apples, he resents someone coming in and displacing him. As a result of that the stand-by came into existence in its various modifications and ramifications. It was really to make it expensive, just like time and a half under the Wage and Hour law after 40 hours. It is done to make it expensive, to place a penalty and to reduce as much as possible the influx of out-of-town musicians competing with the musicians in town. Yet, in spite of the imposition of this penalty and in spite of everything else, the American Federation of Musicians would like to see less traveling bands and more work go to the local fellow. He is a citizen. He promotes the community welfare. In spite of all that, the establishment wants these traveling bands, and they

pass the cost of the traveling band on to the consuming public.

That is the story. There is a keen justification for the stand-by in certain instances. I will admit that it can be abused, and I am not going to sit here and say that some of our locals do not at times abuse it. One abuse reflects itself upon all of our musicians and we are condemned en masse because of the sins of omission and commission by some locals.

I would say that the time is now here for the employers and the American Federation of Musicians to review the whole stand-by question. I would like to see it eliminated in its present form entirely if the employer will consent to it and substitute something on a more equitable basis.

Mr. Bingham. Does that go also for the amateur band?

Mr. Padway. Surely. We want the amateur band to also, as I will soon show you, have some method of control.

Mr. Bingham. There is a standing resolution that the Federation has passed to use its political and economic strength to prevent the encroachment of amateur organizations.

Mr. Padway. That resolution probably was worded by the one who introduced it. Resolutions usually, even though they are adopted, do not express a permanent policy. I have seen some of the resolutions passed by Congress, and that would be true as to them. The truth of the matter is that resolutions do not express our policy by the mere adoption of them, unless they are acted on by the executive board and put into force and effect.

Mr. Bingham. The resolution relating to amateurs has been put into effect by Mr. Petrillo, so far as radio broadcasting is concerned.

Mr. Padway. What is meant by encroachment? Probably the person that used that word meant regulation. I think President Petrillo made it clear yesterday that the elimination of amateur bands is not the objective of the American Federation of Musicians. Control is. Regulation is. I think that if it were left to President Petrillo to say what he would do with the amateur band he would give the educational institutions a much more liberal and better break on the amateur band than even the employers themselves would in certain instances. I am sure of that.

\* \* \* \* \*

One of the biggest factors responsible for the displacement of live musicians has been the "juke box" industry. We do not contend that all places that operate the 500,000 juke boxes in the United States and Canada could afford to hire musicians, but it is an absolute misstatement to say, as some have said, that the employment taken away by the juke boxes is insignificant.

\* \* \* \* \*

In thousands of restaurants, taverns and small dance halls which formerly employed live talent the musicians were thrown out of jobs when the juke boxes came in.

We estimate that approximately 15,000 of our members have lost jobs because of the juke boxes. This has become a tremendous industry, bringing in huge profits for the manufacturers and distributors and operators.

\* \* \* \* \*

Senator Clark of Idaho. I am not disagreeing, but it only tells half the story. Of course the juke boxes cost money, and you have got to figure that that money is not so easily available. In addition to that, the juke box has got to be serviced, and that requires a considerable overhead, and there is depreciation. So that, although what is said is unquestionably factually correct, it has got to be balanced up against the entire operation.

Mr. Padway. I might say this. Suppose they were not making a penny, and losing money. That does not depart from the argument that we are being displaced.

\* \* \* \* \*

Mr. Padway. Thousands of other musicians are put out of jobs by the use of transcriptions and records in radio broadcasting. In his statement to this Committee, Commissioner Fly pointed out that of the radio stations that had answered his questionnaire at that time more than fifty-eight per cent did not employ a single full time musician. This means more than 500 stations rely entirely on canned music. Approximately one-sixth of all the stations employ only one musician. These figures indicate that in seven hundred of the nine hundred radio stations in the country less than two hundred full time staff musicians are employed. The figures supplied to the Committee by Commissioner Fly also show that between 1939 and April 1, 1942, although there had been a large increase in the volume of business and income of broadcasters there was a decrease of 10.5% of full time musicians employed and of 32.7% part time musicians employed. Is it any wonder that the musicians feel that in continuing to make radio transcriptions and records under present conditions they would eventually destroy themselves?

Commissioner Fly, Elmer Davis, and the broadcasters have made much of the fact that many of the broadcasting stations are too small to afford the employment of a musician. This is no doubt true of some of the stations, but is equally untrue of many others. We know that many of them can afford it, and their refusal to hire musicians results in the loss of jobs to thousands.

However, the American Federation of Musicians recognized the fact that some small stations would not be in a position to employ musicians. When the plan of settlement between representatives of independent non-network stations and the American Federation of Musicians was agreed upon May 6th, 1938, it included, in addition to the general plan "for the solution of the unemployment problem of musicians," limitations so that the hiring and use of services of musicians were to apply only to stations with a gross income from the sale of time in excess of \$20,000, and that the amount to be spent by the independent network stations was to be 5½ per cent of the amount of gross income from the sale of time in excess of the \$15,000 gross. While mentioning the 1938 plan for the solution of the unemployment problem it might be well to direct your attention to the fact that the contracts contemplated:

- a. Actual performance of work;
- b. The use of competent and qualified musicians;
- c. The existence of a no-strike clause;
- d. Effort to obtain regular employment for the musicians; and
- e. That the agreement supplemented existing local collective bargaining agreements.

\* \* \* \* \*

Senator Clark of Idaho. Mr. Petrillo admitted that it was the little fellow that was getting hurt here. But I do not think there is any question, according to Mr. Fly's testimony and that of Mr. Davis, that several hundred radio stations do depend on canned music and are going out of business.

Mr. Padway. Perhaps I have drafted it in a way that would probably accentuate my point. What you have said is the fact. The small station is getting hurt; the small station is being injured.

Senator Clark of Idaho. Progressively injured?

Mr. Padway. Yes.

\* \* \* \* \*

Mr. Bingham. What do you call a little fellow?

Mr. Padway. I don't know. I don't want to be facetious about it, either. I suppose it would be a fellow who grosses less than \$25,000. It is just a matter of your own common sense. Senator Tunnell might think a little fellow would be one that grossed \$50,000 or less. I will take \$20,000. But it is the fellow who just about covers his overhead and expenses, probably makes a living for himself, not too large a living, and is really at the mercy of slight fluctuations which bring him into the black or the red.

\* \* \* \* \*

Mr. Padway. What is a little fellow and what is a big fellow is hard to define; but I would like to say this, that the Federal Communications Commission is a very competent agency and gets its figures very well, and so on, but I would like a private, independent accounting system set up to look into the books of these companies and see what picture would be obtained then.

\* \* \* \* \*

Mr. Padway. Pennsylvania has protected us in the creative genius and art and so on, whereas the Federal courts said no. I think it is something that this committee might look into very carefully.

\* \* \* \* \*

Mr. Padway. The American Federation of Musicians is willing and anxious to cooperate in the development of amateur musicians. Indeed, many school bands and orchestras, most of which are instructed and conducted by Federation members, broadcast over the radio without any objection on the part of the Federation. The fact that the Interlochen band was on the air for twelve years shows plainly that we are not opposed to these boys and girls broadcasting.

\* \* \* \* \*

However, our basic reason for raising objections to amateur performances is to prevent unreasonable competition from non-professionals. It is easy to understand that the more free music the radio receives, the less need for the professional. That was the primary reason for opposing the broadcasting of the concerts from Interlochen. It is not a question of being selfish; it is a question of protecting the very livelihood of our members.

\* \* \* \* \*

Mr. Padway. The musicians do not want to fight for the sake of fighting. They have taken their action only because there was no other resource left, due to the failure of the employers to make satisfactory arrangements.

Everything that has been done has been done in a legal and orderly manner and strictly in accordance with our rights. Every contract has been lived up to. The A. F. of M. has a long and honorable record of living up to its obligations.

We are willing to sit down with any responsible group or groups representing the industry, in an effort to work out a solution that will be fair and equitable to all concerned.

\* \* \* \* \*

Mr. Padway. Now, gentlemen, we can cease working, and under the Norris-LaGuardia Act, which has now abandoned the common-law doctrine of conspiracy, two or more can refuse to work for the same purpose as one. But, all they will do—and I am not saying this by way of a threat or challenge, but all their hues and cries and resolves will not make our men work when they are believing that they are subjected to improper and unjust conditions. The quicker the N. A. B. and its officers and those that compose it get out of their heads that they are going to drive us into a bargain the way they drove ASCAP into a bargain by a campaign of this type, the quicker results will be produced. The quicker they forget it, the better it will be for them. We are not even harsh enough to say that we won't forgive and forget. It has been a hard crown they have put upon us. We haven't had the millions that they have had, or the hundreds of thousands of dollars to spend to carry on that kind of a campaign, and if we had it, we wouldn't do it, because we would not be justified in using the members' money for that kind of a campaign.

\* \* \* \* \*

Now, they have to live with us and we have to live with them. We are not going to call them dirty names, but they have got to quit calling us dirty names. That policy has got to stop. They are not going to get anywhere with us unless they do. When I say we won't, yes, we will settle with the industry; we will settle even with the members of the National Association of Broadcasters, but we won't be able to deal with them as an association. We regret it.

They have a right to be an association as much as we have. They are nothing more than an employer of the union, and they have a right to be an employer of the union. They have a right to have their lawyers and their presidents and their officers, just as we have, and the right to express themselves. But, they ought to do it with due courtesy and due respect for a man. The president of this organization, Mr. Petrillo, after all, is doing nothing more than what he is paid to do, what he is asked to do, what the members have commanded him to do, and doing it in the best means he knows how.

Now, involuntary servitude, we realize, could not be imposed. We will work. We will be glad to work. We will be reasonable, but it must be on the basis of a fair approach and fair dealing, and not on the basis of prejudice, insult and calumny.

\* \* \* \* \*

Senator Clark. I think I can also give you reasonable assurance that no further hearings will be commenced for at least a week or ten days, and probably more than that; maybe two weeks.

Mr. Padway. I wish you would. I wish you could let it go until after February 1st.



# National Association of Broadcasters

1760 N STREET, N. W. \* \* \* \* \* WASHINGTON, D. C.

February 19, 1943

SPECIAL A. F. of M. BULLETIN

No. 16

## THE PETRILLO PROPOSALS

On February 11, Mr. Petrillo sent to the major phonograph record companies and to some of the companies engaged in making electrical transcriptions a set of proposals, which, together with the communication which he sent to these companies, is printed in full in this issue.

The proposals included no demands on the radio industry. At a press conference which he held on February 12, Mr. Petrillo said, "This memorandum covers the whole situation. We have no fight with radio". Mr. Petrillo's statement that he has no demands to make on the broadcasting industry will be welcomed by broadcasters who remember:

(1) Mr. Petrillo's original statements quoted in the trade papers and daily newspapers in July and August to the effect that he wanted the recording companies "to find a way to keep the records out of radio stations", and that "it is up to the recording companies to see to it that the records do not get to the stations".

(2) The statements of Mr. Petrillo and his counsel before the Senate Committee which were devoted very largely to claims against radio, including the assertion that broadcasting stations had caused unemployment and should employ many thousands more musicians than they are now doing.

(3) Mr. Padway's arguments before the Federal Court asserting that the union had a controversy with broadcasting stations that could employ musicians, and suggesting that 20,000 to 60,000 more musicians should be employed.

Mr. Petrillo's proposals include one directed to "juke boxes", but Mr. Petrillo stated at his press conference that he had not yet decided how this demand could be enforced or made workable. No representative of the "juke box" industry attended the meeting with Mr. Petrillo.

Representatives of phonograph record and transcription companies had one meeting with Mr. Petrillo and his Executive Board on February 15 and since then have had several meetings among themselves. The latter meetings were so protracted that it was found necessary to postpone to a date not yet fixed further discussions with Mr. Petrillo.

Mr. Petrillo himself stated at his press conference that his demands were entirely new and of a type never before made by a labor union. He stated at the meeting on February 15 that he would not state his dollar demands until the recording industries accepted his basic principle, namely, the making of a contribution directly by them to the union for the purpose of enabling the union to relieve unemployment, to increase cultural interest in music, to give free concerts, etc.

The complexities confronting the record and transcription companies include:

(1) The unsound public policy involved in the acceptance by any industry of an obligation to persons whom that industry does not employ, has never employed and with whom it has no relation.

(2) The unsound public policy involved in permitting any organization to levy taxes upon employers and the public for unemployment purposes instead of leaving such taxing power to the government.

(3) The problem of whether the payment of such a sum would be regarded as an evasion of wage stabilization regulations, since, under the precedent which would be created by the acceptance of the demands, any labor leader could, instead of asking for increased pay for the members of his union, ask for an equivalent amount to be paid directly to the union itself.

(4) The problems relating to income tax and other liability on any industry which made such a payment, especially since the labor union itself would be exempt from taxation on the amounts received.

(5) The conflict between the acceptance of such a principle and the desire of the War Manpower

(Continued on page 2)

## THE PETRILLO PROPOSALS

(Continued from page 1)

Commission to draw all citizens not engaged in necessary work into war industry.

(6) The conflict with the anti-inflationary policies of the Office of Price Administration, which has frozen the cost of products and services at the prices charged during March 1942.

(7) The precedents which would be established with respect to other labor unions representing singers, announcers, actors, engineers, etc.

(8) Conflict with the National Labor Relations Act which forbids direct contribution by employers to unions.

(9) The problems involved in the admission, implicit in the acceptance of such a principle, that Mr. Petrillo has a genuine grievance or any real unemployment problem.

The record and transcription manufacturers are having meetings among themselves as this issue of the Bulletin goes to press, and broadcasters will be advised of further developments as information becomes available.

Another development in the situation came on February 15 when the United States Supreme Court, without opinion and without hearing argument, denied the petition of the government to review Judge Barnes' decision in the first of the government's anti-trust suits against the American Federation of Musicians. On Wednesday, however, Judge Barnes refused to grant an A. F. of M. motion to dismiss an amended complaint and gave the union 20 days to answer it. Judge Barnes' memorandum appears in this issue.

Mr. Petrillo's demands upon the recording companies apply to all records made by members of his union. Stations which purchase and use phonograph records would, therefore, be in the same position as the public with respect to phonograph records.

So far as the transcription companies are concerned, Mr. Petrillo acknowledges that no charge should be made on commercial transcriptions which are played only once, but he will not remove his ban on such transcriptions unless transcription companies accede to all his demands. He seeks from the transcription companies a percentage of the rental on library transcriptions. If his demands were acceded to, it is conceivable that the broadcasting industry might be faced with increased cost of library services.

Editorials from the "New York Times" and the "New York Herald-Tribune" are reprinted in this bulletin.

### Judge Barnes Memorandum

This cause comes on to be heard on the motion of the defendants to dismiss.

The complaint herein is substantially the same as the

complaint in *United States vs. American Federation of Musicians et al.* Decided by this court October 12, 1942 (57 F. Supp. 304) with the following changes, additions and subtractions:

Section 14 of the earlier complaint has been changed by the insertion of a new clause as the second clause of the section, and by the addition of a new paragraph at the end of the section, so that the first two clauses of the section read as follows:

"14. That for the purpose of restraining and destroying all interstate commerce in phonograph records and electrical transcriptions; of destroying entirely independent radio stations depending upon phonograph records or electrical transcriptions for their musical requirements;"

And so that the last paragraph of the section reads as follows:

"(1) To eliminate from the air independent radio stations which depend largely or entirely upon phonograph records or electrical transcriptions for their musical requirements, since no live musicians are available;"

Section 16 of the earlier complaint has been omitted from the new complaint.

Section 17 of the earlier complaint became section 16 of the new complaint, and has been changed to read as follows:

"16. That the effect of the activities hereinbefore described is to destroy independent radio stations which depend upon transcribed music for their musical requirements because no live musicians are available; to destroy completely competing businesses such as manufacturers, jobbers, and retailers of phonograph records and electrical transcriptions, as well as manufacturers, distributors and operators of 'juke boxes'; and of denying to amateurs the right to the air forum for artistic expression."

The prayer of the earlier complaint for a preliminary and a final injunction enjoining the defendants from entering any conspiracy to do certain acts and things, has had added to it, in the new complaint as a last paragraph, the following:

"(1) To eliminate from the air independent radio stations which depend largely or entirely upon phonograph records or electrical transcriptions for their musical requirements;"

The defendants assign three reasons for a dismissal:

(1) The court lacks jurisdiction by reason of the Norris-LaGuardia Act (47 Sta. 70), since the complaint sets forth a case involving or growing out of a labor dispute; (2) The complaint fails to state a claim against the defendants upon which relief can be granted; and (3) The issues presented have all been decided by the court in the earlier case, above referred to.

The defendants, in their arguments in support of their motion to dismiss, make the following points:

(a) The complaint sets forth a controversy involving a labor dispute within the meaning of the Norris-LaGuardia Act, which act precludes the court from granting the relief sought, even assuming that a violation of the Sherman Anti-Trust Act has been alleged;

(b) No violation of the Sherman Act is alleged because the acts complained of are included in the conduct specified in section 20 of the Clayton Act, and, as such, do not violate any law of the United States;

(c) The decision of this court in *United States vs. American Federation of Musicians et al*, decided October 12, 1942, is *res adjudicata*;

(d) The defense of *res adjudicata* may be raised by motion to dismiss;

(e) The complaint at bar adds no relevant fact that was not alleged in the earlier complaint, and raises no legal issue that was not raised by the earlier complaint;

(f) The complaint in the earlier case alleged a purpose on the part of defendants to destroy independent radio stations;

(g) Assuming that the allegation of a purpose to destroy independent radio stations is new, nevertheless, it cannot be disassociated from the rest of the complaint and treated as a separate isolated allegation;

(h) If the allegation of defendants' purpose to destroy independent radio stations is treated separately, the court can grant no adequate relief without reversing its judgment in the earlier case;

(i) Even if the allegation of a purpose on the part of defendants to destroy independent radio stations is new and can be isolated from the rest of the complaint, nevertheless, the complaint at bar does not state a violation of the Sherman Act.

The United States, in its argument against the motion to dismiss, in addition to the points made in the earlier case, makes the following points:

(a) Paragraph 14 of the complaint at bar alleges that it is a specific purpose of defendants "to destroy entirely independent radio stations depending upon phonograph records or electrical transcriptions for their musical requirements"; the situation alleged in the complaint at bar is not one wherein small stations are destroyed as a mere incident of achieving another purpose which is legitimate: on the contrary, destruction of such small stations is alleged to be a specific purpose of the defendants.

(b) Paragraph 16 of the complaint at bar alleges that one of the effects of the conspiracy charged will be to drive the independent radio stations out of business.

(c) The complaint at bar specifically prays that the defendants be enjoined from conspiring to achieve the result lastly above referred to.

(d) The complaint at bar raises issues not ruled upon by the court in the earlier case.

(e) The decision in the earlier case is not *res adjudicata*.

(f) The defense of *res adjudicata* cannot be raised by motion.

(g) The new allegation of purpose is only one of four purposes. Since all four purposes are supported by the same elements or means, and since the new purpose is part of a broader plan, it cannot be disassociated from the rest of the complaint and treated as a separate isolated allegation. The new allegation of purpose may make unlawful a plan which the court declared lawful in the earlier case.

Counsel on both sides of the case have indicated to the court their desire that the court dispose of the case on this motion, so that they may speedily take the case to

the reviewing courts. The court would be glad to do this but for one consideration, which will hereafter be referred to.

The court is inclined to the view that the complaint at bar raises issues neither raised nor ruled upon in the earlier case.

It may be true, as the defendants substantially contend, that, even if the allegation of a purpose on the part of defendants to destroy independent radio stations is new, nevertheless, the complaint at bar does not state a violation of the Sherman Act.

But for the consideration above referred to, the court would definitely decide these two issues (neither is decided) and permit the losing side to take the case up.

The consideration which the court has now referred to twice is this,—it is not satisfied that the issues of law, which will be made by the evidence when it comes in, will be the same as the issues of law made by the motion to dismiss. In other words, the court is inclined to think that, by ruling on the pending motion and making possible an immediate appeal, it would be sending to the reviewing courts issues which will probably not be in the case after a hearing on the merits.

The court has, accordingly, decided to defer the ruling on the motion to the trial on the merits, which will be granted promptly. The court has this day rendered an order deferring the ruling on the defendants' motion to dismiss to the trial on the merits, and ruling the defendants to answer the complaint within 20 days from this date.

(SIGNED) BARNES, Judge.

February 17, 1943.

## Petrillo Proposals

February 11, 1943.

Gentlemen:

Enclosed is a copy of the proposals of the American Federation of Musicians for settlement of the controversy with various branches of the music industry.

We invite you to meet with the Executive Board of the American Federation of Musicians, Monday, February 15th, for the purpose of negotiating respecting these proposals.

The meeting will be held at the offices of the Federation, 1450 Broadway, New York City, at two P. M.

Very truly yours,

JAMES C. PETRILLO.

It is a matter of common knowledge based upon years of experience that the accomplished musician becomes such only after many years of study and training, which study and training he must continue uninterruptedly

thereafter in order to maintain the technique necessary for the accomplished musician. He is therefore required for that purpose, to maintain his standard and technique, which of necessity are lost by suspending the period of study and training or by devoting any time to any other field or industry.

It is also a matter of common knowledge that practically none of the symphony orchestras composed of accomplished musicians are self-sustaining and in the past have depended upon voluntary contributions and subsidies, which, because of other current conditions and obligations are continually becoming less and less, thus threatening even the continuance of symphonic and other recognized activities of orchestras necessary for the maintenance of musical culture.

The problem of technological unemployment caused by "canned" music has been with us for many years, resulting in recognized decrease in employment of musicians and their displacement by "canned" music in such places as theatres, hotels, restaurants, dance halls, musical halls and many others of like nature.

The inroads upon employment of musicians by such "canned" music have been ever-increasing with no abatement at any time and no evidence of any abatement, but rather continual increase for the future. Experience has also shown that in the employment of members, preference is always given to the younger musicians, thus making the unemployment situation aggravated for those men who have devoted years in acquiring their talent and skill and who are no longer in a position if they were inclined, to become part of or train for any other field of endeavor. This has resulted in the employment exchanges of the different locals of the Federation being continually filled to overflowing by musicians looking for employment opportunities, many of which were taken away and displaced by "canned" music. Continuance of this situation must of necessity destroy the incentive for the study of music and eventually would destroy the entire music industry and music culture. Therefore, it becomes necessary for the preservation and maintenance of music culture and to alleviate the unemployment situation that means be created for the continued dissemination of music and maintenance of musical culture by employing musicians and furnishing music gratis throughout the United States and Canada, including localities which have not the means financially to provide the advantages of current live music by the use of such fund created for that purpose. Symphony orchestras, bands and other instrumental combinations would be employed and used to furnish live music throughout the United States and Canada for all classes and all communities.

### PROPOSALS

A fund shall be created by the payment of a fixed fee to be agreed upon, for each reproduction of records, trans-

criptions, mechanical devices, and library service, the master of which was made by members of the American Federation of Musicians. This fund shall be used by the Federation for the purposes of reducing unemployment which has been created in the main by the use of the above mentioned mechanical devices, and for fostering and maintaining musical talent and culture and music appreciation; and for furnishing free, live music to the public by means of symphony orchestras, bands and other instrumental musical combinations.

Canned music includes among other things the following branches of the music industry:

1. Records
2. Transcriptions
3. Library Service
4. Wired Music
5. Juke Boxes
  - (a) Common juke box
  - (b) Telephone Music Box  
(Patron through telephone device chooses selection)
  - (c) Soundies  
(Music box with picture accompaniment)

**RECORDINGS:** The Federation shall receive from the manufacturer of recordings a fixed fee for each side of musical recordings made by members of the American Federation of Musicians, such fee to be agreed upon by negotiation.

**TRANSCRIPTIONS AND LIBRARY SERVICE OF TRANSCRIPTIONS:** Members of the Federation will make commercial or sustaining transcriptions without additional fee to the Federation providing they are played one time only. (The number of copies made of transcriptions to be determined by agreement.) With respect to other transcriptions used on a rental basis, the Federation shall receive from the company engaged in the business of renting-out transcriptions a percentage of the rental charge, such percentage to be agreed upon by negotiation.

**WIRED MUSIC:** The Federation shall receive from the company engaged in the business of selling wired music a percentage of the price charged, such percentage to be agreed upon by negotiation.

**JUKE BOXES:** The Federation shall receive annually for each juke box used, a fixed fee, such fee to be agreed upon by negotiation.

## Editorial Comment

(*N. Y. Times, Feb. 16*)

### Mr. Petrillo's New Demands

Mr. Petrillo is distinguished from his fellow labor leaders by greater audacity and imagination. He realizes

clearly the enormous powers of private dictatorship that the present state of the law, the beneficent attitude of the Administration, and the timorousness and vacillation of Congress have placed in his hands.

He has now put forward the demand that the operators of juke boxes, the companies that send music over the wires, the makers of phonograph records and the great radio companies pay a monetary tribute directly to his union for the privilege of doing business. All he asks is a cut-in on every record and every phonograph sold. These fees will be paid into the union treasury. The money will be used, according to Mr. Petrillo, to reduce unemployment, to subsidize symphony orchestras and "to foster and maintain musical talent and culture and musical appreciation."

What Mr. Petrillo is proposing, in brief, is that the recording companies—which must ultimately mean the public that pays for the records—must submit to a private tax so that he can set up his own private system of unemployment relief. What he is proposing is that the members of his own union must submit to a private income tax—in the form of that part of their fees which would, in effect, go to the union instead of to themselves—in order to support this private system of unemployment relief. What he is proposing is that, at a time when war demands have made the shortage of manpower more acute than ever, he shall have the power of levying private tribute in order to create unnecessary jobs for men and women as musicians.

Mr. Petrillo no doubt looks at these matters from so disinterested a standpoint that he has not considered what abuses might develop if this device were also adopted by other unions less single-mindedly devoted to the public weal than his. These unions could insist that every employer pay a special fee to them for the privilege of employing a member of their union. These unions could make themselves rich beyond the dreams of avarice. In one or two cases, no doubt, they might even be tempted to increase the salaries and other emoluments of their officials. For, as Mr. Petrillo knows, nothing but his own high conscience would prevent him from using these enormous fees in ways that did not directly promote the public welfare. There is no law which forces unions to make an accounting of their funds or even to publish financial statements. And though the Wagner Act forces employers to recognize unions, it contains not a word which compels these unions to be in any way responsible.

Mr. Petrillo, in short, can lay down the law to the phonograph companies, the recording companies, the radio companies, and to the members of his own union; but nobody can lay down the law to Mr. Petrillo. The Supreme Court emphasized this fact yesterday by affirming the Chicago Federal court ruling that the Govern-

ment could not prosecute the American Federation of Musicians under the anti-trust laws because it will not permit new records to be made for juke box and radio reproduction.

As long as Congress acquiesces in the Supreme Court's decision that labor unions enjoy sweeping immunity from the anti-trust acts and from the Federal anti-racketeering act; as long as Congress forces employers to recognize and deal with unions, but does nothing whatever to compel these unions to conduct their affairs democratically or responsibly; as long as Congress retains a law which forces an individual to join a union, whether he wants to or not, because his source of livelihood would otherwise be cut off by boycott of himself or his employer, or by other means—as long as Congress tolerates all this, we shall continue to have private dictators like Petrillo; and they will continue to find further means for enriching their treasuries and extending their powers.

---

(*N. Y. Times*, Feb. 17)

#### Why Mr. Petrillo Rules

James Caesar Petrillo has the power to force practically every musician in the country to join his union. He has the power to tell these musicians when and how and whether or not they can make recordings. He has the private arbitrary power to tell the American people what music they can and cannot hear. This has just been confirmed by a decision of the highest court in the land. The Administration must be perfectly satisfied with this condition of affairs, as it has never proposed any revision in the law to change it. Congress must acquiesce in this arrangement, because it has never passed, nor is it now considering, any law to end it.

---

(*N. Y. Herald Tribune*, Feb. 14)

#### "Something Absolutely New"

Mr. James Caesar Petrillo, worming his way through the complexities of his battle with mechanical music, has turned up with "something absolutely new." It is not precisely a penalty upon producers of mechanical music in order to find work for Mr. Petrillo's unemployed. Nor is it a change from a flat fee basis of payment for recordings and transcriptions to a royalty system. In fact, it has nothing to do with relations between employer and employed. It is simply a tax, levied by the American Federation of Musicians, to be expended for purposes which Mr. Petrillo believes desirable.

This is, indeed, something absolutely new. James Caesar evolved it in response to a curt request from

Congressional leaders that he produce some concrete statement of the union's desires in the long-drawn-out conflict over recordings and transcriptions. No one expected that Mr. Petrillo would pop up with a super-check-off. Some have indeed accused the union head of attempting to set up a "private W. P. A." but Mr. Petrillo is following the pattern of government far more closely than any one could have realized. He proposes to collect his taxes and then reduce unemployment among union members by "furnishing free, 'live' music to the public by means of symphony orchestras, bands and other instrumental musical combinations."

Obviously Mr. Petrillo's scheme is inadmissible. The principle of the fees he proposes to collect would set a most injurious precedent, even if the organization collecting them were impeccable and the safeguards over disbursements absolutely perfect. When it is James Caesar Petrillo, the dictatorial, who suggests such a scheme; when the public control over the financial operations of unions and the union control over their leadership is so slight, the whole thing becomes ridiculous. Mr. Petrillo must find another solution for his problem and find it speedily. The country is in no mood for further imper tinences.

# National Association of Broadcasters

1760 N STREET, N. W. \* \* \* \* \* WASHINGTON, D. C.

March 5, 1943

SPECIAL A. F. of M. BULLETIN

No. 17

## A. F. M. Board To Meet

James C. Petrillo, president of the American Federation of Musicians, has advised the recording companies that his executive board will meet March 16 in Chicago to draft an answer to the recording companies' reply to the A. F. of M. "demands."

Here is the text of the recording companies' reply which Mr. Petrillo referred to:

Mr. James C. Petrillo, President,  
American Federation of Musicians  
1450 Broadway  
New York, N. Y.

New York, February 23, 1943.

Dear Mr. Petrillo:

After meeting with you on February 15th, the undersigned companies engaged in various phases of the recording and transcription business met to consider the proposals which you had distributed on February 12th. Considerable time has been spent by us in an effort to find a response which would result in your permitting the re-employment of your members. Any such response must be viewed in relation to these prior facts:

On June 25, 1942, without previous notice or demands, you announced that you would not allow any of your musicians to perform for recordings after July 31st. This meant a complete cessation of recording because we had been operating under a license from you which imposed on us a "closed shop" for your union. Under this license, we had been paying your members at rates which are among the highest for skilled service in any industry. In addition substantial royalties for each phonograph record manufactured and sold have been paid to the musicians or orchestras who made them. Although hours and other working conditions were beyond criticism, you nevertheless called a strike, without previous notice or demands.

While you allege wholesale unemployment of your members (a claim we deny), you have continued this strike and the resulting unemployment for a period of almost seven months, to date. In doing so, you disregarded pleas of Elmer Davis of the O.W.I. on behalf of both military and civil officials, that the strike was harmful to the War effort. During those seven months you at no time offered to return your members to work or even to state the conditions upon which you would do so. This continued until a Senate Committee under the Chairmanship of Senator D. Worth Clark of Idaho insisted that you make some proposal. Even now your proposal is a proposal in form only.

You propose that the recording companies pay an additional sum directly to the union over and above their payments to the musicians employed. You further propose that this sum be accumulated or disbursed in the union's uncontrolled discretion *for the benefit of union members who render no service whatsoever to the recording companies*. The destructive and dangerous fallacy of your proposal is that it assumes that a specific industry owes a special obligation to persons not employed by it,—an obligation based only on such persons' membership in a union. In addition to the inherent unsoundness of such a proposal, the following objections are at once apparent:

### (a) *Obstructs Technical Progress*

We are alarmed at the damage which might be done to the whole field of technical and technological improvement if the manufacturer of any new device, of proven value to the people as a whole, were to be saddled with the costs of special industry unemployment relief in addition to the already heavy costs of pioneering research and development, and subsequent promotion.

### (b) *Subsidizes Non-Employees*

We do not believe that our companies, who before your ban were employing the maximum number of musicians at the highest wages in the history of the music industry, should be asked to assume responsibility for unemployment, even if such unemployment exists, of such of your union members who are not and cannot be employed by us.

### (c) *Penalizes Employment and Use*

We cannot approve a proposal which imposes a private tax upon every phonograph record manufactured and sold when it is obvious that the records used in the home, far from creating unemployment, have been the source of much profitable employment to your members. This (Continued on page 2)

## A. F. M. BOARD TO MEET

(Continued from page 1)

has been publicly and officially proclaimed on more than one occasion at your own union's conventions. Such records used in the home constitute at least eighty percent of the total phonograph record output, and thus, under your proposal, eighty percent of your tax would ultimately fall squarely on the public which buys records for home use and is in no way responsible for whatever unemployment you may claim exists.

### (d) *Duplicates Government Relief*

The Government has provided taxes for unemployment relief. A second tax for a new private system aimed at the same relief seems wholly unjustified. Similar proposals could, with no more excuse, be made by singers, engineers and others contributing to the high quality of our products. Any such private and isolated system of unemployment relief within an industry is not only contrary to public policy but would be in direct conflict with the various plans under discussion in Government circles for the expansion of uniform and nation-wide social security measures. No private and limited scheme for the benefit of a few within an industry can be pyramided on top of Federal and State social security plans without creating serious inequities. Certainly mere membership in a union should not entitle a member to special privileges from an industry which does not employ him but happens to employ some of his fellow members.

We recognize that because a social philosophy is new it is not necessarily wrong. What you have proposed is a startling new kind of social philosophy for both industry and labor. While we believe that it is wholly wrong in principle, we doubt that, either a single union or a single industry is qualified to be the final judge. Only the people of the United States are qualified to decide whether multiple systems of unemployment relief administered by a variety of private as well as governmental agencies shall now be created. Authority for the application of such basically new social theory should therefore come from the people's representatives in the Congress. Such sanction would necessarily be accompanied by rules and regulations defining the limits, requirements and approved objectives of such union relief funds, and subjecting the union and its administration of such funds to Governmental control and supervision. As in the case of pension and retirement plans created by corporations for the benefit of their employees, the Treasury Department would unquestionably desire to participate in such regulation and supervision.

This is not rhetoric but plain statement of fact because only the Congress should be called upon to answer such fundamental questions as the following:

(a) Would not such a payment directly to a union offer an easy means of evading the "wage freeze" regulations; or, on the other hand, would it not be deemed an indirect increase in compensation to the members employed and, as such, in violation of the regulations?

(b) If, on the other hand, it were ultimately determined that the additional payment directly to the Federation were not additional compensation, direct or indirect, to the employees, would not such a payment be merely a gratuity, and therefore a waste of a company's assets which would subject the company's management to liability under the law?

(c) Would not your proposal be in violation of Section 8 of the National Labor Relations Act which pro-

vides that it shall be an unfair labor practice for an employer to "contribute financial or other support" to any labor organization?

(d) What would the Treasury think of your proposal if it resulted in diverting taxable income in the hands of the employer to non-taxable receipts in the hands of your union?

(e) If on the other hand the Treasury Department refused to allow such payments as a deductible expense of the employer, would not the employer be compelled to pay not only the contribution to your fund but also an income tax on the amount of that contribution?

(f) Would not any plan for creating artificial employment for unemployed members of the Federation be contrary to the policy of the Manpower Commission, which is seeking to draw into War industries at least those persons not presently employed?

(g) Would not such a payment as you propose subject both you and us to the charge of a conspiracy to maintain or to increase prices,—and a resulting prosecution by the Government or civil suit by an injured consumer.

Only if you procure Congressional authority for the creation of a fund in accordance with your proposal could such a proposal become operative without raising many presently unanswerable questions.

Pending such Congressional authority for a plan which you yourself have termed "absolutely new", we suggest that you permit your members to return to work immediately and produce phonograph records and transcriptions which are sorely needed for both civilian and military morale.

You know of course, that we stand ready to meet with you at all reasonable times when you have anything further to submit. We want you also to know that the views expressed represent our individual as well as our joint decisions.

Very truly yours,

### *Electrical Transcription Companies*

Associated Music Publishers, Inc.

By JOHN R. ANDRUS, Vice President.

Empire Broadcasting Corporation

By GERALD A. KELLEHER, President.

Lang-Worth Feature Programs, Inc.

By C. O. LANGLOIS, President.

Muzak Corporation

By C. M. FINNEY, President.

Radio Recording Division

National Broadcasting Company, Inc.

By C. LLOYD EGNER, Vice President

Standard Radio

By GERALD KING, Partner.

World-Broadcasting System, Inc.

By A. J. KENDRICK, Vice-President.

C. P. MACGREGOR

### *Phonograph Record Companies*

Columbia Recording Corporation

By EDWARD WALLERSTEIN, President.

Decca Records, Inc.

By JACK KAPP, President.

RCA-Victor Division

Radio Corporation of America

By LAWRENCE B. MORRIS, Director of Personnel Contract Relations.

### *Soundies*

Soundies Distributing Corp. of America, Inc.

By SAMUEL OLIPHANT, Attorney.

# National Association of Broadcasters

1760 N STREET, N. W. \* \* \* \* \* WASHINGTON, D. C.

March 26, 1943

SPECIAL A. F. of M. BULLETIN

No. 18

## Petrillo Developments

This week's Bulletin contains a letter sent by Mr. Petrillo to members of the recording industry on March 17 and a telegram which members of the recording industry sent to Mr. Petrillo in reply on March 19. Mr. Petrillo's letter charged bad faith on the part of the recording industry, and emphasized the fact that he was seeking compensation from the recording industry not on behalf of persons who are, were or might be employed therein, but for persons who, in his view, have been "displaced" because the phonograph was invented. The recording industry's reply invited Mr. Petrillo to meet with members of the industry in New York on March 24, for the limited purpose of discussing wages, hours and working conditions of the persons actually employed in recording. Mr. Petrillo's answer to this invitation, made by telephone, was a suggestion that representatives of the recording industry should meet with him in Boston on April 12. Neither the American Federation of Musicians nor Mr. Petrillo, nor any recording company which extended the invitation has offices in Boston. The recording industry rejected the idea of meeting at this inconvenient place at so distant a date. Mr. Petrillo's rejoinder was a suggestion that a meeting be held in New York on April 15, three weeks from now. As yet the recording industry has not replied to this most recent suggestion on Mr. Petrillo's part. Also included in this Bulletin are a few of the recent editorials and news items which have appeared in the press concerning Mr. Petrillo's activities.

### A. F. of M. Letter to Recording Companies

The A. F. of M. Executive Board, at its Chicago meeting, sent the following letter to the recording companies, dated March 17:

"Gentlemen: The Executive Board of the American Federation of Musicians met to consider your answer to its proposals submitted to you. The members of the Board cannot escape the conclusion that you have failed to consider these proposals in good faith. No other conclusion can be deduced from the many specious arguments presented by you. In short, you have failed to measure up to the test of good faith collective bargaining which requires submission of counter proposals.

"Your letter contains many incorrect assumptions and many misstatements of fact. You incorrectly assume that our proposal is founded on a claim that there is an obligation in any industry to persons belonging to a given union. To begin with, we are dealing with a particular kind of industry, namely, one that has been built up exclusively by a mechanical invention that displaces human labor. In the second place, we are dealing with workers who are not employed in their craft precisely because of the creation, development and expansion of such an industry. We say simply that all those who benefit from the displacement of human labor should share the burden of the cost to the displaced workers. These workers are entitled to relief not because they happened to be members of a union but solely because they happened to be victimized by the same things which benefited others. Their membership in the union does not give them the right, it merely provides for them the means whereby they seek to enforce that elemental right. This (*Continued on page 2*)

## A. F. OF M. LETTER TO RECORDING COMPANIES

(Continued from page 1)

principle is recognized by many outstanding economists, among them Dr. Isadore Lubin, U. S. Labor Commissioner, and Professor Sumner Schichter of the Harvard School of Public Administration.

"You state that the proposal is unjustified because it duplicates government relief. The plain fact remains that the many musicians who have been put out of work by canned music are not presently eligible for government relief, and such relief as is accorded under present government plans is wholly inadequate.

"You state further that the proposal we have submitted is one that can only properly come from the 'people of the United States' through the people's representatives in the Congress, and then you say that only Congress should answer certain stated questions. We refuse to accept the suggestion that the time has been reached when any constructive advance in our social devices must be initiated by the government. That suggestion is wholly foreign to our ideals and certainly is completely at odds with history.

"It is an axiomatic historical principle that legislation is never created in a vacuum, but is merely the culmination of the acquired experience of private individuals and private groups, and in labor relations through the process of collective bargaining. It will be a sorry day indeed when and if changes and advances in our social patterns must await governmental initiative and action.

"We are advised by our counsel that a payment directly to the union would not constitute an evasion of the 'wage freeze' regulations. Nor would it constitute a violation of the National Labor Relations Act, whose main objective is encouragement of collective bargaining.

"We are satisfied that the Treasury would not and could not prevent the diversion of this money to the unemployment relief fund contemplated in our proposal, any more so than pensions, insurance, medication or health plans for workers and their families in private industry. The acceptance of our proposal would in no manner contravene the policy of the Manpower Commission. It is unthinkable that anyone of our unemployed members would prefer whatever benefits would flow from the acceptance of our proposal to a job required of him by his government in times of war. Nor is it thinkable that the union would grant to any such person any of the benefits contemplated by our proposal. We are further advised that our proposal does not violate the anti-trust laws. The mere fact that collective bargaining does or may result in an increased price never had been considered a violation of any law.

"There is ample justification in the practices of business itself for the union proposal. Business men customarily set aside funds for depreciation of machinery and equipment, depletion of natural resources, and for obsolescence. All these funds are considered legal charges against the cost of production.

"Especially applicable is the obsolescence fund which compensates the business for the untimely displacement of machinery or equipment, as the result of the introduction of new methods, new machinery and new equipment. The philosophy behind insuring the worker against industrial hazards by funds that would be charged against the cost of production is by no means novel. Under the old judicial precepts of 'assumption of risk,' 'fellow servant,'

and 'contributory negligence,' the worker used to bear the full cost of industrial accidents.

"These harsh rules were replaced by more humane doctrines, and now workmen are insured against industrial accidents by workmen's compensation funds which are added to the cost of production and thus spread among all who benefit from the production.

"The same principle lies behind our social security laws in both the funds for payment of unemployment compensation and old age benefits.

"Your suggestion that the American Federation of Musicians permit its members to return to work immediately and produce phonograph records and transcriptions, particularly in view of your failure to make or contribute a single constructive suggestion towards a settlement of this dispute, is as arbitrary as it is audacious. If any of your concerns engaged in this industry was producing a product that was slowly but surely putting you out of business, you would not continue to produce that product, and actuated by the same motives, the members of the American Federation of Musicians will not continue to make a product that is slowly and surely putting them out of jobs.

"There is nothing further we can present until you are prepared to submit in good faith constructive proposals for the solution of this tragic problem."

The letter was signed "The Executive Board, American Federation of Musicians, James C. Petrillo, President."

### THE RECORDING COMPANIES' REPLY

The following is a telegram dated March 19 addressed to Mr. Petrillo from the recording industry:

"In your reply of March 17 to our letter of February 23, you complained that we have failed to measure up to the test of good faith collective bargaining. That complaint is unjustified, since it was you who terminated all prior arrangements without previous complaints or demands. Individually and collectively we have always been and continue to be ready to confer and bargain with you on the question of wages, hours and working conditions which, under both the National Labor Relations Act and universal practice, are the appropriate subjects for collective bargaining, and to enter into a written agreement for a definite term which will provide for the immediate resumption of recording. As tangible evidence of our good faith, we now invite you to meet with us for such purpose at the Hotel Ambassador in New York on Wednesday, March 24th, at 2:30 P. M. Please reply by telegram to Mr. Lawrence Morris, c/o of RCA Victor, Camden, New Jersey."

*Signed:*

Associated Music Publishers, Inc.  
Columbia Recording Corporation  
Decca Records, Inc.  
Empire Broadcasting Corporation  
Lang-Worth Feature Programs, Inc.  
Musak Corporation  
RCA Division, Radio Corporation of America  
Radio Recording Division, National Broadcasting Company, Inc.  
Standard Radio  
Soundies Distributing Corporation of America, Inc.  
World Broadcasting System, Inc.

## Editorial Comment

### PETRILLO'S ARM IN FLORIDA

Interesting editorial report by The Miami Herald of March 18:

The Kiwanis Club of Delray Beach has felt the long arm of Music Czar James Petrillo. The club has been sponsoring USO dances Saturday nights for service men stationed at Boca Raton Field.

The good folks of Delray Beach did not reckon with Czar Petrillo's brand of patriotism and the stranglehold he has on Washington. Following complaints by the musicians' union, the Adjutant General's Office at Washington ordered the proper Army officials at Boca Raton to stop service men from playing for the weekly dances.

Delray Beach has no professional music organization. The soldiers were not competing with the union. They were playing for service men and their partners only. So to satisfy Petrillo there won't be any more Saturday night hops for the boys. You can't dance without music. The Kiwanis Club has protested to Washington. They'll get a nice letter of acknowledgment. But Jimmy Petrillo will prevail and the armed services be hanged. Who are they, anyway? Sure, it's awful, un-American and cowardly ingratitude to American boys prepared to die for Czar Petrillo and his ilk.

—*New York Times*, 3-24.

### "C FOR CAESAR"

James C. (for Caesar) Petrillo did pretty well by himself yesterday. He vanquished the army and navy in the same day.

An army band from Gilroy agreed to play for a dance at San Jose State College. Petrillo wrote a letter to Washington. The band will not play and the kids will dance to phonograph records.

The navy planned to use a naval band at a reception in Chicago in honor of Maj. Gen. Alexander A. Vandegrift, hero of the marine corps forces which stormed Guadalcanal. Petrillo wrote a letter. The navy band did not play.

There are not many men in the world who could push the American army and navy around in the same day and get away with it. Perhaps we ought to put Petrillo in charge of our war with the axis.

In the great mass of cases you can't blame Petrillo for getting all the work he can for his union. However, it seems a little harsh to block the use of a navy band at a reception for the hero of Guadalcanal. Likewise the thing which gripes you about his blacklisting of the college is the utter wrongness of his position and the fact that he is upholding what amounted to a steal. The students say Paul Pendarvis, whom Petrillo upholds, ran in a substitute band instead of his own and did not himself appear until the dance was practically over.

—*San Jose (Calif.) News*, 2-19.

### A DANGEROUS PHILOSOPHY

The continuing argument between James Petrillo, czar of the union musicians, and the recording companies brings out a dangerous philosophy set forth by Petrillo.

One of his proposals is that the recording companies pay an additional sum, over and above the salaries of musicians employed by them, directly to the union. This sum would be disbursed by the union at its own discretion for the benefit of union members who render no service whatsoever to the recording companies. Petrillo's plan assumes that an industry owes an obligation to persons not employed by it, simply because they belong to a certain union.

This "second tax" for unemployment relief would set up a system which would not be wrong simply because it was a new social philosophy, but because of its ultimate conflicts and widespread inequities. It is a dangerous philosophy for the union, for business and the public.

—*Tucson Star*, 3-13.

### RECORD MAKERS RIGHTLY REJECT PETRILLO SCHEME

James Petrillo, the \$46,000 a year czar of the musicians' union, recently offered to rescind his ukase on recorded music—provided the manufacturers paid him a price.

And what a price!

It was to the effect that on every record or transcription made, in addition to paying the musicians employed their full time wages, the manufacturers should donate a specified sum to his treasury.

This sum was to be absolutely under Petrillo's control, although ostensibly for the benefit of unemployed musicians, even though those might be hundreds and thousands of miles away from the place where the records were made.

---

Such a proposal in others days would have been called blackmail by some, extortion by others.

But autocrats, whether of the pinfeather or the full blown variety, all have this in common:

They thoroughly believe in their divine right to exploit the rest of the human race.

The manufacturers of records, however, did have the backbone to reject so preposterous a proposal.

---

When has any industry been expected to furnish unemployment relief for persons who never have been and never will be on its payroll?

Further, such an agreement probably would run afoul of the anti trust law so far as the manufacturers are concerned.

So the making of much needed records has become subject to further postponement.

And the wonder grows if this is the land of the free after all.

—*Modesto (Calif.) Bee*, 3-10.

### PETRILLO'S WORK RELIEF

Having been in the untenable position of striking for six months without stating his demands, James C. Petrillo now comes forth with a questionable plan under which members of the American Federation of Musicians may again make records.

The plan, which Mr. Petrillo somewhat naively insists is legal because unprecedented, simply provides that

recording companies, juke box operators, and others engaged in various departments of the recording industry, pay a stipulated fee, the amount to be arrived at by negotiation, to Mr. Petrillo's union. The Union, in turn, will operate a sort of super WPA, giving work relief to members unemployed presumably because of the general substitution of loud speakers for live musicians.

This is a novel proposal. While one's sympathy must be extended to those individuals whose talent, training and experience is affected by the changes that invention has brought to the musical sphere, it is necessary to remark that this circumstance is not unique. Trades and professions have a high rate of obsolescence and change. Progress is inexorable.

While Mr. Petrillo may be entirely within his proper sphere in insisting that society should provide cushions for the shock, his plan for licenses and fees would only seek to support indefinitely an old system of work at the expense of a new. That is unrealistic for the signs of the moment indicate that while the total number of musicians professionally employed may become fewer, the opportunities for the very highly skilled will be greater and vastly more rewarding financially. The trend is away from quantity and toward quality.

Furthermore, the question will inevitably arise whether this Caesar of music has shown marked capacity for administering such a broad social relief program as he has proposed.

—*Christian Science Monitor*, 2-15.

There is no question that records and radio have created far more jobs—even for musicians—than they have destroyed. Yet James C. Petrillo claims that thousands of members of the American Federation of Musicians are unemployed because of "canned" music; and he has demanded, as a condition of his lifting the present ban on recording, that these unemployed members be provided for by means of a fund to be created by payment to the union of a fixed fee for each reproduction of records, transcriptions, mechanical devices, and library service of which the master record was made by members of the American Federation of Musicians. The recording and transcription companies, needless to say, have turned down Mr. Petrillo's proposal. The companies contend, with logic it seems to us, that such an arrangement would put a penalty on technological improvement, duplicate government relief, and probably be found to violate half a dozen laws, including the National Labor Relations Act. The companies maintain, further, that when Petrillo says a large number of his members are unemployed, he can only mean that they are unemployed as musicians, for a great many of them earn their living otherwise; and Petrillo has practically admitted that union membership is open to anyone who *wants* to earn his living as a musician. Thus a man who works in a factory and also plays the cornet can presumably join the A. F. of M. and qualify as one of the unemployed musicians in whose name Petrillo has prevented recording. Petrillo has done a good job in raising the wages and standards of musicians; but when he attempts to enforce his demand by taking a step which affects the public interest as gravely as the ban on recording he is performing a service, not for his members or for "music culture" in the United States, but only for the enemies of labor unions.

—*The Nation*, 3-20.

## USO OPERA IS BARRED

### Musician Union Opposes Heavy Camp Schedule

Philadelphia, March 18.—The Philadelphia Opera Company today cancelled performances at Fort Meade and Indiantown Gap and tentatively cancelled a third at the New Cumberland Reception Center, charging the American Federation of Musicians had refused to permit orchestra members to participate in the shows without pay.

The company presented Johann Strauss' "The Bat" before an audience of 1,000 soldiers at Fort Dix last night with only a piano accompaniment. Personnel Manager Max Zehr said the union a few hours earlier stopped the musicians from accompanying the show, saying that a precedent might be set.

Zehr said the men themselves were eager to play and had sent a delegation to union headquarters requesting permission.

"It isn't finally settled yet," Zehr said, "and I believe a hearing will be held on the matter in a day or two. I think part of the trouble arises from the fact that some USO shows now giving performances have paid performers."

C. David Hocker, manager and producer of the company, said the orchestra had accompanied the singers to three other posts during the past two weeks and that the musicians were willing to continue donating their services.

"Nine musicians spent three hours arguing unsuccessfully with officials of the musicians' union yesterday," Hocker said. A spokesman for the union said that "it is not that the musicians are not patriotic but the opera company went ahead and scheduled nine successive performances without consulting the union. It put us in the middle."

"Our men have been playing for all kinds of benefits for the military services and we have donated time worth thousands and thousands of dollars," he added.

—*N. Y. Telegraph*, 3-19.

The Associated Press carried the following story under a Fort Dix date-line:

The Philadelphia Opera Company gave a performance for more than 1,000 soldiers at an Army theater last night with only a piano for accompaniment.

At the start of the program, David Hocker, the producer, announced that union officials in Philadelphia had prohibited the musicians of the company from contributing their services.

Mr. Hocker said the orchestra had gone with the company to three other Army posts during the past two weeks, but union officials ruled yesterday that they did not want to set a precedent by permitting the musicians to perform gratis.

As a result, Mr. Hocker added, he had cancelled a tour of several other Army and Navy stations.

In Philadelphia, Frank Liuzzi, president of the musicians' local, refused to comment, but said that he might have something to say about it later.

The authorities at Fort George G. Meade, Md., said that the opera company had cancelled a performance scheduled there Sunday.

# National Association of Broadcasters

1760 N STREET, N. W. \* \* \* \* \* WASHINGTON 6, D. C.

July 15, 1943

SPECIAL A. F. of M. BULLETIN

No. 19

## Petrillo Defies WLB

James C. Petrillo last week joined John L. Lewis in defiance of the National War Labor Board.

He advised the Board that he would refuse to abide by any order of the Board that musicians should end their year-old strike against radio transcription manufacturers.

Speaking at a Board hearing on the question of whether the Board should take jurisdiction in the strike (and order the Union to call it off), Petrillo's lawyer, Joseph Padway, said "Labor cannot stultify itself to permit any tribunal to violate the Constitution of the United States and impose upon us involuntary servitude. That is where we would have to part ways . . . to maintain the freedom, the democratic rights given to us under the Constitution".

Padway took the amazing position that the controversy between the Union and the A. F. of M. was not a "labor dispute", hence the War Labor Board should keep hands off. Just six months ago Padway was contending for all he was worth that the controversy was a "labor dispute" within the meaning of the Norris-LaGuardia act and hence the Union could not be prosecuted under the Anti-Trust laws.

Walter Socolow, Counsel for the Transcription companies told the Board that the "dispute was a common garden variety strike" and if Petrillo and Padway got away with this fast one every Labor Union in the country could strike as it please and duck the Board merely by contending that it had abandoned jurisdiction.

Below are printed excerpts from the testimony. The Board took the case under advisement. A decision is expected during the week of July 19.

### Padway and Petrillo For the Union

\* \* \*

MR. PADWAY: Mr. Chairman and members of the Board.

The position the American Federation of Musicians takes in this controversy, if we can call it that, is that this Board is without jurisdiction to make a decision in this matter, and that is founded on the premise that you do not have here a labor dispute. We take the position that no employment relationship exists and none is sought, and on that premise it is our contention that there is nothing here for this Board to determine.

Until the radio came into existence there was little objection to the making of the record, little objection to the creation and the continuance of this mechanical device. But when the radio came into existence it was apparent to enterprising persons that to synchronize the radio with the use of the disk might create a new business, and a very profitable business. And with the use of the radio and with the use of disks on the radio, this music—and it may have been disks that were not music, but the disk, or whatever was recorded upon it, was transmitted to various areas in the country and, if they so desired, through networks to the entire nation.

That created a problem for the American Federation of Musicians. It created this very simple problem, and I would like you to take cognizance of this. The American Federation of Musicians were confronted with the making of an instrument, or contributing to the making

and manufacture of that instrument which destroyed their employment opportunities. Instead of creating work for them, it destroyed work; and instead of increasing their number or maintaining those who were employed, it would, if followed to its logical conclusion, put them out of business.

\* \* \*

The problem became acute when sound pictures came into existence. There were some 22,000 musicians employed in these theatres at the time sound came into existence, and in a little better than a year there were left but 3,000 or 4,000 and 18,000 musicians went out of the theatres, displaced by the use of sound and by a mechanical device.

\* \* \*

Now, that problem became more and more acute when the radio came into existence. The ability to distribute over networks and over stations music to wide areas made a less and less demand for music; musicians were unemployed.

\* \* \*

So then we had an issue between a mechanical device and human labor. The American Federation of Musicians had to solve that problem or attempt to solve it. It conferred with the industry. As a result of that conference the industry recognized that it ought to at least make good some portion of the loss, and after very, very long and arduous conferences and negotiations it agreed to spend three million dollars in addition to what it was then spending on live music.

I think that was in 1937 or 1938. That was just a drop in the bucket, but for the moment it was accepted for the time being by the American Federation of Musicians as at least the establishment of a principle which might go toward the solution of this unemployment problem created by the mechanical device.

Well then, pretty soon the Anti-trust Division, under Thurman Arnold, got busy and he threatened the employers or the industry that if they continued with that contract or renewed it he would prosecute them under the Anti-trust laws. And while this may not be admitted by the industry, it is our opinion, based on some very strong and definite evidence, that the industry was only too happy to have Mr. Thurman Arnold make that rule. And while some of the industry continued to keep faith with the agreement, a large portion of the industry did not.

The fact is that the income on that particular arrangement, after Mr. Arnold's threat, was reduced by 60 percent or better than 50 percent. So that was no longer a solution to the problem.

\* \* \*

In 1942 at Dallas it was definitely decided to cease making the records. We contend, whether it be disputed or not, that the industry showed no warmth or receptiveness to anything that had been discussed before. It made no efforts at cooperation to solve the problem. It was as much their problem as it was ours but they sat by, satisfied in the fact that we will have to continue to furnish that music regardless of the fact that we are dying as a result of the furnishing of these disks and this mechanical music.

To emphasize the fact that there was an absolute cessation of an employment relationship, I want to direct your attention to this significant aspect of history. If these employers recognized us as continuing employees, such as results, perhaps, from strike situations, why did they not call upon us to explain why this notice was sent to them? Perhaps they will say they knew, and I think they did. Why did they not approach us and say "We want to know on what basis you will work for us.?"

I make this as a positive statement of fact, that no official communication, no official approach was made by the industry to the American Federation of Musicians from the time this notice was sent to the present day. Let me explain that.

For seven months there wasn't a peep out of them to the American Federation of Musicians.

\* \* \*

We went to the Senate and we told the simple story in probably more elaborate form than I have related it to you at the outset of this argument. We made a simple statement. We cannot live any longer under the conditions that exist now, and as a basis of self preservation, as a basis of creating and remaining in employment instead of destroying it, we had to simply cease to make these records and we have severed the employment relationship; we severed it.

Then, at the suggestion of the Chairman of the Senate—he said, "Will you meet with them?" He said, "Meet with them and see what you can work out."

Now I want to make this very emphatic. The mere fact that we responded to the request of the Chairman of the Senate Committee to meet with them was not an acknowledgment that we still were in their employ; it was not an acknowledgment that a strike existed; it was not an acknowledgment that there was a hiatus or an establishment or a continual relationship. We went there to listen to them as we were asked to do, to see if there was anything they had to offer; and they didn't ask us to meet with them, it was the Chairman of the Senate Committee that asked us to meet with them. They were too proud and haughty, they relied upon their infamous campaign.

We went, sat down, and met with them. We even deigned, if you please, to make certain proposals. We took the initiative, although we were seeking no employment. We severed the relationship; we didn't want to work. They wanted us to come to work for them; it was their duty to say they wanted us to come to work, to state the basis on which they wanted us to come to work. Did they? They did the old employer's trick—now I don't mean all employers, but some of them, those who are responsible for the bringing about of the National Labor Relations Act—of listening and smoking and accepting us very nicely and very amicably, but not a peep out of them about what they would do.

We made them a proposal. They wanted our employment and we didn't want to work for them at all, we had severed relationships. All we got back in response to the proposal that we made was, "Your economic views are entirely contrary to our own. We cannot accept the basis of your philosophy," which was to create some scheme whereby this unemployment might be absorbed. All they said was "This is no good," and "That

is no good," and "That is contrary to this," and "This is contrary to that," and bingo, it was shut off.

That should have terminated at least the relationship, if there was any, that existed, and it was through.

\* \* \*

Now then, we are not permanent employees of these recording companies. It is sporadic employment. We have jobs; we have employers, fine jobs, fine employers. Every musician involved in the transcription business as distinguished from the recording business, and that is the only business before you, has a fine job, has never been without work.

\* \* \*

What is this transcription business? I am coming now to one phase that will dwell upon the law. This transcription business as distinguished from recording—if the recorders make an argument that it may interfere with war morale or have something to do with war morale, we can meet that, but as far as we are concerned, all their business of the major, greater portion of it, is just general advertising: "Pepsi-Cola hits the spot," "Use Kreml; it will make bald heads grow hair," "Jergen's Lotion—any woman that uses it will get a beau overnight if she hasn't one."

Now, Mr. Chairman, that is all right, but what contribution is that to the war effort? These are commercial transcriptions if you please, and I cannot see what connection there is between the commercial transcriptions and the war effort.

\* \* \*

Mr. Chairman and members of the Board, I have stated that you have not here a labor dispute, and the first thing that ought to occur to me as a lawyer, having handled this case all the time, is: What about that case in Chicago? What about the Supreme Court? Didn't they hold that it was a labor dispute?

\* \* \*

The entire face or our picture of it when you have a case before the court on the Norris-LaGuardia Act is entirely different than we have in meeting the definition in connection with your jurisdiction.

\* \* \*

And we here have no wages to ask you or to consider or determine. In our controversy we ask nothing of you respecting hours. We have no employment conditions in controversy as to sanitation or health, and we do not seek representation because we do not seek to establish the relationship of employer and employee.

We don't want to work for those employers. Much as they want to stay in business, much as they want our work, much as they want our employees, we want to exercise the constitutional right of refusing to work for them either arbitrarily or for reasons that are best known to ourselves, although I have stated to you the reasons.

\* \* \*

If this business wants to continue, come to us and talk to us about it, we can consider one proposition, one proposition only, and that is this: We will work for them in the flesh. If they want to get "Pepsi-Cola hits the spot," we will give them the dingaling's and all of it, but it will have to be a live one. We are not going to produce a

master disc and have them, with that canned music, circulate it all over the world.

It doesn't affect the controversy. I am making a statement to you so that you may know our position of good faith, but I say this, we don't thereby establish the relationship. I am simply telling you, Mr. Chairman, that any time these employers sitting around in this industry want live musicians to fill in these programs anywhere in the United States, we have got the men, we have got the music, and we will give it to them.

\* \* \*

What substantial interference with the war effort is there here? Is there substantial interference if Kreml or Pepsi-Cola or Jergens Lotion isn't advertised through transcriptions? They are not talking about records now.

\* \* \*

There is nothing you can settle for us by collective bargaining because there is nothing we want. We don't want to bargain with them at all. We are not employed by them and we don't want to be employed by them. We haven't a dispute that comes within the terms of collective bargaining. We haven't got to the point of employer-employee relationship to want to collectively bargain with them. However, you must have something here that can be covered or come within the terms of the collective bargaining process in order to have jurisdiction.

\* \* \*

Now I come to the crux of this case, and that is this, Mr. Chairman: Labor will not defy this Board, the President of the United States or any Government agency, but on one thing it will have to differ with the Board, regardless of what your order may be, and this is not said definitely. Labor cannot stultify itself to permit any tribunal to violate the Constitution of the United States and impose upon us involuntary servitude. That is where we would have to part ways, not to compel you to take any certain action, not by way of disrespect, not by way of defiance, but on the contrary, merely to maintain the freedom, the democratic rights given to us under the Constitution. We would not be worthy of existence. Labor unions would have to disintegrate or ought to if they won't stand and protect their members against the imposition of involuntary servitude.

\* \* \*

MR. DAVIS: Mr. Padway, can I ask you a question or two?

MR. PADWAY: Yes, sir.

MR. DAVIS: In the hearings before the Senate Committee, Senator Tobey said, "The interests of all the people have to be taken care of." Mr. Petrillo replied, "We understand that, and the American Federation of Musicians is going to do nothing to take away music from the public."

Later on, in the Senate discussions, I think Senator Wheeler was speaking. I have it here (referring to document). It was Senator Clark; and Senator Clark said, "Mr. Petrillo, all we are able and have been able to elicit from you is that you have not made any demands known either to this Committee or to the public or to the industry up to this time, and when pressed, your response is that you want more work. Now, there are only three people—three groups—that can give you more work.

One is the recording companies. Do you want more musicians hired by the recording companies?"

Mr. Petrillo said, "I will answer your question in this way. We are ready now to make demands if that will clarify the situation, and to go into negotiations and settle this thing as fast as possible."

And again Mr. Petrillo said, "But I am in hopes we will get somewhere if we sit down. I am satisfied now during the investigation here and the court procedures, that these men will finally get down to their level and finally will talk about the matter in a manner that I think the time has come that we have got to do business with these boys because there is a problem to be solved, and they have some justice on their side."

And you in your testimony before the Committee, said: "Well, I think if what we had a right to expect reasonably, would have resulted, this strike would not have been enforced. It would have been settled even before the ban came on. That, of course, will cause a debatable subject whether this side is wrong or that side is wrong."

And you said in another place where Senator McFarland said, "It is striking in the midst of war. That is the thing we are trying to get away from, having strikes in the midst of war;" and you said, "We want to settle this strike because we don't want to have it any longer."

Now, my question is, Has the position of the musicians changed since that time? Are they still desirous of settling the controversy, and are they still desirous of or willing to make suggestions for settlement, and to sit down and work it out?

MR. PADWAY: Mr. Chairman and Members of the Board: This is the situation as I understand it—and when I state this, I am responding to your question; if I am incorrect, then I want Mr. Petrillo to answer if he disagrees with what I say, because I am not going to bind him to what I am stating now.

MR. DAVIS: What don't you let him answer?

MR. PADWAY: Well, I want to answer it this way because of the testimony. I recall the testimony and here is the testimony:

First of all, the use of the word "strike" like my use here of the words "going back to work" every once in a while—"strike" is a colloquial expression. (Laughter.) We use it in the sense that we were employed by somebody, we had an argument with them, and we have quit. That is all—we have quit. Whether we have quit definitely and permanently because we think the employer is a no-good so-and-so, and don't want—we struck and we went. In utilizing that language, we never intended to say that we are recognizing a strike in such a way that we have any rights as workers that we can compel employment or get strike benefits, or get employment compensation benefits, and the like. We voluntarily severed the relationship.

Now, then, with respect to sitting down with them—or rather, that we don't want to prevent music. We don't want to prevent music. We want to give the public all the music it wants, and we will give the public all the music it wants; but we won't give it to them through the can.

\* \* \*

Now, you will say that puts us out of business. Well, as between them going out of business and we going out of business, we say that they should go out of business, that is all. If it is a matter that they shall die or we

shall die, we say—not with any Oriental curse—but "Die!" (Laughter.)

\* \* \*

MR. DAVIS: Just a minute. You really haven't answered my question.

MR. PETRILLO: What is it? I tried to give you more, perhaps. Go ahead.

MR. DAVIS: If you will listen to the question and give me a direct answer, I would appreciate it.

The public interest that was under discussion in the Senate Committee was the public's interest in canned music. The people that were under discussion were—shall I call them the "canners"?

MR. PADWAY: Yes.

MR. DAVIS: And at that time Mr. Petrillo said that he was willing to enter into negotiations, that he hoped to arrive at a settlement, and he proposed to submit terms and conditions.

MR. PADWAY: We did.

MR. DAVIS: All right. My question was, Is Mr. Petrillo or the Musicians still of the same mind about these canners, or have they changed their position since the Senate hearing?

MR. PADWAY: Whether this is a change of position or not—I contend it isn't a change of position but you may construe it that way—definitely now we do not want, will not sit down to make recordings or transcriptions. We are through. Am I right?

MR. PETRILLO: Yes.

MR. PADWAY: I would like Mr. Petrillo to answer.

MR. DAVIS: I wish he would.

MR. PADWAY: Go ahead, Jimmy, you can do a better job than I can.

MR. PETRILLO: Mr. Chairman and Members of the Board; I am speaking now to transcriptions. The only possible chance for a settlement in this situation is the question as to whether or not these people are willing to recognize that there is a problem here of unemployment for the man who makes the instrument and says, "Here, Mr. Radio Station, now you can sell this instrument to Mr. Lucky Strike; and you can play this, Mr. Radio Station, for six or eight months. But you, Mr. Paul Whiteman, and Kay Kyser, you stay home until such time as we are ready to send for you again."

What we have in the back of our heads if it is at all possible—and we are not ducking any issue—it is either a question of not making the instrument any more or placing musicians with the can in the station. In other words, if Whiteman makes a transcription with 25 men and it is sent out to a station, then we say, "Mr. Station, you must employ 25 men when you play this transcription."

Now, of course, these gentlemen won't listen to anything like that.

Or, you can have Mr. Whiteman in the flesh. You can hire Mr. Whiteman on a chain and Mr. Whiteman while he is playing the Lucky Strike program will deliver that orchestra to a hundred and forty stations in the United States and also in Canada—and also in South America.

Now, that is about the size of the entire picture. We are interested in giving the public the canned music that goes into the home, where primarily and originally it was made for. In the old days canned music was only made for the home and not for commercial purposes; but as it went on, as the radio stations opened up, we

found that we were making an instrument that was putting us out of business.

\* \* \*

MR. PADWAY: I want to supplement Mr. Petrillo's answer. This clause (from the recording license) just read by Mr. Petrillo was drafted before the court handed down the Paul Whiteman decision. We thought that we could get some control over the record for home use and not prohibit others.

MR. DAVIS: If you had consulted me, Mr. Padway, I could have told you that you couldn't.

(Laughter.)

MR. PADWAY: If we had done so, it would have been a very fine thing. They spent a lot of money on lawyers, and the like. I am sorry I wasn't one of those lawyers. I would have liked to have gotten some of that money.

But the court in the Whiteman decision, which you in your practice are quite familiar with, held we could have no property right in the creative art of the record and once it went out it could be used by the world.

So; that feature you find there is wholly inapplicable. It was made years ago, and the Whiteman decision has rendered it inoperative.

MR. DAVIS: That is precisely what I had in mind, Mr. Padway, and the real question seems to be whether you can substitute for that provision some adequate protection of the musicians in some other form.

MR. PADWAY: The best proof we can't is this, that no employer has been willing to even make a suggestion or repeat as to how to do it. That is why we are not employed by them, won't be employed by them, and can't be employed by them.

## Socolow

### For the Transcription Companies

\* \* \*

Mr. Chairman and members of the Board, I came here this morning prepared to limit myself to the question of jurisdiction, to discuss the question of jurisdiction of this Board.

I didn't think that Mr. Padway would concern himself with the merits of the dispute. I felt, and still feel, that there should be hearing on the merits of the dispute. As far as I am concerned, the hearing of this Board of this labor dispute is transparently clear.

\* \* \*

The connection with the war effort which these products have, it has been established clearly, continuously, since this strike by the officers of our Government who are in charge is with the system of communications of this country and with the maintenance of national morale. It is no laughing matter to say if a radio station in a small town in Iowa, for example, is unable to obtain a program service, unable to obtain live musicians, if you please—and I contend there is an actual shortage of musicians, as Mr. Petrillo has himself admitted—that that station will go out of business and will be unable to serve the people in its community not only for the advertising of commercial shows, not only for general

programming, but also for the transmission of messages which our Government must transmit to the public.

I refer you to the testimony of Mr. Elmer Davis and Chairman Fly of the Federal Communications Commission given before the Senate. I refer you to quotations from that testimony appearing in the statement of fact submitted to the Conciliator.

\* \* \*

No contract we have ever had with this Union has obligated any musician to work for us. I say to you gentlemen that the right of an individual worker to refuse to work for a given employer continues. I am not questioning that right.

I say to you that the right of a union to prevent a worker from continuing his employment is an entirely different matter. I say to you that an employer individually may decide to go out of business. Nobody can stop him. But if a group of employers should band together and decide, "We are going to go out of business until we get a lower wage scale for our industry," that is illegal and unconstitutional. By the same token, the union as a group of men cannot band together for the purpose of destroying our business.

\* \* \*

Unfortunately, this industry is not an organized industry. They are competitors in the true sense of the word. They have never dealt with the Union, Mr. Padway says, officially as a group. Each one of these men, to my knowledge, have gone to the union officers, talked to Mr. Petrillo or his assistants in his absence, and discussed the problems of their business. It is normal, and you can expect that we did that.

\* \* \*

The objectives of the Union are—and I contend they are objectives. They have been reiterated this morning by Mr. Padway and his client—getting of more money and creating of more work opportunities for their members. There is no question about that.

This is a technological problem. The War Labor Board has dealt with technological problems before, and the Department of Labor has concerned itself for many years with technological advances which displace or affect employment in all industries.

Mr. Petrillo says everybody else doesn't make the machine which destroys them. I think the machinists make lathes, and you can go down the line with a number of articles which are designed for reproductive purposes and which are made by the people who work at it.

The technological problems are always the proper subject of collective bargaining. I defy anybody to say it is not a working condition which is the subject of discussion between employer and employee.

Mr. Petrillo this morning in answer to a question said, "We didn't want to destroy this business. You asked me if I want to destroy this business. I have a proposition now."

He made a proposition. I am not going to discuss the merits of the proposal, but it definitely indicates and confirms that they are willing to go back and work for us if certain advantages can be obtained by them, and that by its very structure is a labor dispute.

Every strike is a cessation of work. Where will this Board be and where will all labor disputes be if every

time a strike is called the Union adopts a new tactic and says, "We don't want to work any more. Nobody can compel us to work. It is involuntary servitude."

That is good negotiations. That is a technique which has been adopted in recent years to gain objectives through coercion, through force, and that is what is being done here.

The history of this strike—and it is a strike. As a matter of fact, Mr. Padway himself had a report to his clients printed in the official journal of the American Federation of Musicians commenting on the decision in the Chicago case which went to the Supreme Court. He says, if I may sum up this decision in a few words, that the right to strike is inviolate.

\* \* \*

When the union sent this letter announcing its termination of employment to the industry, no demand was made by the union. I can tell you of my own knowledge that each and every one of the employers involved called on the union from August 1 and right up to last week in an attempt to negotiate and find a solution to the restoration of the men to work. But no demand was made whatsoever. We were in fact exactly in the same position on August 1 as we are today. Mr. Petrillo himself said that last week. We are right back to August 1.

Sometime in August of 1942 the Department of Justice instituted this action in Chicago in the Federal Court for an injunction under the Anti-Trust Act. The record in that case clearly showed that no demands were made. It was a cessation of work. That Court squarely held that it was a labor dispute. The Supreme Court of the United States affirmed it.

Mr. Padway, in appearing for his clients in that case, argued that this entire controversy grows on a labor dispute. The Court upheld his contention and an injunction was denied. The Court deciding the case made reference to the labor dispute under the Norris-LaGuardia Act, which is the same definition as found in the War Labor Disputes Act.

Mr. Padway stated that the union in fact desired the radio stations to hire more employees—then this entire dispute will be resolved by accession to the demands for greater employment. In other words he did not stick to the letter of the complaint but he acknowledged the truth of those allegations and said it is the truth, not only for purposes of discussion and purposes of a court action, but he admitted the truth of them.

Now, in August of last year and during the entire time this case was pending, although no demands were made by the union, it was acknowledged that their demand was one for greater employment. No specific demands were made, true, but the ostensible, announced purpose of this strike was to get more money and more work. During the entire pendency of this action by the Department of Justice in Chicago and in the United States Supreme Court, and until it was decided, no demands were made by the union, which is exactly the position we are in today.

In January before the Senate Committee, Mr. Petrillo said he would make certain demands upon us. Then he made the demands and when he made them he announced in his official journal that these demands were made voluntarily, not through any pressure or coercion on the part of any Government agency.

In his demands on us originally he stated we should pay him an unspecified percentage of our gross receipts—the amount to be negotiated—pay that to the union treasury, in addition to the regular compensation which we were paying the men. He said he didn't want any more money for the men. We said "no" to that with a lot of reasons. I don't want to go into those now.

But we did come back with a counter proposal. Mr. Padway said we didn't make any at all. We made a counter proposal to increase the rate of pay for the men who work for us. I recall very clearly it was in Mr. Petrillo's office late one Saturday afternoon. Mr. Weber, the ex-president of this union said that he and everybody else were overjoyed and elated at the attitude that we manifested in our proposal to pay more money. He thought we were getting somewhere.

Then he asked for certain figures. He wanted to know what kind of business we were doing, what we were making, so he could see how much this formula would yield to them. When he got those figures he said, "You fellows are small peanuts—not just peanuts, but small peanuts. You only take in \$4,000,000 a year, and you make only a quarter of a million in net profits. I want \$35,000,000 a year. My board wants me to take \$10,000,000 or \$12,000,000. Your entire gross income wouldn't be enough for me."

He said, "I'll tell you what. I'll make you a proposal. You give me what I call contract control. You agree not to deliver your products to your customers if I declare some of these customers to be unfair at any time." I asked him how many stations were unfair at that time. "Not many," he said, "one or two. But it is only fair to inform you that if you sign this contract there may be 500 or more declared unfair the day after the contract is signed."

You can't be in a business like ours, making transcriptions, without knowing what your market will be. You can't afford to spend money making transcriptions and not know whether you can sell them and get your money back.

We were obliged to refuse to accept that demand, on practical grounds as well as on legal grounds. We thought of it as a secondary boycott.

We spent the time from February 11 to May 13 in negotiations, when we broke up. We spent many hours in very friendly conversation, telling our problems; pointing out conditions in our business, which he learned about for the first time; telling him how we operate. We disclosed everything and concealed nothing.

The result of those negotiations was that he said it was unfortunate but there isn't anything in this business that attracts him and would solve the problem in terms of large sums of money, so we were obliged to call in a conciliator. I won't go through the steps we took in that, but conciliation was a failure.

The Secretary has certified to this Board, and you have the certification before you, that this is a labor dispute; it could not be conciliated; and that this has a direct effect upon the war effort and comes within your jurisdiction.

I submit to you that under Section 7(a)(1) of the War Labor Disputes Act you have the power and also the duty to exercise your jurisdiction in this case whenever the Secretary certifies to you the statement of facts that you have on your desk at this moment.

You have here, gentlemen, a garden variety strike—nothing else. Maybe the personalities are a little more colorful; maybe the products are a little more interesting and appealing, but this is a strike in every sense of the word. The union has termed it to be a strike and we say it is a strike. It is a strike against our business. We cannot engage in our business if the flow of manpower is being withheld from us by union order.

I am not asking you to take jurisdiction here and order that an individual musician go back to work for us. I don't expect you to do that, but I can ask you—you have done it in every case that you have had before you—to order the union to remove its restraint upon the men so that the proper interplay of labor and employer can be maintained.

There is not a question in my mind of your having jurisdiction. The whole hearing is predicated upon the exercising of that jurisdiction, and I say to you that if this Board does not exercise its jurisdiction in this case you are letting the door wide open for every union to come in and say, "Your order means involuntary servitude. You can't compel us to go to work."

You have done it before and there is no reason why you shouldn't do it now. You are not compelling the individual; you are affecting the union.

\* \* \*

Mr. Padway says that is different from going back to work, but that is all we can ask this Board to do. That is all we can expect from you. These men don't have to work for us if they don't like the conditions. Individually they can refrain from making recordings or anything else.

A musician, if you please, renders his services in a peculiar manner. It is not comparable to that of other industries in most places. A musician derives his livelihood from an aggregate of compensation for part-time jobs. He plays on the radio; in restaurants, cafes, hotels. He also comes into our studios and makes recordings. Some of them also go into the studios of phonograph companies and make their recordings.

\* \* \*

In connection with the proof that this controversy has an effect on the war effort, I would like to read to you brief quotations from Chairman Fly, Federal Communication Commission in the testimony before the Senate Committee in Interstate Commerce. Mr. Fly said, "Wherever emergency messages, news of the world, war information, much propaganda, if you will, cannot reach the people or any great portion of the people a nation at war is seriously handicapped. May I therefore offer this suggestion. Electrical transcriptions are essential. We must have them. There is no alternative."

Mr. Davis, the Director of the Office of War Information in the same hearing said as follows: "Since several hundred small stations, which cooperated whole-heartedly with the Government on the war effort, depend for their major sustenance on electrical transcriptions Mr. Petrillo may well force them out of business and thus seriously interfere with the communication of war information and messages vital to the public security."

Mr. Davis also said—he was making this statement on behalf of the War Department, the Navy Department, the Marine Corps, the Coast Guard, Treasury Department, the Office of Civilian Supply, and the Office

of War Information and that his communication to Mr. Petrillo was made and sent only with the consent, after a joint meeting, of their representatives.

Mr. Padway this morning made the statement that the members of the Musicians Union were working free for the war agencies. I want to say to you that that statement is incorrect. I doubt whether Mr. Padway has the facts. The facts are that the Musicians are being paid for their work on behalf of the Government agencies. Certain union rules are held not applicable to the Government agencies, but whenever a musician goes into a studio and makes electrical transcriptions for a Government agency he is paid the scale for that service. That applies to the Army, Navy, the Treasury Department, and your office if you make transcriptions. You check your records. You will find that to be true. The statement that these recordings are made free is incorrect, and when the broadcast appears over the network the union musicians are employed and they are paid at prevailing broadcast wage scales for their services, even if the sponsor is the United States Government.

\* \* \*

The action of this union has had all the characteristics of a strike. Not only have the men ceased to work for my clients, but these tactics, which the Union has employed, are shifted from time to time to suit the opportunities that existed at each moment.

When the Union made its demand in February they said it was done voluntarily. Later on they changed their tactics. They said it was done because of senatorial pressure.

Mr. Petrillo was asked before the Senate Committee by Senator Whitten, I believe, on January 12 of this year, whether he did not have in mind not making records at all any more. He said, "No." He agreed that the American public would not stand the stopping of the manufacture of these products. When he made his demand in February he said, "Those are my total claims. I have no complaints against the broadcasters at all." In July he said, "I am through and I am not going to make transcriptions. I am trying to get at the other fellow, the broadcasters."

In this strike which has been a strike of instrumental musicians only, he has taken action against his own men and has also exercised pressure upon members of other unions—musical recordings using the services of vocalists as well as instrumentalists—singers, members of another union.

Mr. Petrillo in the last few weeks called in and notified various vocal artists that he would consider it uncooperative, if not unfair to them, to render their services for vocal recordings without any musical accompaniment.

Of course, the pressure which he has to bring to bear upon those individuals is very serious. It can make it difficult for them to work on the radio and other engagements with the musicians. They have given that cooperation to Mr. Petrillo. He has effectively cut off other sources of supply for the business; namely, vocalists.

He has told the arrangers and copyists some of whom are members of his union that he would consider it a violation of his union regulations if they make arrangements of purely vocal music.

He has referred to records made in Mexico, I understand, phonograph records in this instance, not transcrip-

tions, as being scab records because they interfere with the strike which he has called.

Music publishers, incidentally, have had a very serious aftermath of this strike. Very few popular tunes have been classified in the hit standing since this strike went on. The exploitation of music through the medium of transcriptions—the medium of mechanized music is essential for the development of that industry.

All of the characteristics which I have just described, all of the concomitants of this strike, indicate without question that this is a labor dispute, and every step taken by this Union is in furtherance of the attainment of the objective they want; mainly, more money and more work for everybody somehow.

\* \* \*

Mr. Padway made some references to constitutional rights against involuntary servitude. I think the rest of the American public has some constitutional rights too—the right of free enterprise. We as business men have a right to conduct our businesses consistent with public welfare and rights of labor in a legitimate fashion.

\* \* \*

I think it is high time we found out what the no strike pledge means. The Union has called this strike. They have said, No, it is not a strike. It is a different type of cessation of work. If it is abandonment, let us know. If it is a strike, let them face the music, such as we have. (Laughter)

\* \* \*

I want to close with the statement that the tactics of the Union are those of a transparent evasion of whatever jurisdiction the Government seeks to exert in order to end this strike.

They have argued no jurisdiction under the Norris-LaGuardia Act. They say this Board has no power. By that they are undermining the very structure of the work and frustrating everything you have been doing on this today.

## Questions From the Board

\* \* \*

MR. ROTH: May I at this time complete the record on the decision of the Court you read from by reading the following paragraph:

“The Norris-LaGuardia Act provides ‘the term labor dispute’ includes any controversy concerning terms or conditions of employment, etc. The Government says that the activities complained of in the case at bar do not involve ‘terms or conditions of employment’ and that, accordingly, the Norris-LaGuardia Act is not applicable. It has been observed that the union and its members here contend, in a sense, for a ‘closed shop’ so far as phonograph records, electrical transcriptions and amateur musicians are concerned. The question then is: Is this contention one in respect of a ‘term or condition of employment’? Congress itself answered this question quite definitely in the National Labor Relations Act when it said: ‘. . . to require as a condition of employment membership therein.’ Here Congress itself speaks of an

agreement for a closed shop as a ‘condition of employment.’

“The court is satisfied that the union and its members and the employers of the latter are disputing in respect of a ‘condition of employment’ and that, accordingly, the dispute involved in this case is a ‘labor dispute’ within the meaning of the Norris-LaGuardia Act.”

I understand, Mr. Padway, that your whole case is predicated on the fact that no employment relationships exist. I think these are your exact words, “. . . and none is sought.”

That being true, would your client raise any objection to employment of musicians who are not members of your Union for production of these records?

MR. PADWAY: Certainly, we would raise every objection in the world, and it doesn’t change our position.

MR. ROTH: You would take whatever measures you could to prevent—

MR. PADWAY: We would absolutely expel any member who went ahead and made records. We would, by all peaceful and lawful means, endeavor to get those who are not members not to make records, for the same reason we don’t want to make them; namely, it kills our opportunities.

\* \* \*

MR. ROTH: Now, your statement that you had no objection to them (radio stations) playing transcriptions by Paul Whiteman as long as they had—how many, 23 musicians standing by?

MR. PETRILLO: The number of men employed to make that transcription, the same number of men to be employed when the transcription is played.

MR. ROTH: What would they be doing while Paul Whiteman’s records are being played?

MR. PETRILLO: Listen to the music.

MR. ROTH: Have you ever heard of the Government’s problem of manpower shortage in this country?

MR. PETRILLO: Did I ever hear of it?

MR. ROTH: Ever heard of the problem and what the Government is trying to do? How do you square that with the present situation on manpower?

MR. PETRILLO: They are taking our musicians and they say, “Either work or fight,” and our boys are going to the factories, and they are making bullets and dropping their instruments.

MR. ROTH: They can’t make bullets while they are listening to Paul Whiteman’s records.

MR. PETRILLO: That’s all right, but he’s got to live. He ain’t going to live if he don’t stand by his own records. In other words, we are not going to play our own funeral any more. That’s what it amounts to. We listen to it being played while we stay home, you see.

\* \* \*

MR. ROTH: One question. If the tables were turned—let us assume this were a stevedoring company which was seeking to use lift trucks, which are a labor saving device. The contract had expired; the parties had contested those provisions in their contract, not come to an agreement. The employer said, “As far as I am concerned, I can find plenty of people who will use lift trucks. I am not concerned any more with hiring you boys.” And he proceeded to hire other people and refused to go on with negotiations. Do you consider that would be a breach of the no-strike, no lock-out pledge on the part of the employer?

MR. PADWAY: Well, it all depends whether that would be a breach of the no-strike, no lockout pledge. On the facts and circumstances you have related, the no-strike and no-lockout pledge is ended. You know why? He's got other employees, and he can go out and get them, and he says he can. Consequently, there is nothing further for us to seek. He terminates our employment. He has a right to.

MR. ROTH: The Board took the San Francisco Hotel cases where the strike has not succeeded and the hotels are running, and they held it was a labor dispute.

MR. PADWAY: I don't know what the Board held in that case. I will say this: Where an employer is not willing to pay the price his employees want and he has refilled his establishment with competent employees, or even incompetent employees, and production is at normal the courts have held the strike is over. Now, I can give you many decisions to that effect, where there is a strike called, the employees are out, and then other employees are brought in to replace them and production is at normal, the strike has ended. Except in that strike there the former employees are seeking work. Here we are not seeking to work any longer.

MR. ROTH: But my employer wasn't seeking the services either.

MR. PADWAY: If he has refilled his establishment and wasn't seeking the work—but if the employer threw out all manual labor, or put in all physical labor, and the employees wanted those physical jobs, that is a different situation.

MR. PETRILLO: May I clarify one point, Mr. Chairman?

First of all, there are no non-Union professional musicians. These gentlemen know that any man that don't carry a card of the AFM they couldn't use. They wouldn't want them around. I am sure they would substantiate what I said.

Second, all the musicians in England have pledged through a letter to their organizations that they will not make any such transcriptions or recordings as long as

this controversy is on. That also goes for the South American musicians.

MR. DAVIS: Mr. Padway, before we break up I'd like to get back to the question I asked you this morning as to whether the position of the Union had changed since the Senate hearing, at which time it was the position of the Union that they were prepared to negotiate with these people.

Now, you have made it quite clear—I want to be sure I understand it—that the position of the Union now is that they will not make these mechanical recordings or electrical recordings at all. In other words, your purpose is—you say that they will supply live musicians. Of course they supply live musicians, or did, to these recording companies; so that the purpose of the Union is to put these people out of business, isn't it?

MR. PADWAY: That may be the result. Our purpose is to compel any form of music used in connection with electrical transcriptions to be live music and no more mechanical instruments to be used. That is our purpose. If their business depends entirely or to any extent upon mechanical recordings, we are not going to furnish that music. The result will be they will go out of business.

I want to state quite definitely in my parting sentence that the American Federation of Musicians now states that regardless of what negotiations went on after it quit it has not re-established employment relations.

It is in the same position as the NLRA—when the Board rules that when a person even is on strike, but having quit the strike and obtained substantial and equivalent employment elsewhere his employment is terminated. We have substantial, equivalent, and better employment elsewhere. We are all employed so far as this end of the business is concerned. We don't want other employers. We are through.

If they'd like to have us and it's extra time and they want live musicians we will probably give them live musicians. As far as mechanical transcriptions are concerned we are here to say to this Board now: We are never going to make another mechanical transcription.

# The National Association of Broadcasters

1760 N STREET, N. W. \* \* \* \* \* WASHINGTON 6, D. C.

August 13, 1943

SPECIAL A. F. of M. BULLETIN

No. 20

## Late Developments in the Petrillo Fight

1. The War Labor Board has appointed a panel to hear and report on the merits of the controversy between the transcription companies and the A. F. of M. This panel consists of the following:

### *Representative of Labor*

Max Zaritsky, President of United Hatters Cap and Millinery Workers

### *Representative of Employer*

Henry S. Woodbridge, Assistant to the President of American Optical Co.

### *Representative of the Public*

Arthur Meyer, Chairman of the New York Mediation Board

Public hearings have tentatively been set to begin in New York City the first week in September. The function of the panel is to report to the War Labor Board what action, if any, should be taken. The War Labor Board denied "at this time" the plea of the transcription companies that the union be ordered to terminate its strike at once, but the form of the order leaves it open for such action to be taken in the future at the recommendation of the panel.

2. Station WSAY in Rochester, which was cut off the Mutual Network as a result of a threat by Petrillo to deprive the entire Mutual Network of all of the services of musicians, has commenced an action for an injunction against James C. Petrillo, individually and as President of the American Federation of Musicians, and Leonard Campbell, individually and as President of Rochester Musicians Protective Association, Local #66, American Federation of Musicians.

The theory of the action is that it constitutes an unlawful labor objective for the union to demand that the station hire five musicians whose services the station does not need and that it constitutes an unlawful method for

the union to conspire to put pressure on Mutual to deprive the station of network musicals programs unless the station does the union's bidding. The case is brought in the Supreme Court of the State of New York and will be heard in Rochester. The motion for an injunction is scheduled to be heard on Thursday, August 12th.

### *Diamond Calls Meeting*

3. On August 5th Mr. Milton Diamond, counsel for Decca Records, Inc. and for the World Broadcasting System, Inc. which was recently purchased by Decca, called a meeting in New York City to which R. C. A. Victor,

Columbia Recording, NBC, Blue Network Company, CBS and the NAB were invited. At this meeting Mr. Diamond reported, without recommendation, the result of several months discussions with Mr. Petrillo and his Board which Mr. Diamond had carried on solely on behalf of Decca and not on behalf of any other interests.

Mr. Diamond reported that Mr. Petrillo and his Board would be willing to return the musicians to work in the phonograph record field in consideration of a payment of eighteen million dollars net over the next five years. Such payment would be made to musicians employed by the recording companies, with the understanding that the union would tax the money away from these men and put it in its own coffers. The eighteen million dollars was to be paid by "public users" of records which, after negotiations, boiled down to the broadcasting industry since it was admitted that there was no prospect of receiving any part of the contribution from juke boxes unless and until a new copyright law was passed.

Transcriptions were not specifically mentioned in this connection, but it was Mr. Diamond's understanding that the men would also return to work in the making of transcriptions.

It was part of Mr. Petrillo's proposal, however, that all industries should cooperate in the passage of a new law which would require broadcasters and other users of records to make payment for the use of records, and for the benefit of the union, for all times in the future and at such rate as might be fixed in the future. It was no part of the proposal that any part of the money be paid by the motion picture industry.

### Price Goes Up

Discussion brought out the fact that while Mr. Petrillo said that what he wanted for his union was eighteen million dollars net, the discussions were predicated on the fact that there also would be moneys for the recording companies and for the artists who actually made the records. It was suggested that the record companies might receive, in addition to the moneys paid to Petrillo, another eighteen million dollars, which would raise the amount involved to thirty-six million dollars. It was also pointed out that some money would be needed for the collection and administration of funds and that this would amount, perhaps, to another four million dollars. The total amount involved for the first five-year period, therefore, would be from eighteen to forty million dollars, with no limitation placed on what it might be in future periods.

What was involved in the proposal, therefore, was an agreement by the broadcasting industry to pay from eighteen to forty million dollars over the period of five years, and at the same time to agitate for the passage of a new law which would permit the collection of similar or greater amounts in the future.

### Broadcasters Not Interested

The NAB was asked its opinion as to whether the broadcasting industry was interested in discussing such a plan. The NAB made it clear that the broadcasting industry would not be. It was pointed out that such plan involved the acceptance of a totally false principle, the imposing of unjustified and crushing charges, and the adoption of a technique of lobbying for new legislation by means of a strike, which was actually a strike against the American people and the Congress, until new legislation was passed.

4. James C. Petrillo announced to the press that the union, as a means of encouraging symphonic music, had appropriated \$500,000 for the giving of 570 free concerts by the leading symphony orchestras in smaller communities. The following statement was issued by Neville Miller, President of the NAB, and was widely printed:

## Petrillo Symphonic Music Gesture Exposed as Hypocrisy by NAB

"James Caesar Petrillo's announcement that his union intends to give 570 symphonic concerts in small towns is unequalled for hypocrisy. Mr. Petrillo has done more to prevent symphonic music in the United States than any other man in the history of our country.

"Before Mr. Petrillo prevented the making of all recordings of symphonic music last August, the great orchestras could reach all of our people in all parts of the country through the phonograph record. The recordings so made were available for the home, schools, broadcasting stations and for all of our citizens wherever situated and whenever they wanted to hear symphonic music, not merely once each in 570 communities hand-picked by the union. The very orchestras which Mr. Petrillo now wants to bring to the people, are those which, for one full year, have been prevented from making phonograph records. If Mr. Petrillo were sincerely interested in the welfare of symphonic music, he could, by lifting his ban, permit the equivalent, not of 570, but of hundreds of thousands of times 570 concerts.

"All of the symphony organizations are non-profit institutions. A substantial part of their revenue, in some cases as much as one-third, was derived from royalties on phonograph records, 98 per cent of which, according to Mr. Petrillo's own testimony before the United States Senate, went into the American home and formed a permanent contribution to musical education. Moreover, the musician in the symphony orchestras has been deprived by Mr. Petrillo of the substantial revenue which he previously received from his recording activity. The musicians in symphony orchestras received, in addition to the royalty obtained by the orchestra itself, a minimum fee of \$28 per man for no more than 80 minutes playing time.

"Mr. Petrillo has, therefore, stifled the major source of income for the symphonic orchestras, deprived the symphonic musicians of normal compensation and withdrawn from the American people the benefits of recorded symphonic music.

"It should be noted that in making this transparent gesture, Mr. Petrillo drops the last vestige of justification for his ban on recordings. He has contended that records commercially used in the smaller cities deprived local musicians of employment opportunities. Yet, when the union sets aside \$500,000 to bring some music to the American people it does not employ local

musicians, but instead spends it on bringing into the communities the performances of the fully employed musicians who had always made recordings.

"The good faith of Mr. Petrillo's proposal may be attacked not only on these grounds, but on the basis of his own figures. His announcement says that the men in the orchestras will be paid for their services, and he sets the normal personnel of a symphony orchestra at 90 men, although in travelling, the services of baggage men, librarians, etc. are also required. At his own figures, Mr. Petrillo is allotting less than \$10 a man per concert to cover salary, railroad fares, hotels, meals, baggage car for instruments, cartage of instruments and music stands to place of performance, and incidental expenses. When a non-profit symphony society wishes to give a concert out of town today, it must pay, in addition to the high union scale, \$7.50 a man per day for mere maintenance, and the lowest union scale of symphony concert tours is \$100 a week a man, exclusive of the obligation of the orchestra to furnish first-class transportation, including sleepers. It is obvious, therefore, that Mr. Petrillo proposes to pay the men no compensation or only nominal compensation.

"The essence of Mr. Petrillo's gesture, therefore, is that he is going to compel some of his members to render free services and the orchestral societies to lend their names and reputations to his enterprise so that he may take unto himself the credit for their services."

The accuracy of Mr. Miller's figures was later proved when Mr. Petrillo, in a later statement, announced that \$250,000 was to be used in order to give 115 concerts, thereby cutting, in more than half the number of concerts, within a week after the first announcement.

On August 7th, Marshall Field, president of the board of directors of the Philharmonic Symphony Society, asked Mr. Petrillo to lift "immediately" his ban on the recording of symphonic music. Mr. Field's appeal has been approved by eleven symphony orchestras, including: the Los Angeles Philharmonic, Rochester Philharmonic, Indianapolis Symphony, Cleveland Orchestra, National Symphony and the Minneapolis Symphony.

Also an estimated 700 members of N. Y. Local 802 signed petitions demanding that Mr. Petrillo execute his project by giving work to totally or partially unemployed musicians rather than to symphony instrumentalists who already were earning high wages.

Details of Marshall Field's appeals and the protest of the 700 members of N. Y. Local 802, A. F. of M., are given in articles from the *New York Times* reprinted below. Also we are printing an editorial from the *New York Times* of August 10:

(N. Y. Times, Aug. 10)

## Field Asks Petrillo to Lift Ban On Recordings by Philharmonic

James C. Petrillo, president of the American Federation of Musicians, has been asked by Marshall Field, president of the board of

directors of the Philharmonic-Symphony Society, to lift "immediately" his ban on the recording of symphonic music, it was disclosed yesterday.

The society "desires, in fact requires" royalties from its recordings in order that the Philharmonic may continue, and other major symphony orchestras are "similarly situated," Mr. Field told Mr. Petrillo in a letter dated Aug. 6, which sets forth the conditions under which the society will permit the use of its name in the series of free concerts that the union proposes to give in the smaller cities with the union musicians of leading symphonic organizations.

After outlining the conditions—that the society shall approve the cities played, the programs given and the conductors who conduct the orchestra, and that the performances shall neither involve the society in any expense nor be broadcast or recorded—Mr. Field's letter continues:

"I have spoken informally to a number of members of our board and I believe that if these conditions are complied with, you will receive the society's cooperation to your project. They have expressed the hope, in which I join, that if the society cooperates, you will see the importance, for the same ends to which your proposed performances are aimed, to lift the ban which you have placed on recordings by our orchestra."

Acknowledging Mr. Petrillo's professed desire to bring "symphonic music to persons who might not otherwise have the opportunity to hear it," Mr. Field informed the union leader that "the recording of the great symphonic orchestras of this country under their famous conductors is also a means of bringing that symphonic music to persons who might not otherwise hear it."

Mr. Field was "frank to admit," he said, "that the society desires, in fact requires, the royalties from its recordings in order to insure the continuance of the orchestra which you are proposing to borrow. The other great symphonic orchestras of this country are similarly situated. Their very existence is threatened by the loss of recording royalties."

Accordingly, the letter continued, "my plea to you, and I am sure it will be the plea of the management of every symphonic orchestra in America, is that you will immediately lift your ban on the recording of symphonic music and by doing so contribute to the availability of symphonic music throughout this country in a manner that not even your proposed concerts can accomplish. In addition, we have the word of Army and Navy officers, as well as civilian officials in Washington, that the continuance of recording is necessary for the maintenance of military and civilian morale, one of the primary purposes stated by you for your own concerts."

A statement from the Philharmonic-Symphony Society office said that copies of the letter had been sent to other major symphonic organizations, and that by the time the letter was mailed to Mr. Petrillo telegrams "approving Mr. Field's position" had been received from the Philadelphia Orchestra Association, the Chicago Symphony, the Boston Symphony, the Cleveland Orchestra, the National Symphony of Washington, D. C., and the Cincinnati, San Francisco and Minneapolis Symphonies.

Mr. Petrillo announced his free concert plan on July 27, at which time he said that the union had authorized an expenditure up to \$500,000 for an estimated total of 570 concerts. The plan was first suggested to him, he declared, by President Roosevelt. The day after its announcement, the proposal was assailed by Neville Miller, president of the National Association of Broadcasters, as "unequaled for hypocrisy." Through his ban on the making of records, Mr. Miller charged, Mr. Petrillo had "done more to prevent symphonic music in the United States than any other man in the history of our country."

Mr. Petrillo was not available yesterday for comment.

(Continued on page 4)

## Musicians Oppose Petrillo Concerts

Against Leader's Proposal to Give Free Performances by Symphony Orchestras

### WORK FOR JOBLESS SOUGHT

Petitions Point to Fact That Those Affected by Project Already Earn High Pay

Opposition to the plan of James C. Petrillo, president of the American Federation of Musicians, to have the major symphony orchestras give free concerts in smaller cities developed yesterday within Mr. Petrillo's own union.

An estimated 700 members of Local 802 of the federation, covering the metropolitan area, signed petitions demanding that Mr. Petrillo execute his project by giving work to totally or partially unemployed musicians rather than to symphony instrumentalists who already were earning high wages.

The petitions were delivered late yesterday afternoon to Mr. Petrillo's office at 570 Lexington Avenue, where they were accepted by Harry Steeper, assistant to the union leader. Mr. Petrillo was said to be in Chicago.

Circulation of the petitions was done by the faction within Local 802 known as the "Unity Group." The group in recent months has offered increasing strong opposition to the present local administration, headed by Jacob Rosenberg, president, and William Feinberg, secretary.

Mr. Rosenberg declined to comment on the petitions.

### Not Fighting Recording Ban

While the petitions represented the first intra-union opposition to Mr. Petrillo since he started his fight against "canned music," Billy Vann of the "Unity Group" emphasized that the signers were not fighting the federation's ban on recordings.

In a letter accompanying their petitions, however, a committee of the "Unity Group" noted that Mr. Petrillo had declared repeatedly that the purpose of the recording ban was to aid needy musicians.

"Last week, in an apparent desire to gain the public good will, the federation announced that it would spend \$500,000 on a program designed to bring good music to small communities," the letter continued. "Are the musicians who are to be so used unemployed? No! Famous symphony orchestras have been designated to do this work."

The letter added that the plan as announced by Mr. Petrillo had the effect of "proclaiming that we have no competent unemployed musicians on whom the funds of the organization should be expended."

### Suggestion From Committee

The committee suggested that, if the federation were to subsidize music, "new orchestral units be formed using those musicians who are not already fully employed at high wages."

Mr. Vann said that twenty members of the New York Philharmonic-Symphony had signed the petitions but he declined to make public their names.

He reported that some members of the symphony were opposed to working for \$10 a concert, the fee proposed by Mr. Petrillo, Committee members said that the commercial scale was \$16.

The committee members signing the letter were Nicholas F. Vitalo, recording secretary of the group; Alfred Manuti, Calmen Fleisig, Maurice Benavente, Jack Cohen, Raymond Parker, Frank Morse, Charles Sanchik, Benjamin Berkowitz, Hyman Grossman, Benjamin Margulis and Albert Stanley.

The Philharmonic-Symphony Society of New York meanwhile announced that a total of eleven symphony orchestras in the country had voiced approval of the position of Marshall Field, the society's president, in asking for lifting of the ban on records. The latest adherents were the Los Angeles and Rochester Philharmonic Orchestras.

(N. Y. Times, Aug. 10)

### BEGGING MR. PETRILLO

Marshall Field, as president of the board of directors of the Philharmonic-Symphony Society, has asked James C. Petrillo, president of the American Federation of Musicians, to lift immediately his ban on the recording of symphonic music.

Mr. Field is "frank to admit," he declares, "that the Society desires, in fact requires, royalties from its recordings in order to insure the continuance of the orchestra which you are proposing to borrow. The other great symphonic orchestras of this country are similarly situated. Their very existence is threatened by the loss of recording royalties."

"Accordingly," Mr. Field continues, "my plea to you, and I am sure it will be the plea of the management of every symphonic orchestra in America, is that you will immediately lift your ban on recording of symphonic music and by doing so contribute to the availability of symphonic music throughout this country in a manner that not even your proposed concerts can accomplish."

This plea has the merits of understatement. Mr. Petrillo, through the use of irresponsible private power, is denying music to millions by his ban on recording, while he ostentatiously offers "free concerts" as a special favor to a few thousand. Why should the country be placed in the position of pleading with Mr. Petrillo to remove a ban that he ought never to have had the power to impose? Mr. Petrillo has this power only because Congress and the Administration have in effect delegated such power to him. If they will revise our ill-considered labor laws, which give Mr. Petrillo the power to impose ruinous boycotts against individual musicians as well as concert halls, theatres, restaurants, transcription companies and radio stations, nobody will have to appeal to Mr. Petrillo not to abuse his powers. They will no longer be his to abuse.

# The National Association of Broadcasters

1760 N STREET, N. W. \* \* \* \* \* WASHINGTON 6, D. C.

September 11, 1943

SPECIAL A. F. of M. BULLETIN

No. 21

## The A. F. of M. Hearings Before The War Labor Board

Hearings with respect to the strike by the A. F. of M. against the transcription companies were held on Tuesday and Wednesday of this week and are continuing as this bulletin is written. These hearings were held before Arthur Meyer, Chairman, and Gilbert Fuller and Max Zaritsky, constituting the Panel appointed by the War Labor Board.

The hearings thus far have been devoted to arguments made by Walter Socolow, counsel for the transcription companies, Henry Friedman and Joseph A. Padway, counsel for the Union, and to a statement by James C. Petrillo. The portion of the presentation which has excited the greatest interest in the press has been Mr. Petrillo's statement.

Mr. Petrillo charged government agencies with having allowed themselves to be used by the industries involved to "crush the A. F. of M." He defied anyone to show him "where there isn't enough music in this country." He said of the industries involved:

"They have got us on the floor, they have got us punch drunk and I don't mind telling you they have got us punch drunk; they have taken us to every agency and they are not stopping yet and I don't suppose they ever will, but as sure as there is a God and just as sure as there is justice we are right in our fight in principle and we will live in that righteous cause or we won't live."

Mr. Petrillo accused the transcription companies of "pulling millions and millions of dollars out of the pockets of the musicians in the United States." He referred to the "large profits" of the broadcasting and recording industries. He also said:

"Don't forget, gentlemen, that up until this moment the men who make these transcriptions and recordings have lost in the neighborhood of seven million dollars in wages."

Mr. Petrillo said that the matter would have come to a successful conclusion if it had not been for government interference. He was challenged on this point by Mr. Meyer, the Chairman of the Panel, who said:

"When you make a remark of that kind it seems to me that it suggests that there must be in mind something which represents that possible settlement. You would be very helpful to the panel, you would be very helpful in this entire proceedings if you would make clear what that 'something' in your mind is."

Mr. Petrillo spoke at some length, and was interrupted by the Chairman who said:

"When a question is asked it should first have an immediate answer, afterwards you can make any extension of it you please. I would prefer, if you would be so kind as to say what it is you had in mind when you stated that this matter would have been settled had it not been for the interference of government agencies. I am asking what type of settlement you had in mind because there must have been one, otherwise that statement of yours would scarcely have made the amount of sense I feel there must be in it."

Mr. Petrillo continued and the Chairman again said that Mr. Petrillo's speech "doesn't answer what I have in mind and I know you would like to give me that answer."

At that point Mr. Petrillo said:

"I don't think I can make myself any more clear than I have on this."

In short, Mr. Petrillo just never did answer the question.

The hearings will probably continue for the remainder of this week. Meanwhile, Mr. Petrillo has agreed to call a meeting of his International Executive Board next week and to report to Mr. Meyer its present disposition to advance a proposal looking to a settlement of the dispute. Some time next week, presumably on the basis of the Union's position then, the panel will decide on the future course of the hearings.

It will not be possible to summarize the actual proceedings until they are concluded, at which time members will receive a report. There is appended hereto, however, a statement submitted by Mr. Socolow on behalf of the transcription companies which will act as a good digest of the argument submitted by him.

### Statement on Behalf of Electrical Transcription Manufacturers

In repudiation of labor's wartime no-strike pledge, the American Federation of Musicians, on August 1st, 1942, went on an unjustified strike against the seven electrical transcription companies which are parties to this proceed-

ing. The strike is still in effect. No electrical transcriptions have been made for these companies by members of the Union for more than thirteen months.

For six and one-half months the Union made no demands upon the employers. Indeed, even after the labor dispute had endured for more than five months, Mr. Petrillo was unable to state clearly to a Senate Committee what he wanted from whom as a condition for permitting Union musicians to resume the making of transcriptions.

Since February 11th, 1943, a series of proposals have successively been advanced by the Union. These are as follows:

1. "Members of the Federation will make commercial or sustaining transcriptions, without additional fee to the Federation, provided they are played one time only (the number of copies made of transcriptions to be determined by agreement). With respect to other transcriptions on a rental basis, the Federation shall receive from the company engaged in the business of renting out transcriptions a percentage of the rental charge, such percentage to be agreed upon by negotiation. . . . This fund shall be used by the Federation for the purpose of reducing unemployment which has been created, in the main, by the use of the above mentioned mechanical device and for fostering and maintaining musical talent and culture and music appreciation and for furnishing free live music to the public by means of symphony orchestras, bands and other instrumental musical combinations."

The employers pointed out that the commercial program type of transcription is used only once on a broadcasting station; but they rejected the remainder of the proposal in advising the Union that "the destructive and dangerous fallacy of your proposal is that it assumes that a specific industry owes a special obligation to persons not employed by it—obligations based only on such persons' membership in a union."

Other objections were that the proposal would destroy technical progress, subsidize non-employees, penalize the use of an invention and contravene established governmental policies.

Since there appeared to be no issue with respect to commercial program transcriptions, the employers attempted to end the strike by offering to pay the musicians employed by them for library transcriptions additional compensation in an amount to be negotiated.

Mr. Petrillo, after studying the figures submitted to him, withdrew his original proposal because no increase in wages was sought, and observed that his Union would not terminate the strike even if it received the industry's entire gross receipts, which he characterized as "small peanuts."

2. The Union thereupon demanded "that the transcription companies agree with the Union that they would not permit transcriptions made by them to be used by any radio station which may be placed on a national unfair list by the American Federation of Musicians, such demand to apply both to commercial advertising and to library transcriptions." Mr. Petrillo stated that the Union would determine, in its sole discretion, which stations were or were not unfair in accordance with its views from time to time. He gave the transcription companies notice

that upon their acceptance of his proposal, the Union might well put 500 broadcasting stations on its unfair list. The Union made it clear that its criterion of fairness would be the willingness of broadcasting stations to maintain a quota of forced employment of Union musicians satisfactory to the Union.

This proposal was rejected not only as to principle but also because:

(a) As a practical matter, the operation of the transcription business would be impossible if the companies attempted to control the use of transcriptions by advertisers or broadcasting stations since such attempted control would destroy the access of the employers to their market; and

(b) The proposal of the Union would involve illegal boycotts, rendering employers liable to money damages as well as for penalties prescribed by law.

3. The Union's latest proposal, embodied in an informal suggestion made by Mr. Petrillo while testifying before the War Labor Board, was that a broadcasting station using an electrical transcription should be compelled by the manufacturer of the transcription to employ local Union members in a number equal to those musicians who performed in the making of the transcription. He declared that the function of these stand-bys would be to listen to the music on the transcription and to get paid.

This proposal is merely an implementation of the second.

All of these demands appear to imply that all the members of the Musicians' Union should be guaranteed a permanent livelihood in the field of music.

The transcription companies do not recognize any obligation to the members of the Union whom they do not employ. They do not concede that a person who chooses a calling can divest himself of the economic risks of his occupation.

In this connection, Sir William Beveridge, in his report "Social Insurance and Allied Services," significantly notes:

"Men and women in receipt of unemployment benefits cannot be allowed to hold out indefinitely for work of the type to which they are used or in their present place of residence, if there is work which they could do available at the standard of wage for that work."

And his recommendation is equally revealing. He says:

"Men and women who have been unemployed for a certain period should be required, as a condition of continued benefit, to attend a work or training center, such attendance being designed both as a means of preventing habitation to idleness and as a means of improving capacity for earning."

The theory of the Union, when analyzed, is applicable, if it be accepted at all, to all industry and to all employers. The Union asserts that the manufacturer of an invention should either go out of business or, in the alternative, agree that every person who uses the invention should hire, or preferably pay the Union for, the same number of men as would be used if the invention did not exist. In other words, the Union would exploit the success of an

invention which created a market that could not otherwise have existed.

The industrial progress of this country has been achieved through the increasing and successful use of technology. The proposal advanced by the Union, if accepted, would destroy established industries and thwart new technology. The Union's proposal is the more astounding because recording was invented before any living member of the American Federation of Musicians embarked on his career, and hence he is confronted by no conditions with which he was not familiar when choosing his occupation.

The principle implicit in the Union's demand cannot be accepted by industry generally, and by the electrical transcription industry in particular. Electrical transcriptions utilize not only the service of instrumental musicians, but also that of singers, engineers, actors, announcers, sound effects men, and others. If the position of the American Federation of Musicians be upheld, these other unionized crafts would appear to be equally justified in making similar demands. The manufacturer of electrical transcriptions would then be under the necessity of policing every broadcasting station which used its product in order to insure the employment by the station of members of all of these unions in numbers satisfactory to them. This would be a perversion of the economic function of the transcription industry.

The concept embodied in the position of the Union must be repudiated, even if, in fact, there were broad displacement of workers, serious unemployment and a threatened destruction of the workers' union. However, none of these phenomena exists here; indeed, the precise opposite is true.

There can be no question in this case as to whether the work should be done by transcriptions or by the individual. Either the work will be done by transcriptions or, for the most part, it will not be done at all.

Commercial radio stations are located throughout the United States and in communities of every size. Geographical distribution is one of the factors which governs the Federal Communications Commission in the issuance of licenses. In order to serve the public interest, convenience and necessity, stations are required to be on the air for many hours each day, the average for the country being in excess of sixteen hours. It is impossible for most of these stations to survive by the use of local talent alone, even if it were available. Approximately one-fifth of the stations of the United States are located in cities in which there is no musicians' union. In many communities, there is an insufficient number of capable musicians to make up an orchestra.

Radio itself and all of the inventions in the field of music, motion pictures and network broadcasting, serve the useful social purpose of bringing entertainment from the performer to a widespread audience. The principle espoused by the Union seeks to reverse this process. The musical taste of the public has been developed to a high degree because it has, for years, enjoyed the best music performed by the best singers and instrumentalists. The public will not be satisfied with, nor can it be compelled, by any fiat, to accept, any standard of performance other than that to which it has become accustomed. If the Union succeeds in abolishing the electrical transcription industry, many broadcasting stations will die with it be-

cause they could not maintain the program standards required by the public.

Statistics of the Union and of the industry should reveal whether electrical transcriptions interfere with the employment of musicians at broadcasting stations. All of these statistics conclusively demonstrate that there has been no such interference. On the contrary, during the period of the development of electrical transcriptions, the membership of the Union has steadily grown. The wage scale of the musician in broadcasting has steadily increased. The amount spent in the broadcasting industry for the employment of musicians has likewise steadily increased.

In his testimony before the Senate Sub-Committee, Mr. Petrillo cited a list of twenty-nine cities which he said constituted his major unemployment problem. There are 143 commercial broadcasting stations in these twenty-nine cities. All but eight of these stations employ Union musicians on terms and conditions satisfactory to the Musicians' Union. Of the eight stations which do not employ musicians, only one is affiliated with a national network. All eight are on local or regional frequencies; three have only 100 watts power (the lowest power granted by the Federal Communications Commission); two have 250 watts and three have 1,000 watts. It will be remembered that key stations on networks have a power of 50,000 watts.

Mr. Petrillo has himself conceded that the smaller stations cannot be expected to employ Union musicians. If it were true that electrical transcriptions created unemployment of musicians, the evidence should be found in these twenty-nine cities.

Mr. Petrillo also stated, at the Senate hearing, that there are 201 network affiliated stations which do not employ Union musicians. A survey discloses that only 83 such stations did not employ musicians during the past year. Of these, 64 have 250 watts power or less. Four are located in cities which have no local union and over which no local union has claimed jurisdiction. Hence, only 15 network-affiliated broadcasting stations of more than 250 watts power, in all of the cities of the United States having local unions, do not employ Union musicians.

According to the best estimates, Union musicians receive for their services in radio broadcasting not less than \$30,000,000.00 a year. The Federal Communications Commission's latest figures show that staff musicians now receive from broadcasting stations and national networks more than \$8,000,000.00 a year—the highest amount ever shown by the Commission's statistics. Mr. Petrillo has estimated that broadcasters pay another \$5,000,000.00 annually for casual employment of musicians. For services in commercial national network broadcasting alone, musicians receive an additional \$12,000,000.00 annually. Finally, a sum of more than \$5,000,000.00 yearly is paid to them for services on commercial programs broadcast over individual stations and regional networks. The earnings of musicians from radio broadcasting are greater than those of any other group of radio employees, including engineers and executives. Moreover, the average salary paid by broadcasting stations and networks for staff musicians, the highest in its history, is \$67.90 for an average work-week of 18.2 hours. And all of these earnings come from relatively new employment opportunities created by invention.

The facts fail to support any claim which is based on displacement of, or interference with, the employment of Union musicians. Instead, Mr. Petrillo, at the National War Labor Board hearing on jurisdiction, said:

"Now gentlemen when I say out of business I don't mean that we are starving to death, I don't mean that we are really going to go hungry, but the organization is growing with the population of the country. We had a membership of 18,000, today a membership of 138,000 and when the war is over we will probably have 200,000. . . ."

On January 13th, 1943, in answer to a question by the Senate Committee as to whether the Union could fill the needs of broadcasting stations for musicians, Mr. Petrillo testified:

"I would say to you, Senator, that today we can furnish all the musicians that are needed in radio stations but I doubt, if the war goes on for four or five months, whether we will be able to do that job."

Not four or five months, but eight months, have passed, and that statement has proved abundantly true. Therefore, if for no other reason, it is absurd to compel the transcription manufacturers to go out of business for failing to force on broadcasters quotas of musicians who are unobtainable.

Other evidence demonstrates also that the Union does not have an unemployment problem. The membership of the New York City Local, the largest in the country, has recently repealed a three percent unemployment tax. The Philadelphia Local has announced that free services cannot be furnished to entertain service men because insufficient musicians are available to fill paid jobs. The San Francisco Local has sought permission to use musicians who are now in the armed forces because it cannot assemble, from civilian life, adequate personnel for bands.

The Union's claims of unemployment are based on a tortuous definition of the word. Joseph N. Weber, upon his retirement as President of the Union in 1940, said:

"Our membership consists of fully one-half of non-professionals who are not entirely dependent on music for a livelihood."

Recent studies indicate that this estimate was over-conservative, because actually only one-third of the membership consists of professional musicians. A comparison of Union rosters with city directories in 112 cities and covering over one-quarter of the Union's membership, discloses that only 34.8% of the members whose names were found in the directories listed themselves as musicians or music teachers. The remaining two-thirds listed themselves as being engaged in more than 250 occupations having nothing to do with music.

A recent personal interview survey made in four characteristic cities by an independent research agency revealed that there was no unemployment whatsoever among members of the Musicians' Union in those cities. Only 33.8% of those members are employed in the field of music, with the remainder in other gainful occupations.

Yet the strike of the Union has curtailed commercial transcriptions which are the principal avenue to national advertising for non-network broadcasting stations. This source of revenue has become even more important with

the scarcity in consumer goods, because local advertisers have less need for product advertising and little inclination towards institutional advertising. Many of these stations operate at a loss even under normal conditions.

These independent stations have been described by Chairman Fly of the Federal Communications Commission as being hardest hit by the musicians' strike. Only recently he said that the effect of the strike on these stations has been that of a "creeping paralysis."

As to library transcriptions, these afford the only means whereby independent stations receive a balanced program service for local use, including the latest music, which is designed especially for radio and created by outstanding writers, singers, instrumentalists and directors. The unavailability of such service increases the discrepancy between network and local programs and weans away from the smaller stations the listeners, upon whom depends the well-being of every station.

That this strike interferes with the war effort has been testified to by the leading officials of the Government who are responsible for morale and communications, certified by the Secretary of Labor, and found to be a fact by the National War Labor Board. The war effort is being hampered and an established industry is faced with destruction.

At the National War Labor Board hearing on jurisdiction, Mr. Petrillo cast aside his original pretext for calling the strike. Mr. Almon Roth had asked:

"Are there musicians out of work at this time?"

And Mr. Petrillo replied:

"There are not as many musicians out of work as when the fight started. We are doing what the government is doing and everybody else—we are preparing the way for the boys when they come back so they will have a job."

The Union has thus acknowledged the non-existence of any current valid basis for its strike against the transcription companies. By this admission, the immediate termination of this strike can cause no conceivable hurt to the Union or its membership during the pendency of the war, with which period this Board is solely concerned.

Therefore, the National War Labor Board must, on the merits, order the American Federation of Musicians immediately to terminate its strike against the employers who are parties to this proceeding.

Respectfully submitted,

By A. WALTER SOCOLOW,

*Attorney for*

ASSOCIATED MUSIC PUBLISHERS, INC.,  
EMPIRE BROADCASTING CORPORATION,  
LANG-WORTH FEATURE PROGRAMS,  
INC.,  
C. P. MACGREGOR,  
RADIO RECORDING DIVISION,  
NATIONAL BROADCASTING COMPANY, INC.,  
STANDARD RADIO.

580 Fifth Avenue,  
New York 19, N. Y.

# The National Association of Broadcasters

1760 N STREET, N. W. \* \* \* \* \* WASHINGTON 6, D. C.

October 1, 1943

SPECIAL A. F. of M. BULLETIN

No. 22

## Contract Between Decca and World With The American Federation of Musicians

A contract, which has been signed by Decca Records and World Transcription with the American Federation of Musicians, forms part of this bulletin. This contract does not call for the making of any payment by broadcasters and Decca and World have already formally announced that they will not attempt to pass on to the consumer any part of their cost. The contract does, however, include a recognition of "the principle of a continued interest which all of the members of the Federation have in the use of records containing instrumental music," and which provides for direct payment by the record and transcription companies to the Union.

This is contrary to the declaration of principle in which all record and transcription companies joined in their rejection of the Union's demands on February 23, 1943. This declaration of principle, it will be remembered, received the commendation of the NAB Convention. Decca and World are recording under this contract. None of the other transcription companies which are parties to the War Labor Board proceedings have as yet assented to the agreement; neither have Victor and Columbia which on September 28 became parties to the War Labor Board hearings.

On its face the agreement is not clear as to whether it is a firm agreement for a fixed period at a stated wage scale or whether the Union reserves the right to strike at any time. Presumably, this question will be clarified when the War Labor Board hearings resume on Monday, October 4. Mr. Petrillo, in urging the other companies to sign the agreement, said that it would end the controversy with respect to records and transcriptions. He said that he did not expect any substantial revenue from the agreement during the war, but expressed the belief that the agreement might yield three to four million dollars a year to the Union after the war was over. This estimate would appear to be predicated on an anticipated sale of ten times as many records as have ever before been sold in the history of the recording industry. The contract follows:

### Contract Text

September , 1943, as of September 20, 1943

Decca Records, Inc.  
50 East 57th Street  
New York, New York

GENTLEMEN:

This is to advise you that during the term of this contract you and your subsidiary companies may employ

members of the American Federation of Musicians upon the following terms and conditions:

1) You shall use only members in good standing of the American Federation of Musicians for the performance of all instrumental music in recording phonograph records and electrical transcriptions (Hereinafter sometimes referred to as "recordings"), and when employing persons who are eligible for membership in the American Federation of Musicians you shall employ only such persons as shall be members thereof in good standing;

2) We shall exercise full authority in order that our locals and members of the Federation engaged in or pertaining to such recording activities shall do nothing in derogation of the terms and intent of this agreement;

3) Immediately upon the making of any recording and prior to its release, you shall advise the Federation of such recording, of the serial or other number thereof, and any additional information in connection with any such recording which we may reasonably require. Upon demand by the Federation you shall promptly furnish to it a copy of any such recording including those made or pressed by you in Canada;

4) Upon the execution of this agreement you shall promptly furnish to the Federation a copy of your current catalogue or recordings, and thereafter from time to time as and when issued, you shall supply a copy of all supplements thereto;

5) You shall not require, request, induce, or in any manner attempt to influence any member of the Federation to play, or perform for recordings, or render services pertaining thereto, except as permitted by this agreement;

6) You shall not dub, re-record, or re-transcribe any recordings except upon previous written notice of any such intention to be given to the member through whom the performers were originally employed, as well as to the Federation; and upon payment to the said member of the full scale for all performers applicable to such new use;

7) You shall not require members of the Federation to make phonograph records containing commercial advertisement or any recordings to

be used by or for actors as accompaniment for or in connection with their performances;

8) No changes in our Constitution and By-Laws will be made during the term of this agreement which shall contravene any of the provisions herein;

9) All laws, rules and regulations of the American Federation of Musicians (a copy of which is herewith submitted) are made part of this agreement;

10) You shall pay our members for the services rendered by them in the making of recordings such sums as you may agree upon with them, but which in no event shall be less than scale;

11) All contracts for recordings between you and members of the Federation shall contain the following provisions:

"As the musicians engaged under the stipulations of this contract are members of the American Federation of Musicians, nothing in this contract shall ever be construed as to interfere with any obligation which they owe to the American Federation of Musicians as members thereof."

Said contract shall also contain the following paragraph which is part of a resolution adopted by the American Federation of Musicians:

"That members of the American Federation of Musicians are authorized to accept employment for the purpose of making phonograph records and electrical transcriptions by such phonograph and electrical transcription companies as shall have entered into an agreement with the American Federation of Musicians permitting the employment of its members upon the terms and conditions contained in the standard form of agreement promulgated by the American Federation of Musicians to its members on September —, 1943."

12) In order to give effect to the principle of a continuing interest which all the members of the Federation have in the use of recordings containing instrumental music, you shall pay to the American Federation of Musicians the following:

a) For phonograph records manufactured or produced by you or others from masters hereafter recorded by you containing performances by members of the Federation, and which phonograph records are sold by you or by the lessees of your masters to others a payment equal to the following:

$\frac{1}{4}$ -cent for each record, the manufacturer's suggested retail price of which does not exceed 35 cents;

$\frac{1}{2}$ -cent for each record, the manufacturer's suggested retail price of which is not more than 35 cents but does not exceed 50 cents;

$\frac{3}{4}$ -cent for each record, the manufacturer's suggested retail price of which is more than 50 cents but does not exceed 75 cents:

1 cent for each record, the manufacturer's suggested retail price of which is more than 75 cents but does not exceed \$1.00:

$2\frac{1}{2}$ -cents for each record, the manufacturer's suggested retail price of which is more than \$1.00 but does not exceed \$1.50:

5 cents for each record, the manufacturer's suggested retail price of which is more than \$1.50 but does not exceed \$2.00:

$2\frac{1}{2}\%$  of the sale price of each record, the manufacturer's suggested retail price of which exceeds \$2.00.

You have advised us that the manufacturers' suggested retail prices as referred to in the foregoing schedule are published in your catalogue of records.

b) For electrical transcriptions, manufactured from masters hereafter recorded by you containing performances by members of the Federation, and which are intended for more than one use by your customers, lessees or licensees as part of your library service or otherwise, a payment equal to 3% of the gross revenues derived by you from the sale, lease, license or other disposition thereof.

For spot announcement transcriptions commonly known as "jingles," a like payment of 3% of the gross revenues shall be made.

c) For commercial electrical transcriptions manufactured for commercial broadcasting, intended for a single use and only so used, there shall be no payment pursuant to the terms of this paragraph 12.

d) All payments stipulated in this paragraph 12 shall be made to the Federation pursuant to the resolution referred to in the 11th paragraph hereof within 45 days following each calendar half-year and shall be accompanied by a statement certifying all payments required to be made pursuant hereto.

e) The Federation at its option shall have access and right of examination of your books and records relating to this subject at all reasonable times.

f) It is understood that your obligation to make the payments pursuant to this paragraph 12 hereof shall continue after the expiration of this agreement.

13) You shall not interfere, assign or attempt to interfere or assign your rights pursuant to this agreement.

14) During the term hereof, we will not enter into any agreement with any phonograph rec-

ord or transcription companies upon terms more favorable than those contained in this agreement. In the event, however, that we shall make any agreement with any other phonograph record or transcription company upon any terms more favorable or different from those contained in this agreement, you shall have the right at your option to cause your agreement to be conformed therewith.

15) You shall not make, or permit the use of your facilities for making, or otherwise give aid or assistance in the making of any phonograph recording or transcription which shall utilize instrumental music, for or on account of any other persons engaged in the phonograph recording or transcription business unless authorized in writing by the Federation.

16) You agree not to make recordings or transcriptions of any radio program broadcast from a studio or off the air, without written permission first obtained from the Federation, however, since it has been the practice of the Federation in the past to grant such permission, it is agreed that permission will not be unrea-

sonably withheld and that when granted it shall be upon the payment of transcription scale.

17) The term of this agreement shall be for the period commencing as of September 20, 1943, and terminating December 31, 1947.

— — — — —  
Your signature in the space provided below will constitute this a binding agreement between you, your subsidiaries and ourselves.

Yours very truly,

\_\_\_\_\_  
President

Decca Records

\_\_\_\_\_  
by Executive Vice President

Attest: \_\_\_\_\_  
Secretary



# The National Association of Broadcasters

1760 N STREET, N. W. \* \* \* \* \* WASHINGTON 6, D. C.

October 29, 1943

SPECIAL A. F. of M. BULLETIN

No. 23

## The Petrillo Situation To Date

*(This bulletin contains the NAB Steering Committee Statement of October 23, 1943; a report by Neville Miller, Steering Committee Chairman, to the broadcasting industry; the latest contract signed by four recording companies with A. F. of M.; the February 23, 1943, letter from the transcription companies to Mr. Petrillo, and recent editorials from the newspapers on the Petrillo situation.)*

### NAB STEERING COMMITTEE CONDEMNS PAY PRINCIPLE IN AFM RECORDING DEALS

The full statement follows:

"With the signing of contracts with James C. Petrillo by four more transcription companies, it becomes apparent that Mr. Petrillo has established in the recording field a most vicious principle. By the terms of the contract, Mr. Petrillo levies a tax on the companies for the privilege of hiring members of his union, which tax is paid direct to the union. Although an attempt is made to gain public approval of administration of the fund by the appointment as 'advisors' of public representatives, who have no vote, such procedure in no way mitigates the evils of the principle.

"This principle has been condemned as setting up a private system of unemployment relief. In our view its significance is even more appalling. We regard the principle as being as economically and socially unsound as extortion is immoral and illegal. We believe that its widespread application in this country, which has depended for its growth on the development and use of invention, will impair our future prosperity. We hold that its perpetuation will thwart democracy within the labor movement itself, and be destructive of good relations between all labor and all industry. For these, as well as for other cogent reasons, we are certain that most American citizens will join us in condemning and in rejecting this principle.

"The panel which was appointed by the National War Labor Board to hold hearings and report on the merits of the dispute departed from the task assigned to it to assume a mediatory role, and in this capacity its members participated in bringing about the contract which embodies this principle.

### Three Continue Opposition

"Columbia Recording Corporation, RCA-Victor, and NBC-Thesaurus, with courage which should call forth

the commendation of the entire broadcasting industry, have continued their opposition to the principle of direct payment to the union. These companies now find themselves, however, in an obviously unfortunate position. The merits of the principle which they oppose may now be adjudicated by the very panel which as mediator brought about the making of the contract which embodies the principle the panel is now supposed dispassionately to evaluate.

"Although Mr. Petrillo was the originator of the idea of a direct levy upon the companies, he had made little headway in the hearings before the National War Labor Board panel until Decca Records and its subsidiary, World, deserted the principles set forth in a joint letter which they, with the other recording companies, had addressed to the Union on February 23, 1943. Such action by Decca and World placed four of the other companies under such competitive pressure that they felt obliged to accept the principle, despite the fact that it was thoroughly repugnant to all of them.

"The Committee deplors the making of the contracts which embody the principle of direct payment to the union. It regards the payment of moneys directly to a union as equally destructive of the rights of employers and union members. For unions to collect direct tribute as compensation for permitting their members to render services is not a forward step in unionism, but rather a reversion to a philosophy which regards these members as chattels to be disposed of at the union's option.

"There is no economic or social theory which supports such an exaction. There are no facts which justify its application in the present case. The members of the American Federation of Musicians have profited through the invention of recording, and the union has no unemployment problem."

Members of the Steering Committee are: Neville Miller, chairman; Mark Ethridge, WHAS, Louisville; John J. Gillin, Jr., WOW, Omaha; Kolin Hager, WGY, Schenectady; Harry Le Poidevin, WRJN, Racine; Paul W.

October 27, 1943.

#### TO THE BROADCASTING INDUSTRY:

Fifteen months ago the Board of Directors of the National Association of Broadcasters appointed a Steering Committee in connection with the strike of the American Federation of Musicians against recordings. The recording of phonograph records and electrical transcriptions has been partially resumed upon a basis concerning which the Steering Committee has expressed itself in the public statement which is printed in this bulletin.

When James C. Petrillo announced his strike, he stated that the purpose of the strike was to exact payment from the broadcasting industry. Indeed, in August of this year counsel for Decca Records informed representatives of the industry that the lowest figure which Mr. Petrillo would consider was \$18,000,000, to be paid directly to the Union by broadcasters over a five year period. Previously, Mr. Petrillo's counsel had set \$15,000,000 a year as his anticipation of the industry's payment, in his testimony before the Senate Committee. In the light of the initial objectives of the Union, the fact that phonograph records, commercial transcriptions and library transcriptions are again being manufactured at no additional cost to the broadcasting industry might be viewed as a victory for broadcasters.

Thoughtful consideration of the implications of the contract which the American Federation of Musicians has signed with a number of companies must, however, temper this judgment.

#### Payments to Union Called For

The contract calls for direct payments to the union from employers in return for the privilege of permitting the employer to give work to the union's members at mutually satisfactory terms and conditions. The general acceptance of this principle would, it is obvious, be prejudicial to the national interest as well as to our own. The amount all of the transcription companies which have signed the contract will pay during the first year of the contract will probably not be in excess of \$10,000 nor will it apparently exceed \$30,000 during any year of the contract. The amount which Mr. Petrillo's union would have received if all of the record companies had signed his agreement would be, in addition, several hundred thousand dollars a year. These amounts are not large when viewed in the light of Mr. Petrillo's statement that the members of his Union have lost \$7,000,000 in consequence of the strike. A precedent has, however, been established whereby Mr. Petrillo may implement whatever future demands he may wish to assert.

With commendable courage in the face of severe competitive handicaps, three companies, Columbia Recording Corporation, RCA Victor, and NBC Thesaurus, have refused to sign the contract with the Union, and have asked the panel of the National War Labor Board to resume hearings on the merits of the case. The recording situation has not, therefore, been resolved, and it will not be until the panel renders its decision accepting or rejecting the principle of direct payment to the Union.

Broadcasters may be interested in a brief review of

the events leading up to the present situation. Mr. Petrillo refused to formulate his demands until, under pressure from the Senate Committee headed by Senator D. Worth Clark, he transmitted them to the recording companies on February 11, 1943. These demands incorporated the principle of direct payment to the Union. The demands were rejected in a letter dated February 23rd, which sets forth the reasons for the rejection so admirably that it is reprinted as a part of this bulletin. It will be noted that Decca and World, which subsequently voluntarily accepted the principle of direct payment, were among the signers of this communication.

#### WLB Gets Dispute

When independent negotiations between the transcription companies and the Union failed, and when the United States Conciliation Service of the Department of Labor was equally unsuccessful in bringing about agreement between the parties, the dispute was certified to the National War Labor Board. The Board accepted jurisdiction but did not follow its customary procedure of ordering the Union to terminate the strike, despite the fact that Mr. Petrillo had announced his defiance of the Board by stating at the outset of the hearing that he would not obey such an order.

The Board appointed a panel to hear the issues, and the hearings were progressing satisfactorily when, on September 20th, Decca and World signed a contract with the Union. Counsel for the other companies which were parties to the proceeding then asked the panel to issue an order returning the men to work pending a decision in the case, but the motion was denied. Negotiations were then begun, with the panel assuming a mediatory role, and on October 20th Associated Music Publishers, Inc., Lang-Worth Feature Programs, Inc., Standard Radio and C. P. MacGregor signed a contract with the Union. This contract, perforce, contains the objectionable principle, though in other respects it marks an advance over the agreement signed by Decca and World:

#### 'No Strike' Clause New

(1) The Decca and World contract did not contain a "no strike" clause, and Mr. Petrillo stated that under that agreement he felt free to strike at any time. The subsequent contract includes an explicit "no strike" clause with respect to library transcriptions, although the Union remains free to strike at any time with respect to phonograph records and commercial transcriptions intended to be used only once on a broadcasting station.

(2) The Decca contract contained no clause freezing the compensation of musicians. The subsequent contract keeps in effect for two years the rate of July, 1942.

(3) The subsequent contract has a somewhat more explicit description of the use by the Union of the moneys which it will receive under the contract. The funds are to be deposited in what the Union terms an "employment fund" to be used "only for the purpose of fostering and propagating musical culture, and the employment by it (the union) of live musicians, members of the Federation for the rendering of live music." It will be noted that nowhere is there any statement that the money will be used for the benefit of otherwise unemployed members of the Union. Indeed, unemployment is nowhere mentioned in the contract.

(4) The second contract also contains a provision that two persons shall be appointed by the Chairman of the National War Labor Board to advise with respect to the disbursement of the fund, but these persons are given "no power of vote."

### Petrillo Changes Position

Throughout the many phases of the recording strike, Mr. Petrillo has constantly changed his position. Most significant among these changes is the abandonment by the Union of the claim of an existing unemployment problem, and reliance, instead, as justification for the Union's actions, on nebulous post-war planning. The main reason for this shift has been the activity of the NAB in gathering information with respect to the American Federation of Musicians, and the employment of the members of that Union by the broadcasting industry. The result of the NAB's factual and legal researches have been made available to all interested parties, and have played a conspicuous role during the duration of the controversy. Indeed, the results of these researches will continue to have usefulness not only in connection with the recording conflict but in connection with any claims which the American Federation of Musicians may choose to assert against the broadcasting industry in the future.

Mr. Petrillo has further succeeded in enmeshing himself in a web of opportunistic contradictions, which the NAB has been careful to bring to public notice.

When Elmer Davis, Director of the Office of War Information, asked Mr. Petrillo to rescind his ban in the interest of the war effort, Mr. Petrillo refused; but he did concede that commercial transcriptions, played only once on a station and then destroyed, were not detrimental to his membership. Shortly, thereafter, he reaffirmed that his Union would no longer permit the making of commercial transcriptions.

### When Is 'Strike' Not 'Strike'

In appearing before the Federal Court in Chicago, where the Department of Justice unsuccessfully sought a temporary injunction against Mr. Petrillo and the Union, Mr. Petrillo and counsel argued that the ban was a strike. When the strike was brought before the National War Labor Board, Mr. Petrillo suddenly discovered that no strike existed and that the ban constituted a final refusal on the part of his members to make electrical transcriptions.

When Mr. Petrillo appeared before the Senate Committee, he and his counsel disclaimed any intention permanently to bar amateur bands and orchestras from the air, but even the finest of such groups has not yet been permitted to return to broadcasting activity.

Also, when the Senators asked Mr. Petrillo if he had in mind the destruction of the basic invention of recording, he quickly disavowed any such intention. And yet he told the War Labor Board that his members had forever abandoned the making of electrical transcriptions and would seek to prevent anyone else from engaging in that field—a position from which he has, obviously, again departed.

Mr. Petrillo has vigorously criticized the NAB for its work in bringing his actions before the public. The NAB was active, and we believe effective in this respect. However, it is well to note that many thousands of news items,

editorials and cartoons appeared with respect to Mr. Petrillo's activities during the month prior to the formation of the NAB's Steering Committee and before the NAB took any steps with respect to the recording ban. During this month every one of the personal attacks and characterizations to which Mr. Petrillo has so vehemently objected was published by the press on its own initiative and inspiration. It is clear, therefore, that the almost universal disapproval of Mr. Petrillo has resulted from what Mr. Petrillo himself has done. Perhaps the best tribute to the NAB's diligence in the recording matter was paid by Mr. Petrillo when, in January, he charged that the NAB had spent, in a public relations campaign alone, more than ten times what the NAB had spent in connection with the entire A. F. of M. matter.

### No Let-Up by NAB

It goes without saying that the continuing problem of the American Federation of Musicians activities will receive constant consideration by the NAB and will be the subject of discussion at the forthcoming meeting of the NAB's Board of Directors. Meanwhile broadcasters will continue to point out that their industry has made a contribution to music and musicians which has been excelled by no other group or organization. Broadcasting has enormously increased the appreciation and understanding of the best music. It has increased the appeal of popular music. It has conferred upon the band leaders unparalleled earning power. Working musicians receive for their services in radio broadcasting in excess of \$30,000,000 a year. Staff musicians employed by broadcasting stations receive an average wage of \$67.90 per week for an average work week of less than eighteen hours. The broadcasting industry has displaced no musicians. It has, on the contrary, given employment to thousands and opened new employment opportunities to countless thousands more. An industry which has consistently met the highest standards in the treatment of all of its employees will, therefore, continue to resist exactions which are based upon both false premises and unsound principles.

NEVILLE MILLER, *Chairman.*

## The 'Latest' Contract

October 20th, 1943.

Gentlemen:

This will confirm our agreement as follows:

(1) You shall use only members in good standing of the American Federation of Musicians as instrumental musicians, conductors, arrangers, and copyists, in recording phonograph records and electrical transcriptions (hereinafter sometimes jointly referred to as "recordings").

(2) We agree that throughout the term of this agreement, so long as you perform your obligations hereunder, our members shall have the right and permission to enter into and continue in your employ and you shall have the right to use their services for the purposes aforesaid upon the terms and conditions hereinafter set forth.

(3) We warrant and represent that we have the right and power to enter into this agreement and to grant you the rights and benefits set forth herein. We shall exercise full authority in order that our locals and members of the Federation engaged in or pertaining to record-

ing activities shall do nothing in derogation of this agreement.

(4) Immediately upon the making of any recording hereunder and prior to its release, you shall advise the Federation of such recording, of the serial or other number thereof, and any additional information in connection with any such recording, which we may reasonably require. Upon demand by the Federation, you shall promptly furnish to it a copy of any such recording, including those made or pressed by you in Canada.

(5) Upon execution of this agreement, you shall promptly furnish to the Federation a copy of your current catalogues of phonograph records and library transcriptions, and thereafter from time to time as and when issued, you shall supply a copy of all supplements thereto.

(6) You shall not require, request, induce, or in any manner attempt to influence any member of the Federation to play or perform for recordings, or render services pertaining thereto, except as permitted by this agreement.

(7) You shall have the right to dub, re-record, or re-transcribe any of your recordings for slide films or as a part of any manufacturing processes by which you make the recordings available for the uses for which they were originally intended. Except as herein expressly provided, you shall not dub, re-record or re-transcribe any recordings containing the services of members of the Federation except on previous written notice of any such intention to be given to the member through whom the musicians were originally employed, as well as to the Federation, and upon payment to the said member of the full scale for all musicians applicable to such new use. Nothing contained in this agreement shall in any way modify any obligation independent of this agreement which you may be under to obtain from our members such individual approval as may be necessary in connection with any dubbing, re-recording, or re-transcribing of records.

(8) You shall not require members of the Federation to make phonograph records containing commercial advertisements; or to make any recordings designed for use as accompaniment by performers for or in connection with their public performances. "Accompaniment" as used in this Paragraph shall not be construed to include signatures, bridges, background and mood music, sound effects and fanfares, incidental music in connection with scripts, etc.

(9) All laws, rules and regulations of the American Federation of Musicians (copy of which is herewith submitted) are made part of this agreement.

(10) We agree that any changes in our Constitution, By-Laws, rules or regulations, which may be made during the term of this agreement or which may conflict with any of the provisions hereof, shall not impose any conditions not herein contained or change your rights hereunder.

(11) You shall pay our members for the services rendered by them in the making of recordings such sums as you may agree upon with them but which, in no event, shall be less than the respective wage scales. We agree that the wage scales for the services of our members, which were in effect July 1942, shall be continued without change for a period of two years from October 20, 1943. Either party may give notice of its desire to change the wage scales for the period from October 20,

1945 to December 31, 1947. Such notice shall be in writing and shall be mailed not later than April 20, 1945. In the event that such notice is sent and that negotiations fail to produce an agreement regarding new wage scales within said six-month period, either you or we shall have the right to terminate this agreement for the services of our members as of October 20, 1945.

(12) All contracts for recordings between you and the members of the Federation shall contain the following provisions:

"As the musicians engaged under the stipulations of this contract are members of the American Federation of Musicians, nothing in this contract shall ever be construed as to interfere with any obligation which they owe to the American Federation of Musicians as members thereof."

(13) In consideration of the rights, privileges, and permissions granted to you hereunder, you shall pay to the "Employment Fund" of the American Federation of Musicians the following:

(a) For phonograph records manufactured or produced by you or others from masters hereafter recorded by you during the term of this agreement, containing performances by members of the Federation, and which phonograph records are sold by you or by the lessees of your masters to others, a payment equal to the following:

$\frac{1}{4}$  cent for each record, the manufacturer's suggested retail price of which does not exceed 35 cents;

$\frac{1}{2}$  cent for each record, the manufacturer's suggested retail price of which is more than 35¢ but does not exceed 50 cents;

$\frac{3}{4}$  cent for each record, the manufacturer's suggested retail price of which is more than 50¢ but does not exceed 75 cents;

1 cent for each record, the manufacturer's suggested retail price of which is more than 75 cents but does not exceed \$1.00;

2 $\frac{1}{2}$  cents for each record, the manufacturer's suggested retail price of which is more than \$1.00 but does not exceed \$1.50;

5 cents for each record, the manufacturer's suggested retail price of which is more than \$1.50 but does not exceed \$2.00;

2 $\frac{1}{2}$  percent of the sales price of each record, the manufacturer's suggested retail price of which exceeds \$2.00.

(b) For electrical transcriptions, manufactured from masters hereafter recorded by you containing performances by members of the Federation, and which are intended by you for more than one use by your customers, lessees or licensees as part of your library service or otherwise, a payment equal to 3 percent of the gross revenues derived by you from the sale, lease, license or other disposition thereof.

In the event that at the time the calculation of the first payment due to us hereunder proves to be unduly burdensome or otherwise difficult

of computation by you, then and in such an event we agree that we shall endeavor to agree with you upon a new basis of calculating an amount equivalent to the sum payable to us hereunder. If we are unable so to agree within a period of thirty (30) days from the date on which such payment shall be due hereunder, then and in such an event we agree to submit such dispute to Honorable Arthur S. Meyer or any other person designated by the Chairman of the National War Labor Board for determination.

(c) For commercial electrical transcriptions manufactured for broadcasting and intended by you for not more than a single use by any one station, there shall be no payment to us pursuant to the terms of this Paragraph 13. You agree that in connection with the sale or other distribution of the electrical transcriptions mentioned in this Paragraph 13 (c), which are manufactured from masters hereafter recorded by you during the term of this agreement, and which contain performances by members of the Federation as aforesaid, you will stipulate for the benefit of the Federation an obligation that your customers shall not use or authorize the use of such electrical transcriptions more than once on any particular station without the prior written approval of the Federation.

(d) All payments provided for in this Paragraph 13 shall be made to the Federation within forty-five days following each calendar half-year, and shall be accompanied by a statement certifying all payments required to be made pursuant hereto.

(e) The Federation at its option shall have access and right of examination of your books and records at all reasonable times relating to the payments referred to in this Paragraph 13.

(f) Your obligations to make the payments pursuant to this Paragraph 13 shall continue after the expiration or other termination of this agreement, with respect to any and all recordings from masters made hereunder during the term hereof.

(14) The American Federation of Musicians will use the "Employment Fund" described in this agreement only for the purposes of fostering and propagating musical culture and the employment by it of live musicians, members of the Federation, for the rendering of live music. This Fund will be kept separate and apart from all other funds of the Federation. No part of this Fund will be used for the payment of the salaries of any officer of the Federation, or for any other purpose than the foregoing. However, up to 5% may be used for the purpose of administering the Fund. In the event administration expenses exceed 5%, the Federation will meet such additional expenses from its own Treasury.

The Federation has in the past submitted at its Conventions a full and detailed financial statement, accounting and annual report audited by certified public accountants to be submitted to the membership of the Federation, and such reports are made public. With respect to the Employment Fund referred to herein, a similar de-

tailed statement, financial accounting and report will also be made annually and in like manner.

In administering the Fund, the American Federation of Musicians will, with a view to best serving the public interest, consult from time to time with an Advisory Committee to be created forthwith. Such committee shall have no power of vote. The Advisory Committee will consist of two persons to be selected and appointed by the Chairman of the National War Labor Board or, in the event that the present National War Labor Board shall not be in existence throughout the term of this contract, then successor appointments shall be made by the Secretary of Labor of the United States. The necessary traveling and other expenses of the Advisory Committee will be paid by the American Federation of Musicians and charged to the Fund, but the same shall not exceed \$1500. in any year.

The purpose of consulting with the Advisory Committee will be to receive advice and suggestions from the Advisory Committee concerning the administration of the fund.

(15) The rights granted to you under this agreement are hereby declared to be personal to you, and you agree not to transfer, assign or attempt to transfer or assign this agreement without our prior written consent, which consent shall not be unreasonably withheld.

(16) In the event that we shall make any agreement permitting the making of phonograph records or electrical transcriptions, during the term hereof, upon any terms or conditions more favorable than or different from those contained in this agreement, you shall have the right at your sole option automatically to cause this agreement to be conformed therewith.

(17) You shall not make or permit the use of your facilities for making or otherwise give aid and assistance in the making of any phonograph records and electrical transcriptions which contain instrumental music for or on account of other persons engaged in the phonograph record or electrical transcription business who is not signatory to an agreement with us, permitting the employment of our members, unless authorized in writing by the Federation.

(18) Except as otherwise provided in this agreement, and so long as you perform your obligations hereunder, we agree that throughout the term of this agreement we shall exercise no influence or restraint upon our members against entering or remaining in your employ, to the end that there shall be no cessation or interruption of your employment of our members hereunder in the making of recordings, in connection with your business. However, our obligation under this paragraph shall not extend to phonograph records or to that type of recording known as commercial electrical transcriptions hereinabove referred to in Paragraph 13 (c).

(19) You agree not to make recordings of any radio programs containing the services of our members, off-the-line or off-the-air, without first obtaining from the Federation written permission, except that we agree that no such permission shall be necessary in instances where

(a) Recordings are for reference or file purposes, or

(b) For the purpose of making delayed broadcast transcriptions, which have been authorized in writing by the Federation.

The Federation agrees that in all other cases it will not unreasonably withhold permission to make such off-the-air or off-the-line recordings, and that in such other instances where granted, permission shall be given on payment of transcription scale to the members of the Federation concerned. This agreement shall not in any way modify any obligation independent of this agreement which you may be under to obtain from our members such individual approvals as may be necessary in connection with such off-the-line or off-the-air recordings.

(20) The term of this agreement shall be for the period commencing as of October 20, 1943, and terminating December 31, 1947.

If this is in accordance with your understanding, kindly execute both copies of this letter to constitute it an agreement between you and us.

AMERICAN FEDERATION OF MUSICIANS  
OF THE UNITED STATES AND CANADA

By JAMES C. PETRILLO, *Pres.*

ACCEPTED AND AGREED TO:

*(Text of the Decca contract was reprinted in the  
Special A. F. of M. Bulletin No. 22, issued Oc-  
tober 1, 1943.)*

## The Recording Companies' Letter

New York, February 23, 1943.

Mr. James C. Petrillo, President,  
American Federation of Musicians  
1450 Broadway  
New York, N. Y.

Dear Mr. Petrillo:

After meeting with you on February 15th, the undersigned companies engaged in various phases of the recording and transcription business met to consider the proposals which you had distributed on February 12th. Considerable time has been spent by us in an effort to find a response which would result in your permitting the re-employment of your members. Any such response must be viewed in relation to these prior facts:

On June 25, 1942, without previous notice or demands you announced that you would not allow any of your musicians to perform for recordings after July 31st. This meant a complete cessation of recording because we had been operating under a license from you which imposed on us a "closed shop" for your union. Under this license, we had been paying your members at rates which are among the highest for skilled service in any industry. In addition substantial royalties for each phonograph record manufactured and sold have been paid to the musicians or orchestras who made them. Although hours and other working conditions were beyond criticism, you nevertheless called a strike, without previous notice or demands.

While you allege wholesale unemployment of your members (a claim we deny), you have continued this strike and the resulting unemployment for a period of almost seven months, to date. In doing so, you disregarded pleas of Elmer Davis of the O.W.I. on behalf of both military and civil officials, that the strike was

harmful to the War effort. During those seven months you at no time offered to return your members to work or even to state the conditions upon which you would do so. This continued until a Senate Committee under the Chairmanship of Senator D. Worth Clark of Idaho insisted that you make some proposal. Even now your proposal is a proposal in form only.

You propose that the recording companies pay an additional sum directly to the union over and above their payments to the musicians employed. You further propose that this sum be accumulated or disbursed in the union's uncontrolled discretion *for the benefit of union members who render no service whatsoever to the recording companies.* The destructive and dangerous fallacy of your proposal is that it assumes that a specific industry owes a special obligation to persons not employed by it,—an obligation based only on such persons' membership in a union. In addition to the inherent unsoundness of such a proposal, the following objections are at once apparent:

### (a) *Obstructs Technical Progress*

We are alarmed at the damage which might be done to the whole field of technical and technological improvement if the manufacturer of any new device, of proven value to the people as a whole, were to be saddled with the costs of special industry unemployment relief in addition to the already heavy costs of pioneering research and development, and subsequent promotion.

### (b) *Subsidizes Non-Employees*

We do not believe that our companies, who before your ban were employing the maximum number of musicians at the highest wages in the history of the music industry, should be asked to assume responsibility for unemployment, even if such unemployment exists, of such of your union members who are not and cannot be employed by us.

### (c) *Penalizes Employment and Use*

We cannot approve a proposal which imposes a private tax upon every phonograph record manufactured and sold when it is obvious that the records used in the home, far from creating unemployment, have been the source of much profitable employment to your members. This has been publicly and officially proclaimed on more than one occasion at your own union's conventions. Such records used in the home constitute at least eighty percent of the total phonograph record output, and thus, under your proposal, eighty percent of your tax would ultimately fall squarely on the public which buys records for home use and is in no way responsible for whatever unemployment you may claim exists.

### (d) *Duplicates Government Relief*

The Government has provided taxes for unemployment relief. A second tax for a new private system aimed at the same relief seems wholly unjustified. Similar proposals could, with no more excuse, be made by singers, engineers and others contributing to the high quality of our products. Any such private and isolated system of unemployment relief within an industry is not only contrary to public policy but would be in direct conflict with the various plans under discussion in Government circles for the expansion of uniform and nation-wide social security measures. No private and limited scheme for the benefit of a few within an industry can be pyramided on

top of Federal and State social security plans without creating serious inequities. Certainly mere membership in a union should not entitle a member to special privileges from an industry which does not employ him but happens to employ some of his fellow members.

We recognize that because a social philosophy is new it is not necessarily wrong. What you have proposed is a startling new kind of social philosophy for both industry and labor. While we believe that it is wholly wrong in principle, we doubt that either a single union or a single industry is qualified to be the final judge. Only the people of the United States are qualified to decide whether multiple systems of unemployment relief administered by a variety of private as well as governmental agencies shall now be created. Authority for the application of such basically new social theory should therefore come from the people's representatives in the Congress. Such sanction would necessarily be accompanied by rules and regulations defining the limits, requirements and approved objectives of such union relief funds, and subjecting the union and its administration of such funds to Governmental control and supervision. As in the case of pension and retirement plans created by corporations for the benefit of their employees, the Treasury Department would unquestionably desire to participate in such regulation and supervision.

This is not rhetoric but plain statement of fact because only the Congress should be called upon to answer such fundamental questions as the following:

(a) Would not such a payment directly to a union offer an easy means of evading the "wage freeze" regulations; or, on the other hand, would it not be deemed an indirect increase in compensation to the members employed and, as such, in violation of the regulations?

(b) If, on the other hand, it were ultimately determined that the additional payment directly to the Federation were not additional compensation, direct or indirect, to the employees, would not such a payment be merely a gratuity, and therefore a waste of a company's assets which would subject the company's management to liability under the law?

(c) Would not your proposal be in violation of Section 8 of the National Labor Relations Act which provides that it shall be an unfair labor practice for an employer to "contribute financial or other support" to any labor organization?

(d) What would the Treasury think of your proposal if it resulted in diverting taxable income in the hands of the employer to non-taxable receipts in the hands of your union?

(e) If on the other hand the Treasury Department refused to allow such payments as a deductible expense of the employer, would not the employer be compelled to pay not only the contribution to your fund but also an income tax on the amount of that contribution?

(f) Would not any plan for creating artificial employment for unemployed members of the Federation be contrary to the policy of the Manpower Commission, which is seeking to draw into War industries at least those persons not presently employed?

(g) Would not such a payment as you propose subject both you and us to the charge of a conspiracy to maintain or to increase prices,—and a resulting prosecution by the Government or civil suit by an injured consumer.

Only if you procure Congressional authority for the

creation of a fund in accordance with your proposal could such a proposal become operative without raising many presently unanswerable questions.

Pending such Congressional authority for a plan which you yourself have termed "absolutely new," we suggest that you permit your members to return to work immediately and produce phonograph records and transcriptions which are sorely needed for both civilian and military morale.

You know of course, that we stand ready to meet with you at all reasonable times when you have anything further to submit. We want you also to know that the views expressed represent our individual as well as our joint decisions.

Very truly yours,

*Electrical Transcription Companies*

Associated Music Publishers, Inc.

By JOHN R. ANDRUS, Vice President.

Empire Broadcasting Corporation

By GERALD A. KELLEHER, President.

Lang-Worth Feature Programs, Inc.

By C. O. LANGLOIS, President.

Muzak Corporation

By C. M. FINNEY, President.

Radio Recording Division

National Broadcasting Company, Inc.

By C. LLOYD EGNER, Vice President

Standard Radio

By GERALD KING, Partner.

World-Broadcasting System, Inc.

By A. J. KENDRICK, Vice-President.

C. P. MACGREGOR

*Phonograph Record Companies*

Columbia Recording Corporation

By EDWARD WALLERSTEIN, President.

Decca Records, Inc.

By JACK KAPP, President.

RCA-Victor Division

Radio Corporation of America

By LAWRENCE B. MORRIS, Director of Personnel Contract Relations.

*Soundies*

Soundies Distributing Corp. of America, Inc.

By SAMUEL OLIPHANT, Attorney.

## Newspaper Editorials

*New York Times*

Oct. 1, 1943

### PETRILLO'S VICTORY

The terms of the contract that the Petrillo union has signed with Decca Records, Inc., have now been made known, and they confirm the worst misgivings. Under the contract the company agrees to pay directly to the union a fee on every record sold. The company must file with the union the serial number of each record, together with additional information that the union "may reasonably require." The union may examine the employer's financial records. In return for these and other concessions from the company, it is hard to see what the

Petrillo union gives except willingness to end its strike or boycott. It agrees that all its laws, rules and regulations are formally made a part of the contract. This protects, among other things, the union's continued right to call a strike when it deems it necessary. The union also agrees that it will not change its constitution or by-laws to contravene the terms of the pact. The practical effect of this would appear to be to prevent the members of the union from voting to have the record fees paid to the actual makers of the records, or from changing the constitution or by-laws to give them any greater control of the union's affairs than they have at present.

It need hardly be pointed out how dangerous the precedent here established would be. Under it Mr. Petrillo levies a private tax on employers. At best he will administer the proceeds—estimated at \$500,000 annually if all record companies accept the terms—to set up his own private system of unemployment relief. But there is no public control whatever of the manner in which he uses these funds. If only a small part of the funds do go to pay unemployed musicians, if the bulk of them are used instead to increase the salary or expense accounts of Mr. Petrillo and other union leaders, neither the record companies nor the consuming public that will ultimately pay this private excise tax through higher record prices will have anything to say about the matter. The arrangement renders Mr. Petrillo and his fellow-union leaders financially independent even of the members of their own unions.

If past experience is any guide, the Administration and Congress will be complacent about this contract. Why should they interfere, they will say, with an arrangement that a private concern has voluntarily agreed to? But to take such an attitude is to be willfully blind to the main point, which is that Federal labor policy itself has placed in the hands of labor leaders the private irresponsible powers which enable them to drive bargains so clearly against the public interest.

*Baltimore Sun*

### INCREASING THE STATURE OF MR. J. CAESAR PETRILLO

Previous suggestions that Mr. James C. (for Caesar) Petrillo, dictator of the American Federation of Musicians, indulged in a strategic retreat when he decided to let one of the popular recording companies use his union subjects are refuted by the actual terms of the contract now made public. Plainly he demanded—and received—an unconditional surrender.

Several weeks ago the report was that he had abandoned his stand for payment directly into his treasury of fees on all records sold. He was said to be willing to permit the company to pay them, as what might be called royalties, to the musicians who made the records. The contract flatly rejects any such concession. Its terms are precise on the point. The musicians will do the work; his union will collect the fees and have full charge of their spending.

The company, moreover, agrees to allow Mr. Petrillo's agents to examine its books whenever they so desire. It accepts all laws of the union as formal parts of the contract—which means, of course, among other things, that Mr. Petrillo retains the right to call off his men again at any time. It will make no re-recordings and take no pro-

gram transcription "off the air" without first notifying Mr. Petrillo and obtaining his approval. He, in his turn, offers one handsome promise. He graciously assures the company that he will not be "unreasonable" in considering such requests from it.

Look well at this Mr. James C. (for Caesar) Petrillo; he constantly increases in stature. Before this he was the supreme boss in his own baliwick, which extends into every village where people toot horns for pay, boosted to that prominence by a Government which interprets its laws to say that he is exempt from most of their provisions. Now he begins to assume the status of a government himself, to take on some of the attributes of a sovereign state. In effect, he issues a license to a corporation to carry on its business, levies a tax upon it, undertakes to supervise its affairs and enacts the rules under which it shall operate. Will anyone really be surprised if some day soon a frock-coated gentleman turns up in Washington presenting credentials as an ambassador from the principality of Petrillo?

*The Cleveland News*

Oct. 4, 1943

### PETRILLO'S \$3,000,000

The terms of the contract which the Decca record making company has signed with James C. Petrillo's musicians union have been made public, along with Petrillo's estimate that the union will receive an annual income from the deal of \$3,000,000 to \$4,000,000.

The union is to get a fee on every record sold. To protect this award, the union is to be furnished with the serial number of every record sold, along with such other information as it "may reasonably require," and is granted the right to examine the company's financial books and sales reports.

The union gives up nothing, the company gains nothing except the consent of the musicians to resume making "canned music" at going rates of pay, plus the royalties.

The public interest is nowhere considered. No one is going to examine the union's books. There are no strings attached as to what purpose this income may be put, private or political. No one except Petrillo and his hand-picked union officials will ever know what becomes of these millions of dollars flowing into the union treasury. Petrillo says he is going to set up a union unemployment fund but this will, of course, be administered as a private Petrillo enterprise just as all affairs of the union are conducted. Anti-Petrillo insurrections have been dealt with so summarily as to discourage union members from interfering with the boss.

Petrillo's control of the federation is just as complete a dictatorship as there is on this earth. Where the contract reads "Federation" it might just as well, for all practical purposes, read "Petrillo." This one man's vast power is now reinforced by an enormous swollen income.

This is as clear an example as can be found for the urgent necessity of national legislation providing for publication of union financial statements. Some unions have taken this step voluntarily. Those of the boss-controlled type such as Petrillo's never will until they are forced. Perhaps the Little Caesar's boast of his \$3,000,000 income will stir Congress to some action.

Oct. 24, 1943

## A CHALLENGE TO CAESAR PETRILLO

After the manner in which James Caesar Petrillo has been getting away with his role as grand dictator of music for the American people, it's refreshing to find the broadcasting companies standing up to him and declaring for a fight to the finish.

Petrillo recently proclaimed his "tremendous victory" in cowing several transcription concerns and making them agree to come across with a special fee for every record they sell.

By the terms of the contracts, this extra money doesn't go to the musicians who play for recordings. All they receive will be their regular high union wages. This tribute must be paid to Petrillo's union. He has said it will be used for an unemployment fund. But since Petrillo has the union in his pocket, there's no power to make him live up to his promise.

No law requires an accounting of union funds. Neither is there any law forcing an employer to pay fees, or dues, to a union. But Petrillo has flatly told a Senate committee that he can do "practically anything under the union constitution to meet any situation."

The broadcasting industry, at least, isn't going to take this Caesar's threats of impositions lying down. Its association calls his exactions from the recording companies "as economically and socially unsound as extortion is immoral and illegal."

Unfortunately, the Petrillo peculiar brand of extortion is untouched by present laws. They not only lack any prohibition of his dictatorial practices, but the anti-trust laws grant the unions sweeping exemptions from prosecution which have been upheld by the United States Supreme Court.

Just consider what Petrillo's latest scheme means. It means the levying, by a private individual, of a special tax on employers. Then after having exercised his self-assumed taxing power, Petrillo personally administers the proceeds, estimated at \$500,000 or more a year from the recording industry alone.

This huge fund, to be vastly increased if Petrillo should get his grip on the broadcasting companies and on the motion picture industry as well, in accordance with a hint he let drop to the Senate committee, would be utilized to set up Petrillo's own private system of unemployment relief.

As has been pointed out, the use of such funds is subject to no official control or public accounting. This virtual excise tax will be passed on to the buyers of the records. Under this contract the union, that is to say Petrillo, may examine the employer's financial records. The employer is barred from scrutinizing the union's finances.

Congress is now considering additional excise taxes to produce much-needed revenue for the Government to carry on the war. Petrillo levies his own tax and not a dollar of it will go to the Government. There's nothing to prevent other labor bosses from following his example.

It remains to be seen whether the broadcasting companies will be able to maintain their stand against Petrillo's threat to extend his aggressions. But whatever

the outcome of this particular case, the menace will not be removed until Congress puts all citizens, employers and employes alike, on a basis of equality before the law.

*New York Times*

Oct. 22, 1943

## MR. PETRILLO MOVES AHEAD

Four more transcription companies have capitulated to Mr. Petrillo, and will doubtless gain a temporary advantage over their more reluctant competitors in doing so. Mr. Petrillo has condescended to sweeten the pill by agreeing that his private unemployment relief scheme, to which he is forcing the companies to contribute, shall be kept separate from other union resources and that no part of the fund may be used for payment of salaries of union officials. The contract provides for a closed shop for members of the Petrillo union in making records. At a time of critical labor shortage, it contains various make-work provisions to give needless jobs.

A panel of the War Labor Board not only approved of the provision obliging the companies to pay a private tax direct to the Petrillo union on every record they make, but by suggesting that "an advisory committee representing the public" be appointed by the chairman of WLB in the administration of the fund, the board panel has given the whole arrangement an official sanction. It does not appear, however, that Mr. Petrillo is under any obligation to take the advice of this "advisory committee." Nor are there any Federal laws whatever which oblige him to make his accounts public, to submit to an independent audit, or to be, in fact, responsible to anybody for what he actually does with the funds.

The principle has now been established, in short, that a labor union leader is able to levy a private tax on employers to maintain a private unemployment relief system. The companies involved have finally agreed to this "voluntarily," of course, but the state of the law and the attitude of the administrators have put Mr. Petrillo in an extremely strong bargaining position and the companies in an extremely weak one. It would not be too much to say that Mr. Petrillo has made this deal thanks to the cooperation of the Federal Government.

*New York Times*

Sept. 23, 1943

## WHY PETRILLO WINS

One of the phonograph record companies has succumbed in large part to Mr. Petrillo's demands. It has signed a four-year contract with him agreeing to pay fees on every record it sells, ranging from one-quarter of a cent on records selling for 35 cents to 5 cents on a \$2 disk. It has still not been made entirely clear to whom these fees are to be paid. According to earlier reports they were to be paid to the musicians actually engaged in making the recordings. It was understood that the musicians, in turn, would be taxed by the Petrillo union to aid its unemployed members. Later reports, however, are that the fees will be paid by the record company direct to the union and not to the musicians making the disks.

Either of these arrangements would be unsound in principle, though the second would be the worse. In either case Mr. Petrillo would be levying a private tax—

in one case on employers, in the other on members of his own union. The second arrangement would be unobjectionable if the members of his union were in fact as well as theory merely voluntary members free to remain with or to leave the union as they saw fit. But their membership is, in fact, obligatory. Through the irresponsible powers that Mr. Petrillo is free to exercise under existing law a musician, no matter how competent, can be effectively prevented from making a livelihood unless he is a member of the Petrillo union. Nevertheless, the membership of the union would presumably retain at least a nominal control over the funds that they were forced to turn into its treasury.

If the fees on record sales are to be paid directly to the Petrillo union, however, the resulting situation would be much worse. In that case Mr. Petrillo would be levying his private tax on employers. At best he would be administering a private system of unemployment relief. But there would be no public control whatever of the

manner in which he used these funds. If only a small part of the funds actually went for paying unemployed musicians, if the bulk of them were used instead to increase the salaries or expense accounts of Mr. Petrillo and other union leaders, neither the record companies nor the consuming public that ultimately paid this private excise tax through higher record prices would have anything to say about the matter. If Mr. Petrillo can succeed in getting this principle established, he will render himself and his fellow union leaders financially independent even of the members of their own unions.

It would be lacking in clarity of thought to put the primary blame for the resulting situation either on Mr. Petrillo personally or on any record company that succumbs to his terms. The primary blame must be placed on the Administration and Congress, who, by their official labor policy, have placed in the hands of labor leaders the private irresponsible powers which enable them to drive such anti-social bargains.



