

# National Association of Broadcasters

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

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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

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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.

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(*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.

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(*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 imperfections.