National Association of Broadcasters
1760 N STREET, N. W. ★ ★ ★ ★ ★ ★ ★ WASHINGTON 6, D. C.
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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

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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?

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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.)

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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.

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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

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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.

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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.

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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.

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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.

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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.

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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.

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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.

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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 jurisdicion 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.