

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,

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