

# The National Association of Broadcasters

1760 N STREET, N. W. \* \* \* \* \* WASHINGTON 6, D. C.

October 29, 1943

SPECIAL A. F. of M. BULLETIN

No. 23

## The Petrillo Situation To Date

*(This bulletin contains the NAB Steering Committee Statement of October 23, 1943; a report by Neville Miller, Steering Committee Chairman, to the broadcasting industry; the latest contract signed by four recording companies with A. F. of M.; the February 23, 1943, letter from the transcription companies to Mr. Petrillo, and recent editorials from the newspapers on the Petrillo situation.)*

### NAB STEERING COMMITTEE CONDEMNS PAY PRINCIPLE IN AFM RECORDING DEALS

The full statement follows:

"With the signing of contracts with James C. Petrillo by four more transcription companies, it becomes apparent that Mr. Petrillo has established in the recording field a most vicious principle. By the terms of the contract, Mr. Petrillo levies a tax on the companies for the privilege of hiring members of his union, which tax is paid direct to the union. Although an attempt is made to gain public approval of administration of the fund by the appointment as 'advisors' of public representatives, who have no vote, such procedure in no way mitigates the evils of the principle.

"This principle has been condemned as setting up a private system of unemployment relief. In our view its significance is even more appalling. We regard the principle as being as economically and socially unsound as extortion is immoral and illegal. We believe that its widespread application in this country, which has depended for its growth on the development and use of invention, will impair our future prosperity. We hold that its perpetuation will thwart democracy within the labor movement itself, and be destructive of good relations between all labor and all industry. For these, as well as for other cogent reasons, we are certain that most American citizens will join us in condemning and in rejecting this principle.

"The panel which was appointed by the National War Labor Board to hold hearings and report on the merits of the dispute departed from the task assigned to it to assume a mediatory role, and in this capacity its members participated in bringing about the contract which embodies this principle.

### Three Continue Opposition

"Columbia Recording Corporation, RCA-Victor, and NBC-Thesaurus, with courage which should call forth

the commendation of the entire broadcasting industry, have continued their opposition to the principle of direct payment to the union. These companies now find themselves, however, in an obviously unfortunate position. The merits of the principle which they oppose may now be adjudicated by the very panel which as mediator brought about the making of the contract which embodies the principle the panel is now supposed dispassionately to evaluate.

"Although Mr. Petrillo was the originator of the idea of a direct levy upon the companies, he had made little headway in the hearings before the National War Labor Board panel until Decca Records and its subsidiary, World, deserted the principles set forth in a joint letter which they, with the other recording companies, had addressed to the Union on February 23, 1943. Such action by Decca and World placed four of the other companies under such competitive pressure that they felt obliged to accept the principle, despite the fact that it was thoroughly repugnant to all of them.

"The Committee deplores the making of the contracts which embody the principle of direct payment to the union. It regards the payment of moneys directly to a union as equally destructive of the rights of employers and union members. For unions to collect direct tribute as compensation for permitting their members to render services is not a forward step in unionism, but rather a reversion to a philosophy which regards these members as chattels to be disposed of at the union's option.

"There is no economic or social theory which supports such an exaction. There are no facts which justify its application in the present case. The members of the American Federation of Musicians have profited through the invention of recording, and the union has no unemployment problem."

Members of the Steering Committee are: Neville Miller, chairman; Mark Ethridge, WHAS, Louisville; John J. Gillin, Jr., WOW, Omaha; Kolin Hager, WGY, Schenectady; Harry Le Poidevin, WRJN, Racine; Paul W.

October 27, 1943.

#### TO THE BROADCASTING INDUSTRY:

Fifteen months ago the Board of Directors of the National Association of Broadcasters appointed a Steering Committee in connection with the strike of the American Federation of Musicians against recordings. The recording of phonograph records and electrical transcriptions has been partially resumed upon a basis concerning which the Steering Committee has expressed itself in the public statement which is printed in this bulletin.

When James C. Petrillo announced his strike, he stated that the purpose of the strike was to exact payment from the broadcasting industry. Indeed, in August of this year counsel for Decca Records informed representatives of the industry that the lowest figure which Mr. Petrillo would consider was \$18,000,000, to be paid directly to the Union by broadcasters over a five year period. Previously, Mr. Petrillo's counsel had set \$15,000,000 a year as his anticipation of the industry's payment, in his testimony before the Senate Committee. In the light of the initial objectives of the Union, the fact that phonograph records, commercial transcriptions and library transcriptions are again being manufactured at no additional cost to the broadcasting industry might be viewed as a victory for broadcasters.

Thoughtful consideration of the implications of the contract which the American Federation of Musicians has signed with a number of companies must, however, temper this judgment.

#### Payments to Union Called For

The contract calls for direct payments to the union from employers in return for the privilege of permitting the employer to give work to the union's members at mutually satisfactory terms and conditions. The general acceptance of this principle would, it is obvious, be prejudicial to the national interest as well as to our own. The amount all of the transcription companies which have signed the contract will pay during the first year of the contract will probably not be in excess of \$10,000 nor will it apparently exceed \$30,000 during any year of the contract. The amount which Mr. Petrillo's union would have received if all of the record companies had signed his agreement would be, in addition, several hundred thousand dollars a year. These amounts are not large when viewed in the light of Mr. Petrillo's statement that the members of his Union have lost \$7,000,000 in consequence of the strike. A precedent has, however, been established whereby Mr. Petrillo may implement whatever future demands he may wish to assert.

With commendable courage in the face of severe competitive handicaps, three companies, Columbia Recording Corporation, RCA Victor, and NBC Thesaurus, have refused to sign the contract with the Union, and have asked the panel of the National War Labor Board to resume hearings on the merits of the case. The recording situation has not, therefore, been resolved, and it will not be until the panel renders its decision accepting or rejecting the principle of direct payment to the Union.

Broadcasters may be interested in a brief review of

the events leading up to the present situation. Mr. Petrillo refused to formulate his demands until, under pressure from the Senate Committee headed by Senator D. Worth Clark, he transmitted them to the recording companies on February 11, 1943. These demands incorporated the principle of direct payment to the Union. The demands were rejected in a letter dated February 23rd, which sets forth the reasons for the rejection so admirably that it is reprinted as a part of this bulletin. It will be noted that Decca and World, which subsequently voluntarily accepted the principle of direct payment, were among the signers of this communication.

#### WLB Gets Dispute

When independent negotiations between the transcription companies and the Union failed, and when the United States Conciliation Service of the Department of Labor was equally unsuccessful in bringing about agreement between the parties, the dispute was certified to the National War Labor Board. The Board accepted jurisdiction but did not follow its customary procedure of ordering the Union to terminate the strike, despite the fact that Mr. Petrillo had announced his defiance of the Board by stating at the outset of the hearing that he would not obey such an order.

The Board appointed a panel to hear the issues, and the hearings were progressing satisfactorily when, on September 20th, Decca and World signed a contract with the Union. Counsel for the other companies which were parties to the proceeding then asked the panel to issue an order returning the men to work pending a decision in the case, but the motion was denied. Negotiations were then begun, with the panel assuming a mediatory role, and on October 20th Associated Music Publishers, Inc., Lang-Worth Feature Programs, Inc., Standard Radio and C. P. MacGregor signed a contract with the Union. This contract, perforce, contains the objectionable principle, though in other respects it marks an advance over the agreement signed by Decca and World:

#### 'No Strike' Clause New

(1) The Decca and World contract did not contain a "no strike" clause, and Mr. Petrillo stated that under that agreement he felt free to strike at any time. The subsequent contract includes an explicit "no strike" clause with respect to library transcriptions, although the Union remains free to strike at any time with respect to phonograph records and commercial transcriptions intended to be used only once on a broadcasting station.

(2) The Decca contract contained no clause freezing the compensation of musicians. The subsequent contract keeps in effect for two years the rate of July, 1942.

(3) The subsequent contract has a somewhat more explicit description of the use by the Union of the moneys which it will receive under the contract. The funds are to be deposited in what the Union terms an "employment fund" to be used "only for the purpose of fostering and propagating musical culture, and the employment by it (the union) of live musicians, members of the Federation for the rendering of live music." It will be noted that nowhere is there any statement that the money will be used for the benefit of otherwise unemployed members of the Union. Indeed, unemployment is nowhere mentioned in the contract.

(4) The second contract also contains a provision that two persons shall be appointed by the Chairman of the National War Labor Board to advise with respect to the disbursement of the fund, but these persons are given "no power of vote."

### Petrillo Changes Position

Throughout the many phases of the recording strike, Mr. Petrillo has constantly changed his position. Most significant among these changes is the abandonment by the Union of the claim of an existing unemployment problem, and reliance, instead, as justification for the Union's actions, on nebulous post-war planning. The main reason for this shift has been the activity of the NAB in gathering information with respect to the American Federation of Musicians, and the employment of the members of that Union by the broadcasting industry. The result of the NAB's factual and legal researches have been made available to all interested parties, and have played a conspicuous role during the duration of the controversy. Indeed, the results of these researches will continue to have usefulness not only in connection with the recording conflict but in connection with any claims which the American Federation of Musicians may choose to assert against the broadcasting industry in the future.

Mr. Petrillo has further succeeded in enmeshing himself in a web of opportunistic contradictions, which the NAB has been careful to bring to public notice.

When Elmer Davis, Director of the Office of War Information, asked Mr. Petrillo to rescind his ban in the interest of the war effort, Mr. Petrillo refused; but he did concede that commercial transcriptions, played only once on a station and then destroyed, were not detrimental to his membership. Shortly, thereafter, he reaffirmed that his Union would no longer permit the making of commercial transcriptions.

### When Is 'Strike' Not 'Strike'

In appearing before the Federal Court in Chicago, where the Department of Justice unsuccessfully sought a temporary injunction against Mr. Petrillo and the Union, Mr. Petrillo and counsel argued that the ban was a strike. When the strike was brought before the National War Labor Board, Mr. Petrillo suddenly discovered that no strike existed and that the ban constituted a final refusal on the part of his members to make electrical transcriptions.

When Mr. Petrillo appeared before the Senate Committee, he and his counsel disclaimed any intention permanently to bar amateur bands and orchestras from the air, but even the finest of such groups has not yet been permitted to return to broadcasting activity.

Also, when the Senators asked Mr. Petrillo if he had in mind the destruction of the basic invention of recording, he quickly disavowed any such intention. And yet he told the War Labor Board that his members had forever abandoned the making of electrical transcriptions and would seek to prevent anyone else from engaging in that field—a position from which he has, obviously, again departed.

Mr. Petrillo has vigorously criticized the NAB for its work in bringing his actions before the public. The NAB was active, and we believe effective in this respect. However, it is well to note that many thousands of news items,

editorials and cartoons appeared with respect to Mr. Petrillo's activities during the month prior to the formation of the NAB's Steering Committee and before the NAB took any steps with respect to the recording ban. During this month every one of the personal attacks and characterizations to which Mr. Petrillo has so vehemently objected was published by the press on its own initiative and inspiration. It is clear, therefore, that the almost universal disapproval of Mr. Petrillo has resulted from what Mr. Petrillo himself has done. Perhaps the best tribute to the NAB's diligence in the recording matter was paid by Mr. Petrillo when, in January, he charged that the NAB had spent, in a public relations campaign alone, more than ten times what the NAB had spent in connection with the entire A. F. of M. matter.

### No Let-Up by NAB

It goes without saying that the continuing problem of the American Federation of Musicians activities will receive constant consideration by the NAB and will be the subject of discussion at the forthcoming meeting of the NAB's Board of Directors. Meanwhile broadcasters will continue to point out that their industry has made a contribution to music and musicians which has been excelled by no other group or organization. Broadcasting has enormously increased the appreciation and understanding of the best music. It has increased the appeal of popular music. It has conferred upon the band leaders unparalleled earning power. Working musicians receive for their services in radio broadcasting in excess of \$30,000,000 a year. Staff musicians employed by broadcasting stations receive an average wage of \$67.90 per week for an average work week of less than eighteen hours. The broadcasting industry has displaced no musicians. It has, on the contrary, given employment to thousands and opened new employment opportunities to countless thousands more. An industry which has consistently met the highest standards in the treatment of all of its employees will, therefore, continue to resist exactions which are based upon both false premises and unsound principles.

NEVILLE MILLER, *Chairman.*

### The 'Latest' Contract

October 20th, 1943.

Gentlemen:

This will confirm our agreement as follows:

(1) You shall use only members in good standing of the American Federation of Musicians as instrumental musicians, conductors, arrangers, and copyists, in recording phonograph records and electrical transcriptions (hereinafter sometimes jointly referred to as "recordings").

(2) We agree that throughout the term of this agreement, so long as you perform your obligations hereunder, our members shall have the right and permission to enter into and continue in your employ and you shall have the right to use their services for the purposes aforesaid upon the terms and conditions hereinafter set forth.

(3) We warrant and represent that we have the right and power to enter into this agreement and to grant you the rights and benefits set forth herein. We shall exercise full authority in order that our locals and members of the Federation engaged in or pertaining to record-

ing activities shall do nothing in derogation of this agreement.

(4) Immediately upon the making of any recording hereunder and prior to its release, you shall advise the Federation of such recording, of the serial or other number thereof, and any additional information in connection with any such recording, which we may reasonably require. Upon demand by the Federation, you shall promptly furnish to it a copy of any such recording, including those made or pressed by you in Canada.

(5) Upon execution of this agreement, you shall promptly furnish to the Federation a copy of your current catalogues of phonograph records and library transcriptions, and thereafter from time to time as and when issued, you shall supply a copy of all supplements thereto.

(6) You shall not require, request, induce, or in any manner attempt to influence any member of the Federation to play or perform for recordings, or render services pertaining thereto, except as permitted by this agreement.

(7) You shall have the right to dub, re-record, or re-transcribe any of your recordings for slide films or as a part of any manufacturing processes by which you make the recordings available for the uses for which they were originally intended. Except as herein expressly provided, you shall not dub, re-record or re-transcribe any recordings containing the services of members of the Federation except on previous written notice of any such intention to be given to the member through whom the musicians were originally employed, as well as to the Federation, and upon payment to the said member of the full scale for all musicians applicable to such new use. Nothing contained in this agreement shall in any way modify any obligation independent of this agreement which you may be under to obtain from our members such individual approval as may be necessary in connection with any dubbing, re-recording, or re-transcribing of records.

(8) You shall not require members of the Federation to make phonograph records containing commercial advertisements; or to make any recordings designed for use as accompaniment by performers for or in connection with their public performances. "Accompaniment" as used in this Paragraph shall not be construed to include signatures, bridges, background and mood music, sound effects and fanfares, incidental music in connection with scripts, etc.

(9) All laws, rules and regulations of the American Federation of Musicians (copy of which is herewith submitted) are made part of this agreement.

(10) We agree that any changes in our Constitution, By-Laws, rules or regulations, which may be made during the term of this agreement or which may conflict with any of the provisions hereof, shall not impose any conditions not herein contained or change your rights hereunder.

(11) You shall pay our members for the services rendered by them in the making of recordings such sums as you may agree upon with them but which, in no event, shall be less than the respective wage scales. We agree that the wage scales for the services of our members, which were in effect July 1942, shall be continued without change for a period of two years from October 20, 1943. Either party may give notice of its desire to change the wage scales for the period from October 20,

1945 to December 31, 1947. Such notice shall be in writing and shall be mailed not later than April 20, 1945. In the event that such notice is sent and that negotiations fail to produce an agreement regarding new wage scales within said six-month period, either you or we shall have the right to terminate this agreement for the services of our members as of October 20, 1945.

(12) All contracts for recordings between you and the members of the Federation shall contain the following provisions:

"As the musicians engaged under the stipulations of this contract are members of the American Federation of Musicians, nothing in this contract shall ever be construed as to interfere with any obligation which they owe to the American Federation of Musicians as members thereof."

(13) In consideration of the rights, privileges, and permissions granted to you hereunder, you shall pay to the "Employment Fund" of the American Federation of Musicians the following:

(a) For phonograph records manufactured or produced by you or others from masters hereafter recorded by you during the term of this agreement, containing performances by members of the Federation, and which phonograph records are sold by you or by the lessees of your masters to others, a payment equal to the following:

$\frac{1}{4}$  cent for each record, the manufacturer's suggested retail price of which does not exceed 35 cents;

$\frac{1}{2}$  cent for each record, the manufacturer's suggested retail price of which is more than 35¢ but does not exceed 50 cents;

$\frac{3}{4}$  cent for each record, the manufacturer's suggested retail price of which is more than 50¢ but does not exceed 75 cents;

1 cent for each record, the manufacturer's suggested retail price of which is more than 75 cents but does not exceed \$1.00;

$2\frac{1}{2}$  cents for each record, the manufacturer's suggested retail price of which is more than \$1.00 but does not exceed \$1.50;

5 cents for each record, the manufacturer's suggested retail price of which is more than \$1.50 but does not exceed \$2.00;

$2\frac{1}{2}$  percent of the sales price of each record, the manufacturer's suggested retail price of which exceeds \$2.00.

(b) For electrical transcriptions, manufactured from masters hereafter recorded by you containing performances by members of the Federation, and which are intended by you for more than one use by your customers, lessees or licensees as part of your library service or otherwise, a payment equal to 3 percent of the gross revenues derived by you from the sale, lease, license or other disposition thereof.

In the event that at the time the calculation of the first payment due to us hereunder proves to be unduly burdensome or otherwise difficult

of computation by you, then and in such an event we agree that we shall endeavor to agree with you upon a new basis of calculating an amount equivalent to the sum payable to us hereunder. If we are unable so to agree within a period of thirty (30) days from the date on which such payment shall be due hereunder, then and in such an event we agree to submit such dispute to Honorable Arthur S. Meyer or any other person designated by the Chairman of the National War Labor Board for determination.

(c) For commercial electrical transcriptions manufactured for broadcasting and intended by you for not more than a single use by any one station, there shall be no payment to us pursuant to the terms of this Paragraph 13. You agree that in connection with the sale or other distribution of the electrical transcriptions mentioned in this Paragraph 13 (c), which are manufactured from masters hereafter recorded by you during the term of this agreement, and which contain performances by members of the Federation as aforesaid, you will stipulate for the benefit of the Federation an obligation that your customers shall not use or authorize the use of such electrical transcriptions more than once on any particular station without the prior written approval of the Federation.

(d) All payments provided for in this Paragraph 13 shall be made to the Federation within forty-five days following each calendar half-year, and shall be accompanied by a statement certifying all payments required to be made pursuant hereto.

(e) The Federation at its option shall have access and right of examination of your books and records at all reasonable times relating to the payments referred to in this Paragraph 13.

(f) Your obligations to make the payments pursuant to this Paragraph 13 shall continue after the expiration or other termination of this agreement, with respect to any and all recordings from masters made hereunder during the term hereof.

(14) The American Federation of Musicians will use the "Employment Fund" described in this agreement only for the purposes of fostering and propagating musical culture and the employment by it of live musicians, members of the Federation, for the rendering of live music. This Fund will be kept separate and apart from all other funds of the Federation. No part of this Fund will be used for the payment of the salaries of any officer of the Federation, or for any other purpose than the foregoing. However, up to 5% may be used for the purpose of administering the Fund. In the event administration expenses exceed 5%, the Federation will meet such additional expenses from its own Treasury.

The Federation has in the past submitted at its Conventions a full and detailed financial statement, accounting and annual report audited by certified public accountants to be submitted to the membership of the Federation, and such reports are made public. With respect to the Employment Fund referred to herein, a similar de-

tailed statement, financial accounting and report will also be made annually and in like manner.

In administering the Fund, the American Federation of Musicians will, with a view to best serving the public interest, consult from time to time with an Advisory Committee to be created forthwith. Such committee shall have no power of vote. The Advisory Committee will consist of two persons to be selected and appointed by the Chairman of the National War Labor Board or, in the event that the present National War Labor Board shall not be in existence throughout the term of this contract, then successor appointments shall be made by the Secretary of Labor of the United States. The necessary traveling and other expenses of the Advisory Committee will be paid by the American Federation of Musicians and charged to the Fund, but the same shall not exceed \$1500. in any year.

The purpose of consulting with the Advisory Committee will be to receive advice and suggestions from the Advisory Committee concerning the administration of the fund.

(15) The rights granted to you under this agreement are hereby declared to be personal to you, and you agree not to transfer, assign or attempt to transfer or assign this agreement without our prior written consent, which consent shall not be unreasonably withheld.

(16) In the event that we shall make any agreement permitting the making of phonograph records or electrical transcriptions, during the term hereof, upon any terms or conditions more favorable than or different from those contained in this agreement, you shall have the right at your sole option automatically to cause this agreement to be conformed therewith.

(17) You shall not make or permit the use of your facilities for making or otherwise give aid and assistance in the making of any phonograph records and electrical transcriptions which contain instrumental music for or on account of other persons engaged in the phonograph record or electrical transcription business who is not signatory to an agreement with us, permitting the employment of our members, unless authorized in writing by the Federation.

(18) Except as otherwise provided in this agreement, and so long as you perform your obligations hereunder, we agree that throughout the term of this agreement we shall exercise no influence or restraint upon our members against entering or remaining in your employ, to the end that there shall be no cessation or interruption of your employment of our members hereunder in the making of recordings, in connection with your business. However, our obligation under this paragraph shall not extend to phonograph records or to that type of recording known as commercial electrical transcriptions hereinabove referred to in Paragraph 13 (c).

(19) You agree not to make recordings of any radio programs containing the services of our members, off-the-line or off-the-air, without first obtaining from the Federation written permission, except that we agree that no such permission shall be necessary in instances where

(a) Recordings are for reference or file purposes, or

(b) For the purpose of making delayed broadcast transcriptions, which have been authorized in writing by the Federation.

The Federation agrees that in all other cases it will not unreasonably withhold permission to make such off-the-air or off-the-line recordings, and that in such other instances where granted, permission shall be given on payment of transcription scale to the members of the Federation concerned. This agreement shall not in any way modify any obligation independent of this agreement which you may be under to obtain from our members such individual approvals as may be necessary in connection with such off-the-line or off-the-air recordings.

(20) The term of this agreement shall be for the period commencing as of October 20, 1943, and terminating December 31, 1947.

If this is in accordance with your understanding, kindly execute both copies of this letter to constitute it an agreement between you and us.

AMERICAN FEDERATION OF MUSICIANS  
OF THE UNITED STATES AND CANADA

By JAMES C. PETRILLO, *Pres.*

ACCEPTED AND AGREED TO:

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*(Text of the Decca contract was reprinted in the Special A. F. of M. Bulletin No. 22, issued October 1, 1943.)*

## The Recording Companies' Letter

New York, February 23, 1943.

Mr. James C. Petrillo, President,  
American Federation of Musicians  
1450 Broadway  
New York, N. Y.

Dear Mr. Petrillo:

After meeting with you on February 15th, the undersigned companies engaged in various phases of the recording and transcription business met to consider the proposals which you had distributed on February 12th. Considerable time has been spent by us in an effort to find a response which would result in your permitting the re-employment of your members. Any such response must be viewed in relation to these prior facts:

On June 25, 1942, without previous notice or demands you announced that you would not allow any of your musicians to perform for recordings after July 31st. This meant a complete cessation of recording because we had been operating under a license from you which imposed on us a "closed shop" for your union. Under this license, we had been paying your members at rates which are among the highest for skilled service in any industry. In addition substantial royalties for each phonograph record manufactured and sold have been paid to the musicians or orchestras who made them. Although hours and other working conditions were beyond criticism, you nevertheless called a strike, without previous notice or demands.

While you allege wholesale unemployment of your members (a claim we deny), you have continued this strike and the resulting unemployment for a period of almost seven months, to date. In doing so, you disregarded pleas of Elmer Davis of the O.W.I. on behalf of both military and civil officials, that the strike was

harmful to the War effort. During those seven months you at no time offered to return your members to work or even to state the conditions upon which you would do so. This continued until a Senate Committee under the Chairmanship of Senator D. Worth Clark of Idaho insisted that you make some proposal. Even now your proposal is a proposal in form only.

You propose that the recording companies pay an additional sum directly to the union over and above their payments to the musicians employed. You further propose that this sum be accumulated or disbursed in the union's uncontrolled discretion *for the benefit of union members who render no service whatsoever to the recording companies*. The destructive and dangerous fallacy of your proposal is that it assumes that a specific industry owes a special obligation to persons not employed by it,—an obligation based only on such persons' membership in a union. In addition to the inherent unsoundness of such a proposal, the following objections are at once apparent:

### (a) *Obstructs Technical Progress*

We are alarmed at the damage which might be done to the whole field of technical and technological improvement if the manufacturer of any new device, of proven value to the people as a whole, were to be saddled with the costs of special industry unemployment relief in addition to the already heavy costs of pioneering research and development, and subsequent promotion.

### (b) *Subsidizes Non-Employees*

We do not believe that our companies, who before your ban were employing the maximum number of musicians at the highest wages in the history of the music industry, should be asked to assume responsibility for unemployment, even if such unemployment exists, of such of your union members who are not and cannot be employed by us.

### (c) *Penalizes Employment and Use*

We cannot approve a proposal which imposes a private tax upon every phonograph record manufactured and sold when it is obvious that the records used in the home, far from creating unemployment, have been the source of much profitable employment to your members. This has been publicly and officially proclaimed on more than one occasion at your own union's conventions. Such records used in the home constitute at least eighty percent of the total phonograph record output, and thus, under your proposal, eighty percent of your tax would ultimately fall squarely on the public which buys records for home use and is in no way responsible for whatever unemployment you may claim exists.

### (d) *Duplicates Government Relief*

The Government has provided taxes for unemployment relief. A second tax for a new private system aimed at the same relief seems wholly unjustified. Similar proposals could, with no more excuse, be made by singers, engineers and others contributing to the high quality of our products. Any such private and isolated system of unemployment relief within an industry is not only contrary to public policy but would be in direct conflict with the various plans under discussion in Government circles for the expansion of uniform and nation-wide social security measures. No private and limited scheme for the benefit of a few within an industry can be pyramided on

top of Federal and State social security plans without creating serious inequities. Certainly mere membership in a union should not entitle a member to special privileges from an industry which does not employ him but happens to employ some of his fellow members.

We recognize that because a social philosophy is new it is not necessarily wrong. What you have proposed is a startling new kind of social philosophy for both industry and labor. While we believe that it is wholly wrong in principle, we doubt that either a single union or a single industry is qualified to be the final judge. Only the people of the United States are qualified to decide whether multiple systems of unemployment relief administered by a variety of private as well as governmental agencies shall now be created. Authority for the application of such basically new social theory should therefore come from the people's representatives in the Congress. Such sanction would necessarily be accompanied by rules and regulations defining the limits, requirements and approved objectives of such union relief funds, and subjecting the union and its administration of such funds to Governmental control and supervision. As in the case of pension and retirement plans created by corporations for the benefit of their employees, the Treasury Department would unquestionably desire to participate in such regulation and supervision.

This is not rhetoric but plain statement of fact because only the Congress should be called upon to answer such fundamental questions as the following:

(a) Would not such a payment directly to a union offer an easy means of evading the "wage freeze" regulations; or, on the other hand, would it not be deemed an indirect increase in compensation to the members employed and, as such, in violation of the regulations?

(b) If, on the other hand, it were ultimately determined that the additional payment directly to the Federation were not additional compensation, direct or indirect, to the employees, would not such a payment be merely a gratuity, and therefore a waste of a company's assets which would subject the company's management to liability under the law?

(c) Would not your proposal be in violation of Section 8 of the National Labor Relations Act which provides that it shall be an unfair labor practice for an employer to "contribute financial or other support" to any labor organization?

(d) What would the Treasury think of your proposal if it resulted in diverting taxable income in the hands of the employer to non-taxable receipts in the hands of your union?

(e) If on the other hand the Treasury Department refused to allow such payments as a deductible expense of the employer, would not the employer be compelled to pay not only the contribution to your fund but also an income tax on the amount of that contribution?

(f) Would not any plan for creating artificial employment for unemployed members of the Federation be contrary to the policy of the Manpower Commission, which is seeking to draw into War industries at least those persons not presently employed?

(g) Would not such a payment as you propose subject both you and us to the charge of a conspiracy to maintain or to increase prices,—and a resulting prosecution by the Government or civil suit by an injured consumer.

Only if you procure Congressional authority for the

creation of a fund in accordance with your proposal could such a proposal become operative without raising many presently unanswerable questions.

Pending such Congressional authority for a plan which you yourself have termed "absolutely new," we suggest that you permit your members to return to work immediately and produce phonograph records and transcriptions which are sorely needed for both civilian and military morale.

You know of course, that we stand ready to meet with you at all reasonable times when you have anything further to submit. We want you also to know that the views expressed represent our individual as well as our joint decisions.

Very truly yours,

#### *Electrical Transcription Companies*

Associated Music Publishers, Inc.

By JOHN R. ANDRUS, Vice President.

Empire Broadcasting Corporation

By GERALD A. KELLEHER, President.

Lang-Worth Feature Programs, Inc.

By C. O. LANGLOIS, President.

Muzak Corporation

By C. M. FINNEY, President.

Radio Recording Division

National Broadcasting Company, Inc.

By C. LLOYD EGNER, Vice President

Standard Radio

By GERALD KING, Partner.

World-Broadcasting System, Inc.

By A. J. KENDRICK, Vice-President.

C. P. MacGREGOR

#### *Phonograph Record Companies*

Columbia Recording Corporation

By EDWARD WALLERSTEIN, President.

Decca Records, Inc.

By JACK KAPP, President.

RCA-Victor Division

Radio Corporation of America

By LAWRENCE B. MORRIS, Director of Personnel Contract Relations.

#### *Soundies*

Soundies Distributing Corp. of America, Inc.

By SAMUEL OLIPHANT, Attorney.

## **Newspaper Editorials**

*New York Times*

Oct. 1, 1943

### **PETRILLO'S VICTORY**

The terms of the contract that the Petrillo union has signed with Decca Records, Inc., have now been made known, and they confirm the worst misgivings. Under the contract the company agrees to pay directly to the union a fee on every record sold. The company must file with the union the serial number of each record, together with additional information that the union "may reasonably require." The union may examine the employer's financial records. In return for these and other concessions from the company, it is hard to see what the

Petrillo union gives except willingness to end its strike or boycott. It agrees that all its laws, rules and regulations are formally made a part of the contract. This protects, among other things, the union's continued right to call a strike when it deems it necessary. The union also agrees that it will not change its constitution or by-laws to contravene the terms of the pact. The practical effect of this would appear to be to prevent the members of the union from voting to have the record fees paid to the actual makers of the records, or from changing the constitution or by-laws to give them any greater control of the union's affairs than they have at present.

It need hardly be pointed out how dangerous the precedent here established would be. Under it Mr. Petrillo levies a private tax on employers. At best he will administer the proceeds—estimated at \$500,000 annually if all record companies accept the terms—to set up his own private system of unemployment relief. But there is no public control whatever of the manner in which he uses these funds. If only a small part of the funds do go to pay unemployed musicians, if the bulk of them are used instead to increase the salary or expense accounts of Mr. Petrillo and other union leaders, neither the record companies nor the consuming public that will ultimately pay this private excise tax through higher record prices will have anything to say about the matter. The arrangement renders Mr. Petrillo and his fellow-union leaders financially independent even of the members of their own unions.

If past experience is any guide, the Administration and Congress will be complacent about this contract. Why should they interfere, they will say, with an arrangement that a private concern has voluntarily agreed to? But to take such an attitude is to be willfully blind to the main point, which is that Federal labor policy itself has placed in the hands of labor leaders the private irresponsible powers which enable them to drive bargains so clearly against the public interest.

### *Baltimore Sun*

#### INCREASING THE STATURE OF MR. J. CAESAR PETRILLO

Previous suggestions that Mr. James C. (for Caesar) Petrillo, dictator of the American Federation of Musicians, indulged in a strategic retreat when he decided to let one of the popular recording companies use his union subjects are refuted by the actual terms of the contract now made public. Plainly he demanded—and received—an unconditional surrender.

Several weeks ago the report was that he had abandoned his stand for payment directly into his treasury of fees on all records sold. He was said to be willing to permit the company to pay them, as what might be called royalties, to the musicians who made the records. The contract flatly rejects any such concession. Its terms are precise on the point. The musicians will do the work; his union will collect the fees and have full charge of their spending.

The company, moreover, agrees to allow Mr. Petrillo's agents to examine its books whenever they so desire. It accepts all laws of the union as formal parts of the contract—which means, of course, among other things, that Mr. Petrillo retains the right to call off his men again at any time. It will make no re-recordings and take no pro-

gram transcription "off the air" without first notifying Mr. Petrillo and obtaining his approval. He, in his turn, offers one handsome promise. He graciously assures the company that he will not be "unreasonable" in considering such requests from it.

Look well at this Mr. James C. (for Caesar) Petrillo; he constantly increases in stature. Before this he was the supreme boss in his own baliwick, which extends into every village where people toot horns for pay, boosted to that prominence by a Government which interprets its laws to say that he is exempt from most of their provisions. Now he begins to assume the status of a government himself, to take on some of the attributes of a sovereign state. In effect, he issues a license to a corporation to carry on its business, levies a tax upon it, undertakes to supervise its affairs and enacts the rules under which it shall operate. Will anyone really be surprised if some day soon a frock-coated gentleman turns up in Washington presenting credentials as an ambassador from the principality of Petrillo?

*The Cleveland News*  
Oct. 4, 1943

#### PETRILLO'S \$3,000,000

The terms of the contract which the Decca record making company has signed with James C. Petrillo's musicians union have been made public, along with Petrillo's estimate that the union will receive an annual income from the deal of \$3,000,000 to \$4,000,000.

The union is to get a fee on every record sold. To protect this award, the union is to be furnished with the serial number of every record sold, along with such other information as it "may reasonably require," and is granted the right to examine the company's financial books and sales reports.

The union gives up nothing, the company gains nothing except the consent of the musicians to resume making "canned music" at going rates of pay, plus the royalties.

The public interest is nowhere considered. No one is going to examine the union's books. There are no strings attached as to what purpose this income may be put, private or political. No one except Petrillo and his hand-picked union officials will ever know what becomes of these millions of dollars flowing into the union treasury. Petrillo says he is going to set up a union unemployment fund but this will, of course, be administered as a private Petrillo enterprise just as all affairs of the union are conducted. Anti-Petrillo insurrections have been dealt with so summarily as to discourage union members from interfering with the boss.

Petrillo's control of the federation is just as complete a dictatorship as there is on this earth. Where the contract reads "Federation" it might just as well, for all practical purposes, read "Petrillo." This one man's vast power is now reinforced by an enormous swollen income.

This is as clear an example as can be found for the urgent necessity of national legislation providing for publication of union financial statements. Some unions have taken this step voluntarily. Those of the boss-controlled type such as Petrillo's never will until they are forced. Perhaps the Little Caesar's boast of his \$3,000,000 income will stir Congress to some action.

Oct. 24, 1943

## A CHALLENGE TO CAESAR PETRILLO

After the manner in which James Caesar Petrillo has been getting away with his role as grand dictator of music for the American people, it's refreshing to find the broadcasting companies standing up to him and declaring for a fight to the finish.

Petrillo recently proclaimed his "tremendous victory" in cowing several transcription concerns and making them agree to come across with a special fee for every record they sell.

By the terms of the contracts, this extra money doesn't go to the musicians who play for recordings. All they receive will be their regular high union wages. This tribute must be paid to Petrillo's union. He has said it will be used for an unemployment fund. But since Petrillo has the union in his pocket, there's no power to make him live up to his promise.

No law requires an accounting of union funds. Neither is there any law forcing an employer to pay fees, or dues, to a union. But Petrillo has flatly told a Senate committee that he can do "practically anything under the union constitution to meet any situation."

The broadcasting industry, at least, isn't going to take this Caesar's threats of impositions lying down. Its association calls his exactions from the recording companies "as economically and socially unsound as extortion is immoral and illegal."

Unfortunately, the Petrillo peculiar brand of extortion is untouched by present laws. They not only lack any prohibition of his dictatorial practices, but the anti-trust laws grant the unions sweeping exemptions from prosecution which have been upheld by the United States Supreme Court.

Just consider what Petrillo's latest scheme means. It means the levying, by a private individual, of a special tax on employers. Then after having exercised his self-assumed taxing power, Petrillo personally administers the proceeds, estimated at \$500,000 or more a year from the recording industry alone.

This huge fund, to be vastly increased if Petrillo should get his grip on the broadcasting companies and on the motion picture industry as well, in accordance with a hint he let drop to the Senate committee, would be utilized to set up Petrillo's own private system of unemployment relief.

As has been pointed out, the use of such funds is subject to no official control or public accounting. This virtual excise tax will be passed on to the buyers of the records. Under this contract the union, that is to say Petrillo, may examine the employer's financial records. The employer is barred from scrutinizing the union's finances.

Congress is now considering additional excise taxes to produce much-needed revenue for the Government to carry on the war. Petrillo levies his own tax and not a dollar of it will go to the Government. There's nothing to prevent other labor bosses from following his example.

It remains to be seen whether the broadcasting companies will be able to maintain their stand against Petrillo's threat to extend his aggressions. But whatever

the outcome of this particular case, the menace will not be removed until Congress puts all citizens, employers and employees alike, on a basis of equality before the law.

*New York Times*

Oct. 22, 1943

## MR. PETRILLO MOVES AHEAD

Four more transcription companies have capitulated to Mr. Petrillo, and will doubtless gain a temporary advantage over their more reluctant competitors in doing so. Mr. Petrillo has condescended to sweeten the pill by agreeing that his private unemployment relief scheme, to which he is forcing the companies to contribute, shall be kept separate from other union resources and that no part of the fund may be used for payment of salaries of union officials. The contract provides for a closed shop for members of the Petrillo union in making records. At a time of critical labor shortage, it contains various make-work provisions to give needless jobs.

A panel of the War Labor Board not only approved of the provision obliging the companies to pay a private tax direct to the Petrillo union on every record they make, but by suggesting that "an advisory committee representing the public" be appointed by the chairman of WLB in the administration of the fund, the board panel has given the whole arrangement an official sanction. It does not appear, however, that Mr. Petrillo is under any obligation to take the advice of this "advisory committee." Nor are there any Federal laws whatever which oblige him to make his accounts public, to submit to an independent audit, or to be, in fact, responsible to anybody for what he actually does with the funds.

The principle has now been established, in short, that a labor union leader is able to levy a private tax on employers to maintain a private unemployment relief system. The companies involved have finally agreed to this "voluntarily," of course, but the state of the law and the attitude of the administrators have put Mr. Petrillo in an extremely strong bargaining position and the companies in an extremely weak one. It would not be too much to say that Mr. Petrillo has made this deal thanks to the co-operation of the Federal Government.

*New York Times*

Sept. 23, 1943

## WHY PETRILLO WINS

One of the phonograph record companies has succumbed in large part to Mr. Petrillo's demands. It has signed a four-year contract with him agreeing to pay fees on every record it sells, ranging from one-quarter of a cent on records selling for 35 cents to 5 cents on a \$2 disk. It has still not been made entirely clear to whom these fees are to be paid. According to earlier reports they were to be paid to the musicians actually engaged in making the recordings. It was understood that the musicians, in turn, would be taxed by the Petrillo union to aid its unemployed members. Later reports, however, are that the fees will be paid by the record company direct to the union and not to the musicians making the disks.

Either of these arrangements would be unsound in principle, though the second would be the worse. In either case Mr. Petrillo would be levying a private tax—

in one case on employers, in the other on members of his own union. The second arrangement would be unobjectionable if the members of his union were in fact as well as theory merely voluntary members free to remain with or to leave the union as they saw fit. But their membership is, in fact, obligatory. Through the irresponsible powers that Mr. Petrillo is free to exercise under existing law a musician, no matter how competent, can be effectively prevented from making a livelihood unless he is a member of the Petrillo union. Nevertheless, the membership of the union would presumably retain at least a nominal control over the funds that they were forced to turn into its treasury.

If the fees on record sales are to be paid directly to the Petrillo union, however, the resulting situation would be much worse. In that case Mr. Petrillo would be levying his private tax on employers. At best he would be administering a private system of unemployment relief. But there would be no public control whatever of the

manner in which he used these funds. If only a small part of the funds actually went for paying unemployed musicians, if the bulk of them were used instead to increase the salaries or expense accounts of Mr. Petrillo and other union leaders, neither the record companies nor the consuming public that ultimately paid this private excise tax through higher record prices would have anything to say about the matter. If Mr. Petrillo can succeed in getting this principle established, he will render himself and his fellow union leaders financially independent even of the members of their own unions.

It would be lacking in clarity of thought to put the primary blame for the resulting situation either on Mr. Petrillo personally or on any record company that succumbs to his terms. The primary blame must be placed on the Administration and Congress, who, by their official labor policy, have placed in the hands of labor leaders the private irresponsible powers which enable them to drive such anti-social bargains.