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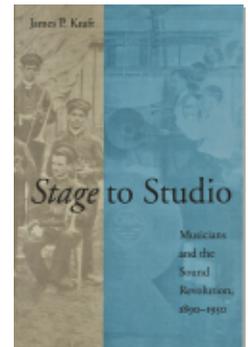
Stage to Studio

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Seven

Balancing Success and Failure

DURING WORLD WAR II the American Federation of Musicians (AFM) won important concessions from employers, but after the war the labor history of musicians, like that of other workers at the time, was stormy. Industrial conflict intensified as the war ended. In the two months following V-J Day, the number of workdays lost nationwide to work stoppages skyrocketed. Across the country hundreds of thousands of miners, machinists, longshoremen, steelworkers, truck drivers, and other workers walked off their jobs, sometimes in defiance of their own unions. The resulting conflict peaked in 1946, when approximately 4.6 million workers found themselves involved in strikes.

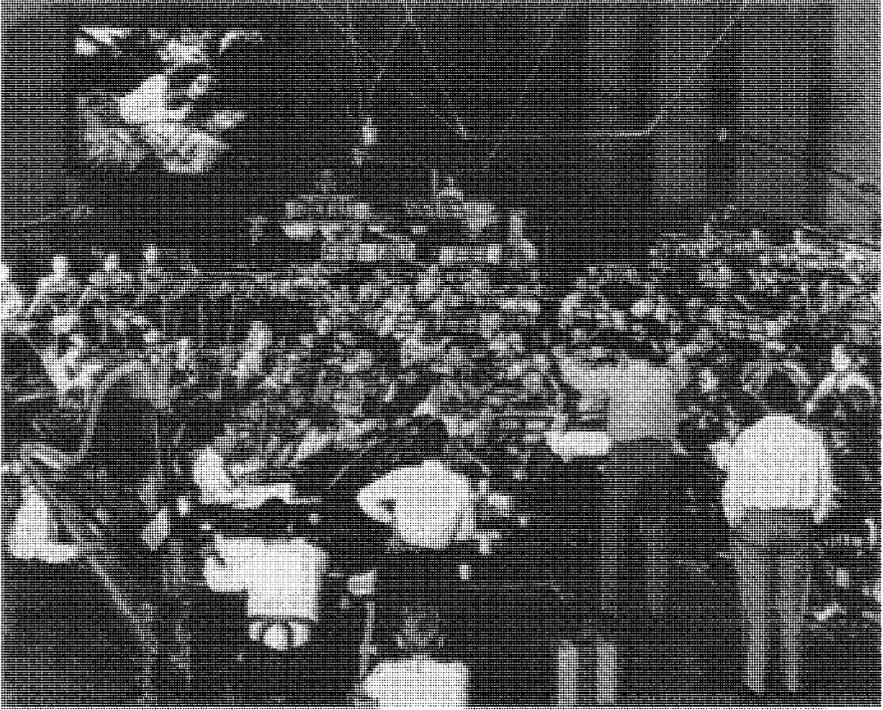
To unionized workers, at least, this unprecedented activism was justified, even overdue. They—and nonunionists too, though it is difficult to generalize about them because they have been so little studied—had made major sacrifices during the war, enduring extended hours, hazardous conditions, and uncompensated speed-ups while honoring no-strike pledges and wage freezes. Yet neither the public, the government, nor employers showed much appreciation for the sacrifices workers had made. When the government lifted price controls at the end of the war, wage controls remained in force, which allowed living costs to rise while income remained flat. When wage controls did end, employers resisted wage increases even though many of them had reaped huge profits from war-related contracts. At the same time, industrial and other war-related employment plum-

meted as the government canceled those contracts before industries had retooled for peacetime production and millions of discharged soldiers were returning to the civilian workforce. The net effect of these developments was to decrease job security and lower real income for vast numbers of workers.

Responding to one of the largest and costliest strike waves in the nation's history, lawmakers began to reexamine New Deal labor legislation, which many of them thought was at least partly responsible for the unprecedented levels of labor unrest. Across the country newspaper headlines condemned the strikes and the unions that had called them, and public opinion became increasingly antiunion if not antilabor. By the time of the 1946 congressional elections, public as well as congressional opinion had shifted decisively against unions and the New Deal coalition that had supported them. President Roosevelt, who had generally sympathized with organized workers, was succeeded in the spring of 1945 by Vice President Harry Truman, whose attitudes toward labor were unknown and thus problematic, and whose political clout was limited. In the postwar climate of opinion, however, even Roosevelt would have been hard-pressed to defend the interests of labor because the depression-era coalitions that had passed the Wagner Act, the Fair Labor Standards Act, and other pieces of pro-union and pro-labor legislation had been steadily eroded in the congressional elections of 1940, 1942, and 1944.

This changing political climate had major implications for musicians and their union. Indeed, it presented the most serious challenge they had faced since the advent of sound movies. The growing influence of the federal government in industrial relations meant that the future of the Record and Transcription Fund as well as of musicians in radio depended upon the government. The fact that the changing political mood coincided with advances in broadcasting technology increased the significance of that dependence. The spread of FM radio broadcasting and the beginnings of television raised hopes for new employment, but those hopes depended on the willingness of Congress to enact laws enabling musicians to protect musical employment in those industries. Against the backdrop of evolving government-business relations in the post-World War II years, musicians continued their efforts to safeguard what they already had while trying to exploit further changes in broadcasting technology.

WHEN WORLD WAR II ended, American musicians had been coping with the effects of rapid technological change for two decades and more.



Renowned composer Dimitri Tiomkin, his back to the camera, conducts studio musicians playing the score for *Duel in the Sun*, a David O. Selznick production of 1946. After World War II some 250 musicians held full-time jobs in motion-picture studios; another 2,500 worked in radio. (*Dimitri Tiomkin Collection, Cinema-Television Library, University of Southern California*)

Despite the loss of theater employment, they could point to meaningful accomplishments in other areas. Their wages in the record industry now exceeded \$2 million a year, and industry payments into the record-royalty fund generated another \$1.5 million. The motion-picture industry now provided full-time employment for 250 instrumentalists and part-time work for another 5,000. The aggregate annual income for these musicians was perhaps \$2.5 million. Income from radio was even more impressive. There, musicians had twenty-five hundred full-time jobs and a number of part-time jobs that cannot be determined precisely; instrumentalists in radio earned more than \$21 million a year.¹

Ongoing changes in broadcasting fueled hopes for even more employ-

ment in radio. During the 1930s the advent and subsequent spread of static-free, frequency-modulation broadcasting and the first experimental television transmissions not only fascinated the public but raised the hopes of musicians too. The commercial potential of both of these media was clear by 1940, but World War II delayed its realization for a decade. When the peacetime economy returned, however, entrepreneurs began to capitalize on these technologies. By the end of 1944 a number of FM radio stations and the first few television stations had appeared in media centers, and musicians watched both developments expectantly. Would FM and television make conventional radio obsolete, as some musicians feared? Or, as others anticipated, would they encourage the revival of vaudeville and with it new musical employment? Did FM jeopardize radio orchestras? Or did it promise to compete with AM radio and thus open more jobs for musicians? And what strategies should the union pursue in these rapidly changing times?

Entrepreneurs were better prepared than musicians for the new technological developments. RCA and CBS invested heavily in FM and television technology from the outset and clearly intended to use recorded music in both. NBC, a subsidiary of RCA, had expanded its library of recorded music in anticipation of the programming needs of the new media. The library included more than ten thousand recordings, neatly catalogued according to programming usage. Those with the general designation of "Dramatic Atmosphere," for example, were subdivided into categories labeled "Aftermath," "Haunted House," "Snow Scene," "Motif for Murder," "Stop Press," and the like; those earmarked "Fanfare" were similarly broken down into "Big Moment," "Exhilaration," "Majestic," "Light Atmosphere," "Shopping Center," and other categories.² The fact that the networks did not consult the AFM concerning staff orchestras for the new media was a portent of their intentions.

AFM leaders foresaw a bitter struggle over the employment of musicians in FM radio. In 1944 the new chairman of the Federal Communications Commission (FCC), Paul Porter, who had been a lawyer for CBS, reversed the commission policy that forbade simultaneous broadcasting over AM and FM channels. Musicians opposed such duplication because it discouraged the rise of an independent FM radio, which they hoped would compete with AM broadcasts for sponsors and audiences and thereby generate new employment for musicians. Porter's ruling promised to make FM an extension of AM rather than an alternative to it, in which case the networks, given their resources, would dominate FM broadcasting. Porter's

ruling allowed, among other things, network sponsors to send the same advertisement over the two media simultaneously at little or no extra cost.³

Since management and government promised little help on these matters, the union would have to help itself. In September 1944 the AFM told broadcasters they must obtain a license from the union to transmit the live music of union musicians over FM channels. The purpose of the directive was to halt duplicate broadcasts of AM programs on FM stations. Network executives responded with a flurry of protests. "There is no extra effort required of musicians for FM broadcasting," NBC president Niles Trammell told Petrillo; and in any case AM programs were sent to FM affiliates "without any additional charge to the advertisers" or profits to broadcasters. CBS vice president Paul Kesten asked for an immediate meeting with Petrillo concerning the union directive, so that there would be "no misunderstanding regarding this situation."⁴

Petrillo replied curtly. "Your understanding of the entire FM matter is erroneous," he told Trammell. "There is no misunderstanding on the FM situation," he likewise told Kesten. "The plain facts are that no one received permission to use members of the AFM for FM broadcasting." Petrillo refused even to discuss the issue until the broadcasters agreed to allow the union to license FM broadcasts of musicians. "I will only meet with the networks," he said, "when I am advised . . . that members of the AFM are not being used for FM broadcasting purposes."⁵

While Petrillo was thus working to safeguard the interests of musicians in FM broadcasting, he was endeavoring to do the same thing in television. For two years during the war, when the new and untested medium was in its infancy, the union had permitted musicians to perform in television experiments at wages of \$18 an hour. Only a few had done so. But as the radio networks tightened their grip on the fledgling television industry, union leaders began pressing for assurances that musicians would benefit from the medium. Accordingly, in February 1945 the union announced that its members would "not play for Television in any form until further notice." Petrillo then told the networks that he wanted a clear idea of the impact of television before he committed musicians to specific wages and working conditions. "Television," he said, "is not going to grow at the expense of the musicians."⁶

The rank and file let Petrillo take the initiative in these matters. "They backed it up," one union official said of Petrillo's action concerning television; "there wasn't any resentment from the membership." But such statements can mislead. In 1945, when the future of FM and television was un-

clear, most musicians thought little of Petrillo's initiatives. "[They] didn't mean much to me," one working musician recalled. Even those most likely to benefit from the new media expressed ambivalence about the prohibitions. Studio guitarist Roc Hilman, who worked in television in the 1950s, explained that in the 1940s "television was so new that it wasn't too important." Trumpeter Bob Fleming, who traveled with Kay Kyser's orchestra in 1945, agreed. In that year, he said, "as long as I played well, that's all I was interested in." But Petrillo and other union leaders had clearer perceptions of the commercial implications of the new medium, and thus pressured broadcasters for jobs and other guarantees.⁷

Tension mounted. Broadcasters insisted that television was in no position to employ staff orchestras or match the pay scales of radio. At the same time, the networks ignored Petrillo's demands concerning FM broadcasting. As a result, in October 1945 Petrillo sent a telegram to broadcasters threatening a strike against the networks, which now numbered four since antitrust rulings had forced NBC to sell its Blue Network, which became the American Broadcasting Company (ABC). Petrillo demanded that broadcasters employ separate orchestras of equal size for AM and FM channels if they duplicated programs on the two media. Standby fees were not acceptable in lieu of the actual employment of musicians. To encourage an independent FM medium, Petrillo urged AFM locals to negotiate agreements of their own with independent FM stations.⁸

Broadcasters faced a dilemma. To hire double crews, as the union demanded, or offer musicians additional wages for duplicating their services would raise the cost of labor and perhaps encourage other workers, such as writers and technicians, to make similar demands. Yet the networks were ill prepared for a strike. Their most popular programs depended on live musical accompaniment; indeed, live music had become a trademark of network broadcasting, one of the things that distinguished it from local programming.

In the face of Petrillo's demand, therefore, the networks decided to halt FM broadcasting. The fact that the FCC had recently altered FM wavelength assignments influenced this decision, for the new assignments could more easily be achieved if all stations simultaneously shut down their FM operations while they modified their transmitters. Kesten explained the action of CBS in this matter to its affiliated stations in telegrams that sharply criticized the union. The networks, he said, "cannot assume the impossible burden which would result from the musicians' demands." Doing so would "seriously retard the development of FM broadcasting," added

Kesten, who hoped the FCC would find ways to protect the industry. But the FCC could do nothing. In a speech to broadcasters in Cleveland in October, FCC chairman Paul Porter reminded them of the limits of the commission's power. The commission "is in favor of duplicate programs," Porter said, "but Petrillo has overruled the FCC."⁹

The broadcasters' continuing hopes of help from the FCC were dashed in March 1946, when the commission released a report criticizing the programming policies of local stations. The report, *Public Service Responsibility of Broadcast Licensees*—nicknamed the Blue Book because of the color of its cover—called attention to the disparities between what broadcasters promised when applying for license renewals and what they actually did after the licenses were renewed. In accordance with FCC codes the broadcasters invariably promised to make time available for local programming employing local talent. A study of over eight hundred program logs, however, found that broadcasters generally broke those promises and filled the air instead with advertisements, recorded music, and network programming. Most stations, the report said, were "mere common carriers of program material piped in from outside the community." As a result, the average local station employed no musicians or actors. The report suggested that the FCC should no longer automatically renew broadcasting licenses but should instead compare the promises and performances of stations and act as the comparison dictated.¹⁰

Broadcasters and advertising agencies responded to the report with a barrage of criticism. *Broadcasting* described the report as "contrary to the precepts of the Constitution" and compared it with developments that "led the German and Italian people down a dismal road" to Nazism and fascism. Similarly, the head of a leading advertising agency, Lewis H. Avery, accused the FCC of seeking to impose "a diet of forced feeding on the American listening people." Justin Miller, head of the National Association of Broadcasters (NAB), suggested that station owners refuse to release program logs to the FCC to test the constitutionality of the agency's licensing powers.¹¹

Such rhetoric gave the AFM little incentive to back away from its hard-fisted tactics. On the contrary, it affirmed the conviction of union leaders that broadcasters would never willingly share the profits of FM and television, and that wrestling concessions from them would therefore be difficult, perhaps even impossible. Moreover, by withholding musical services from FM and television, the union again opened itself to charges of Luddism and to criticism as well from some musicians in media centers. Yet how

else could the union protect the interests of instrumentalists? Experience showed that only aggressive activity had any chance of succeeding.

WHILE MUSICIANS pondered these matters, Petrillo and the union became objects of new initiatives in Congress. In 1944 Petrillo had been a symbol of defiant labor, and a group of congressmen tried for the first time to pass legislation to curb him and his union. Republican Senator Arthur H. Vandenberg of Michigan had proposed an amendment to the Communications Act of 1934 to prohibit union interference with noncommercial and educational programs on radio. The Senate passed the amendment, but the House of Representatives adjourned without doing so.

In 1945 the Senate again passed the amendment, while the House authorized an investigation of "coercive practices in broadcasting." The Committee on Interstate and Foreign Commerce, chaired by Democrat Clarence F. Lea of California, conducted the investigation between February and May and concluded that Petrillo was indeed guilty of "abuses of power" that necessitated corrective legislation. As a result, in early 1946 George A. Dondero, a Republican from Vandenberg's home state of Michigan, introduced legislation in the House aimed at Petrillo. The bill called for much harsher measures than the Senate had contemplated in passing the Vandenberg amendment.

The "Anti-Petrillo Act," as the bill came to be known, made it illegal for employees in radio to use "intimidation" or "other means" to force broadcasters to hire persons "in excess of the number of employees needed" or to pay for services "which are not to be performed." Violators could be imprisoned for up to a year and fined up to \$1,000. Clearly, the purpose of the legislation was to outlaw the union practice of demanding minimum-size and standby orchestras, a practice that was the source of many musicians' income.¹²

During the House debate over the bill, Democrats and Republicans alike described Petrillo in language reminiscent of that used in newspaper editorials during the early weeks of the recording ban. He was variously a "racketeer," a "power-grasping dictator," and a "big rat" who, as the occasion demanded, used "larceny," "embezzlement," or "extortion" to get his way. Lea and Dondero led the attack but found strong bipartisan support. Representative Lyle H. Boren, a Democrat from Oklahoma, called Petrillo a "despot who tramples upon the democratic principles under which the American people want to live." Harris Ellsworth, an Oregon Republican, agreed. "We have weeds in gardens and we have pests to bother animals

and human beings,” Ellsworth said, “and temporarily . . . we have Petrillo to bother the American broadcasting industry.” Democrat Chet Holifield of California compared Petrillo with another unpopular labor leader, John L. Lewis, calling both men a “stench in the nostrils to legitimate organized labor unions.”¹³

The debate made it clear that Petrillo’s recent demands upon FM and television lay behind the bill. In fact, the report of the Lea committee contained a copy of the telegram Petrillo had sent to broadcasters prohibiting AM-FM duplication. Lea called the prohibition an “absurdity” that would force broadcasters to “needlessly duplicate” music. Under the prohibition, he explained, an AM radio station with a ninety-five-piece orchestra—a ridiculously inflated figure, considering that the average size of radio orchestras was probably six or eight pieces—would have to employ 190 musicians to broadcast music over an FM channel. Petrillo, warned Democratic Congressman L. Mendel Rivers of South Carolina, “has it in his power to kill once and for all frequency modulation. If he continues, television is dead and buried.”¹⁴

The little support Petrillo had in the debate came from congressmen representing centers in which the AFM and its members had influence in local politics and labor councils. That resolute friend of labor, Vito Marcantonio of New York, one of two congressmen from the American Labor Party, called the attack on Petrillo a “smokescreen” designed “to prohibit the average American musician from getting some share of the enormous profits that come out of these [entertainment industry] monopolies.” Democrats Benjamin J. Rabin and Emanuel Celler, also from New York, pointed out that musicians were trying desperately to fend off technological displacement. Rabin insisted that the real question was whether musicians would “get their share of the wealth that is created by these new machines,” while Celler maintained that musicians who were receiving \$3 million annually from the recording industry were taking “the place of live musicians who would receive for their work approximately \$100 million.” Celler added, “Musicians are getting a raw deal from canned music,” and he urged his colleagues “to hold out a helping hand” and not “slash and smash” musicians with a “Draconian” law. Democrat Adolf J. Sabath from Chicago agreed. “Even musicians,” he said, “have to eat.”¹⁵

Such pleas fell on deaf ears. On February 21 the House passed the Lea bill by the lopsided margin of 222 to 43. When some senators suggested that the House bill differed too much from the Senate-approved Vandenberg bill, worried union officials breathed sighs of relief. But in the confer-

ence to reconcile the bills, Lea and other House conferees defended the House version, and the bill that emerged from the conference was that version virtually intact. Despite impassioned pleas from Marcantonio, the House approved the conference bill, as did the Senate, with barely a quorum present, forty-seven to three. Ten days later President Truman signed the act into law, making musicians another group of workers against whom Congress had enacted a specific law.¹⁶

Musicians responded to the new law with denunciations of their own. *Overture* suggested that Congress had become “hysterical” and “voted away” the rights of musicians. “Reactionary politicians,” the editorialist explained, had gone “on a rampage” at the behest of broadcasters who had persuaded Congress to “paralyze” musicians because the broadcasters were “quite frankly worried about paying for FM and television.” At the union’s annual convention in St. Petersburg, Florida, Petrillo repeated the charge that the new law stemmed from the cozy relationship between Congress and radio. Congressman Lea himself was a close friend of NAB president Justin Miller, Petrillo noted, and that friendship had helped Miller rise in the ranks of the NAB. Petrillo similarly accused Congressman Eugene Cox of Georgia, who had called Petrillo a “racketeer” in the House debate, of accepting \$25,000 from broadcasters in return for influencing FCC policy. He also reminded delegates that Democratic Senator Burton K. Wheeler owned a radio station in Spokane, Washington, and was a member of the NAB.¹⁷

In saying these things Petrillo had scratched the surface of a growing and problematic link between Congress and radio. Surveys of station ownership in trade journals help explain why many lawmakers supported the interests of broadcasters. In 1946 several House members, including Republicans Arthur Capper of Kansas, Harris Ellsworth of Oregon, Alvin E. O’Konski of Wisconsin, and John Phillips of California, as well as the wife of Democratic congressman Lyndon B. Johnson of Texas, owned radio stations. At least two senators besides Wheeler did also: Republicans Chan Gurney of South Dakota and William F. Knowland of California.¹⁸

Other business interests tied other members of Congress to broadcasters, though in less direct ways. Republican senator Homer E. Capehart of Indiana, for example, who had once owned a radio-manufacturing firm, had investments in a commercial record company. Personal friendships and kin relationships linked other congressmen besides Lea to radio. *Broadcasting* referred to Senator Vandenberg as a “lifelong friend and confidant” of the owner of two Michigan stations. Republican Robert A. Taft,

then head of the Republican Party's policy committee in the Senate, had relatives in radio. Taft's cousin, Hulbert Taft, Jr., owned two Cincinnati stations and was president of Transit Radio Incorporated, a multimillion-dollar business that linked FM radio to public transit services. Another relative, David G. Taft, was director of a recently formed organization that advanced the interests of FM broadcasters. This pattern of relationships led union counsel Joseph Padway to tell the annual convention of the union in 1947 that the origins of the new antilabor laws lay in the "pressure of men such as RCA's David Sarnoff and CBS's Bill Paley."¹⁹

Passage of the Lea Act cannot be explained by such financial and personal relationships alone. Perhaps more significant was the context of the times. The year 1946 was one of the most tumultuous in the history of American labor. In January 1.2 million workers struck the automobile, electrical, and steel industries. During February the number of workdays lost to strikes nationwide totaled twenty-three million, approximately 3 percent of all work time. Nor was the unrest limited to industrial workers. Many teachers, public utility workers, and other service sector employees also walked off their jobs. By the time the Lea bill reached Congress, lawmakers at both the state and the federal level were far less tolerant of strike activity than they had been only a short time before. In fact, the Lea bill was but one of a growing number of antilabor initiatives undertaken in 1946. Only a veto by President Truman prevented the Case Act—which outlawed several longstanding trade union practices, including the right to strike without giving prior notice—from becoming law.

This was also a time when more and more Americans were worrying about the spread of left-wing ideologies at home as well as abroad. The deterioration of Soviet-American relations and the problematic future of capitalism and democracy in Eastern Europe and elsewhere raised questions about the relationship between militant trade unionism and the nation's way of life. Communists in fact dominated the leadership of some trade unions, especially at local levels. Leaders of various automotive, electrical, and maritime unions, to illustrate, endorsed communist ideology. The votes on the Lea Act reflected in part these growing concerns about communism and in part the emerging backlash against union activism and criticism of American industrial practices.

Many congressmen no doubt understood that musicians faced serious problems because of changing technologies and ways of doing business in the entertainment industries. But they also understood that some of the practices of Petrillo and his union adversely affected hundreds of businesses

that contributed to the nation's economy. Indeed, musicians were not the only ones with stakes in recording and broadcasting. The livelihoods of thousands of technicians, salesmen, assembly line workers, and other employees outside of music depended on the radio and recording industries. Many lawmakers might well have concluded that for the sake of society at large, musicians and their union would have to adapt to new technology and to the new levels of productivity and production costs that the technology made possible, even though doing so reduced and centralized their job opportunities.

Most Americans, however, probably did not know or understand the significance of the Lea Act. For two decades musicians had maintained a considerable measure of control over the workplace in radio despite technological and organizational changes in the industry. The Lea committee acknowledged this fact but gave it a negative gloss. Because of the union's "coercive efforts," the committee found, "the industry has been forced to comply [with union demands] rather than suffer the penalizations that would follow."²⁰ By outlawing these "coercive" practices, the Lea Act more than punished Petrillo; it fundamentally altered the balance of power between musicians and their employers.

OPPONENTS OF the Lea Act questioned its constitutionality from the beginning, arguing in both House and Senate that it violated constitutional guarantees of free speech and equal protection of the laws and prohibitions against involuntary servitude. By prohibiting musicians from using "intimidation" or "other means" to accomplish their goals, critics maintained, the act violated First Amendment protections of the right to strike and picket and to speak freely. They insisted too that by singling out radio employees, the act breached Fifth Amendment guarantees of due process and equal protection of the law. Finally, they suggested that the act violated Thirteenth Amendment safeguards against involuntary servitude, since it apparently limited the right of musicians to refuse to work.²¹

At the suggestion of Joseph Padway, union leaders set in motion a plan to test the constitutionality of the act. On May 28, as president of the Chicago local, Petrillo asked radio station WAAF to add three musicians to its workforce, promising a strike by station musicians if the request was refused. (Actually the station employed no musicians but did employ three members of the AFM as librarians.) When the owner refused, Petrillo called the union members out on strike and placed a token picket line of one man in front of the station. Explaining his actions to reporters, Petrillo

admitted to violating the Lea Act but said he was ready “to face the music.” At the union convention a week later he told delegates, “I am now waiting for a marshal of the United States to arrest me.”²²

After the FBI and the Department of Justice reviewed the case, U.S. attorney J. Albert Woll filed suit against Petrillo, maintaining that he had violated the law by attempting to coerce a licensed radio broadcaster into hiring unnecessary employees. Petrillo’s action, Woll said, amounted to racketeering. After an initial hearing, Petrillo posted bail and Padway petitioned the court to dismiss the case on the grounds that the Lea Act was unconstitutional.²³

On December 2, 1946, Judge Walter J. La Buy elated musicians by endorsing Padway’s argument and dismissing the charges against Petrillo. In an eight-page opinion La Buy ruled that the Lea Act violated the First, Fifth, and Thirteenth Amendments. He also ruled that Petrillo had not demanded that WAAF hire musicians “in excess” of the number needed because “there is no means, or guide, or standard by which the defendant may know ‘the number of employees needed.’” Petrillo was not present when La Buy read his decision, but he quickly called a press conference and praised the judge for “upholding the constitution.”²⁴

Petrillo’s celebration was short-lived. The Department of Justice promptly appealed La Buy’s ruling, and on June 23, 1947, the Supreme Court upheld the appeal and the constitutionality of the Lea Act and ordered that Petrillo be tried on the original charges. Writing for the high court, Justice Hugo Black denied that the Lea Act unfairly singled out employees in radio, and he rejected the argument that the phrase “more employees than needed” was unconstitutionally vague. Black abstained from ruling on whether the law violated the First and Thirteenth Amendments, but he found that “the statute on its face is not in conflict with the First Amendment.” He remanded the case to La Buy for trial.²⁵

News of Black’s decision was one of two shocks the AFM received on the same day. The other was news that Congress had passed a new and far more restrictive labor law aimed not just at musicians but at the trade union movement itself. The Labor-Management Relations Act of 1947 represented the culmination of a long campaign to amend the Wagner Act, the basic piece of New Deal labor legislation and the law most responsible for the rise of mass unionism in the 1930s and 1940s. The new law bore the names of the men who introduced it, Senator Robert A. Taft of Ohio and Representative Fred A. Hartley, Jr., of New Jersey, both Republicans, but it was the offspring of a coalition of conservative political and business lead-

ers that dominated Congress after the elections of 1946. The National Association of Manufacturers, among many other economically powerful and politically influential groups, lobbied for the bill, and the Republican National Committee paid corporate lawyers to draft it. President Truman described the Taft-Hartley Act as “bad for labor, bad for management, and bad for the country,” but the Republican-controlled Congress overrode his veto of it.

By defining many traditional, and traditionally effective, union tactics as “unfair labor practices,” the Taft-Hartley Act was a direct assault on trade unionism itself and thus on the ability of laboring people to protect their interests through collective action. Among its provisions, perhaps the most important for the trade union movement generally was one that allowed states to pass “right to work laws” banning closed shops (all-union workforces). The new law further restricted organized labor, including the AFM, by outlawing sympathy strikes and secondary boycotts. Sympathy from other unions in entertainment industries, especially the International Alliance of Theatrical and Stage Employees (IATSE), had helped striking musicians on several occasions, and musicians had returned the favor. The unambiguous provision in the Taft-Hartley Act against secondary boycotts clearly prevented the AFM from pulling orchestras from network programs in order to assist musicians in network-affiliated stations. As these examples suggest, the Taft-Hartley Act significantly increased managerial control over industrial life by making it far more difficult for workers to challenge their employers.

Measures in the new law pertaining to hiring policies and employer welfare funds presented special challenges to musicians. Section 8(b), which prohibited unions from forcing employers to pay for services not performed, not only outlawed a longstanding practice of the AFM; it also gave broadcasters new grounds for refusing union demands for minimum-size crews and standby fees. In fact, when a puzzled senator asked for a definition of this provision, Taft referred to the AFM practice of demanding that broadcasters employ more musicians than they wanted or needed. Another provision of the law, which seemed even more hostile to musicians, prohibited workers from forcing an employer to “pay or deliver . . . any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.”²⁶ This provision raised serious questions about the legality of the Record and Transcription Fund, since the fund had been “forced” from employers by collective bargaining.

Legally and politically, musicians had never been more vulnerable. In a span of fourteen months Congress and the courts had dealt them two severe blows. The federal government had aligned itself with the interests of employers and seriously undermined the ability of musicians to bargain collectively. The musicians' hard-won employment fund was threatened and their bargaining power in radio in shambles. Employment patterns soon showed the results of the changes. Backed by the Lea and Taft-Hartley acts, network affiliates downsized or eliminated orchestras as existing contracts expired. Between May and November about twenty radio stations discharged more than 140 full-time instrumentalists.

Ironically, as their power and job opportunities declined, growing numbers of musicians were joining the AFM. From 1944 to 1948, a period during which unionization among all skilled workers in the nation rose by about 6 percent, AFM membership jumped by 58 percent, from 147,000 to 232,000. The return of servicemen to civilian life cannot explain this anomaly. The unique pattern is probably attributable to the union's successes and Petrillo's high profile during the 1940s. The conflict and controversy that surrounded those successes, and that surrounded Petrillo himself, made Petrillo as well known as any other labor leader in the nation, including even John L. Lewis. Even though journalists and public officials often portrayed him as nothing more than a tin-pot dictator, Petrillo was to thousands of marginalized musicians a champion they identified with as working people. In 1943 and 1944, when Petrillo and his union wrested royalties from leading record and transcription firms, many of these musicians apparently concluded that union cards provided them the best hope they had, not only for jobs but also for the sense of control over their own lives that promised the fulfillment or self-worth they craved. But the extraordinary growth of the union could also be attributed to the public image of popular big bands and the exciting lifestyles they seemed to represent. Contrary to the union's own predictions about the consequences of mechanization, large numbers of young people continued to learn to play musical instruments, apparently in hopes of entering the small, elite, and glamorous groups of musicians who dominated public images of working musicians. Closed-shop hiring policies in clubs, restaurants, and radio stations no doubt also encouraged star-struck youth to join the AFM.

Whatever the explanation, the burgeoning growth in union membership affected large and small locals alike. Between 1944 and 1948, membership in New York Local 802 rose from 22,000 to 31,500, while that in Toledo Local 15 increased from 413 to 582; Milwaukee Local 8 grew from

1,579 to 2,268. During the same period some locals more than doubled their membership. In Sacramento, for example, membership jumped from 319 to 771, while in Cincinnati that of the union of black musicians grew from 53 to 124. The swelling size of the AFM undoubtedly emboldened Petrillo in his dealings with management, but it must also have reminded him of the pressing need to augment employment opportunities.²⁷

PETRILLO HAD LED employers to expect an all-out campaign by the union to protect the interests of musicians. At the 1946 convention of the AFM, he talked of a nationwide radio strike if the courts upheld the Lea Act, and he promised to halt all recording if record companies stopped paying into the record-royalty fund. According to the *New York Times*, delegates rose to their feet to cheer this resoluteness, which Petrillo reaffirmed the next year by backing a proposal to give union leaders the power to initiate a second nationwide recording ban.²⁸

Petrillo's determination to fight became more apparent shortly after the 1947 convention, when he and other union leaders met network representatives to renegotiate industrywide contracts, which were scheduled to expire on January 31, 1948. Months before, Petrillo had told broadcasters that mounting problems in the industry might prevent renewal of the contracts. He clearly hoped that a warning would cause industry leaders to make concessions on FM and television and to pressure their affiliates to maintain staff orchestras large enough to appease the union. The broadcasters, however, brushed off the warning and agreed only that negotiations for new contracts should begin in due course. This prompted the union to raise the stakes in what became a war of nerves. When industry leaders left Chicago following the initial negotiations, the executive board gave Petrillo power to decide whether negotiations were satisfactory or whether the existing contracts should be allowed to expire.²⁹

Petrillo also threatened to strike the recording industry. In that industry the problem was the record-royalty fund and how to save it. After three days of wrestling with the problem, union leaders decided in October that there was no alternative to a second ban on recording. The board therefore approved a motion that union members "cease making records and transcriptions on expiration of [existing] contracts." Union musicians, the board announced, would "never again" make recordings, since "ultimately the making of same will destroy the employment opportunities of musicians." Nine days later Petrillo informed industry leaders of the decision. The contract between the industry and the musicians "will not be re-

newed,” he told them. “On and after January 1, 1948, members of the American Federation of Musicians will no longer perform [for record manufacturers].” It is “our declared intention,” he said, “permanently and completely, to abandon that type of employment.”³⁰

The AFM had become engaged in what appeared to be a two-front war against broadcasters and recorders but was in fact a single fight against a unified enemy. Mutual interests accounted for that unity. Without new records, broadcasters lost an essential source of programming material, and without radio, recorders lost the best and cheapest way of advertising their products. The ties uniting the two industries became closer as entrepreneurs in the one expanded into the other and into allied economic activities. In the postwar years radio and recording firms had become basic components of interlocking interests. RCA, to illustrate, not only owned NBC but also, through other subsidiaries, produced phonographs, television sets, radios, and other entertainment-related products. A musicians’ strike would adversely affect all of these activities, and not surprisingly, all of the industries of which they were parts banded together to resist the union.

Cooperation between employers reached new heights in late 1947, when industry leaders organized the All-Industry Music Committee (AIMC), the most formidable new organization musicians had faced since the rise of the NAB. The structure of the AIMC reflected the unity of employers as well as their determination to thwart the union. An executive committee directed overall strategy against the union, while separate subcommittees dealt with legal issues and public relations concerns. Representatives of the NAB, the networks (including their FM and television subsidiaries), record and transcription companies, and radio manufacturers sat on the executive committee as well as all subcommittees. To finance the organization, member companies contributed according to their gross earnings, which meant that major broadcasting and recording companies footed the bill.³¹

The strategy of the AIMC became clear in December, when the executive committee gathered in New York to select heads of the legal and public relations subcommittees. After the gathering adjourned, NAB executive A. D. Jess Willard, whom *Variety* called the “flywheel” of the group, explained the purpose of the organization. Petrillo had inflicted “grave injustices” on music businesses, Willard noted, and the AIMC intended to “acquaint the public with the facts” about him and his union and how they threatened the future of recording and radio. The AIMC was necessary, he said, because of the common threat to all segments of the industry. Em-

ployers “had exchanged ideas and information,” Willard added, “in order that . . . no one group goes off on a tangent”—and, he might have added, to ensure employer solidarity in the looming conflict with musicians.³² If it worked, industry might well emerge from the conflict in firm control of its workforce.

Manufacturers again stockpiled recordings. In a study of the industry at the time, Russell Sanjek, a former vice president of Broadcast Music Incorporated (BMI), noted that as soon as recorders realized that musicians were serious about a new boycott, they speeded up production. “Columbia and Victor,” Sanjek said, “invested two million dollars in a down-to-the-wire frenzy of record cutting, producing 2,000 masters at an average cost of \$1,000 each.” Sanjek explained that the speed-ups were due partly to the fact that the union had stipulated in 1944 that in the event of another recording ban, existing contracts with the union would be invalidated. Recorders would thereby lose exclusive control over the services of star performers, which could eventuate in “a bidding war for talent.”³³

These developments worried AFM officials, but union leaders had more specific incentives to settle their differences with employers. Unlike the first recording ban, the new one would also affect musicians in radio, and therefore it promised greater hardship for rank-and-file musicians and thus for union solidarity itself. Most musicians made recordings to supplement their income from other sources, but hundreds of instrumentalists depended on their jobs in radio for their basic income. A lengthy strike against radio and recording, then, promised to drain union strike funds and foster internecine strife. The union was therefore anxious to keep the door open on negotiations with radio.

With these concerns in mind, Petrillo agreed to meet network representatives in New York in November. To map his strategy, he called together the executive board and representatives from the New York and Los Angeles locals. “He told us,” Local 47 representative Phil Fischer later said of the meeting, “that where heretofore we used to come in and make ‘demands,’ we could now only ‘negotiate,’ with the cards stacked against us in favor of the employers. He told us too that . . . one ill-advised remark might immediately involve us in a violation of [the Lea or Taft-Hartley Act] and throw a monkey-wrench into the negotiations.”³⁴

At the negotiations, which began on November 19, Petrillo acknowledged that the new laws made new patterns of bargaining necessary. Instead of making demands, as he had previously done, Petrillo asked the network representatives to present their vision of the future of musicians in

broadcasting. "Mr. Petrillo made the opening remarks," Fischer recalled, "[that] times have changed and with new laws now on the books, everything is in favor of the employers." He "told them the truth, that you gentlemen know we are not going to 'demand,' we want to know what you want." *Broadcasting* described Petrillo's tactic as a "reversal of his usual [practice] of starting off with exorbitant demands" and suggested that it "caught the nets off guard." Nevertheless, network representatives had a "bill of particulars," which they promptly presented to Petrillo.³⁵

The "bill" focused first on FM and the intent to duplicate live musical performances on AM and FM with no added pay for musicians. The duplication, the networks noted, required no additional labor and meant no additional cost to sponsors.³⁶ The networks intended too to use their radio orchestras for television programming, also with little or no extra pay for musicians. The fledgling television industry, they explained, could not yet afford full-time musicians of its own, or even part-time workers paid at radio wage rates. Broadcasters also proposed to use recorded motion-picture music in television programming and concluded by suggesting that the future of musicians in radio hinged on union policies regarding FM and television. The AFM, they reminded Petrillo, had long burdened radio with unnecessary costs. The networks, they also insisted, had no control over the hiring policies of their affiliates and "could not be of much assistance" in protecting union jobs outside media centers.³⁷

In short, the networks would hire no more musicians than they needed on FM or television, and they would not be intimidated by threats of a strike. This stance was all the more ominous because Petrillo and other union leaders had already concluded that a strike would hurt musicians more than broadcasters. "We knew that by this time," Fischer said. "The chain companies were prepared for a nation-wide strike in radio. The fact that they spent at least \$200,000 in recording themes and bridges for all the radio shows was conclusive proof." Petrillo himself "did not think that a strike would be of any benefit"; and in response to the network proposals, he simply agreed to study them and offer counterproposals in early December. Speaking to reporters after the negotiations, Petrillo admitted that musicians were "worried"; the unknown consequences of FM and television as well as the new labor laws made it more difficult to know how or what to negotiate. "It's not so easy now," he said plaintively.³⁸

Petrillo's response to the industry proposals revealed just how much the new laws had changed his bargaining power. He made no demands. "We would like to have an increase in the number of staff musicians in New

York, Chicago, and Los Angeles,” Petrillo told network representatives, and in affiliated stations as well. He urged the networks to encourage their affiliates to return employment to the levels that had existed before passage of the Lea and the Taft-Hartley acts. He also urged them to hire only union members as “pancake turners” (disc jockeys). The last and rather unexpected request stemmed from the fact that Petrillo and the union had long argued that disc jockeys rendered a musical service and should therefore belong to the AFM. The request, however, seemed to trivialize Petrillo’s final proposal: that network musicians wanted “a substantial increase in wages.”³⁹

These exchanges occurred while the union and the networks awaited the outcome of Petrillo’s trial in the case involving station WAAF in Chicago. Union officials anticipated a favorable decision in the trial, because Judge La Buy had sided with Petrillo in the original hearing. His ruling, they hoped, would improve their bargaining position, which was one reason Petrillo played for time in the negotiations just discussed. Petrillo appeared before La Buy a second time, and instead of challenging the constitutionality of the Lea Act, he pleaded not guilty to the charges of forcing WAAF to hire unneeded musicians and waived his right to a jury trial. The tactic paid off; on January 14, 1948, La Buy exonerated Petrillo.⁴⁰

The ruling kept Petrillo out of jail and discouraged prosecutions of other union leaders under the Lea Act. But it did nothing to deter radio stations from discharging staff musicians. Provisions of the Taft-Hartley Act prohibiting secondary boycotts prevented Petrillo from pulling musicians off network programs to safeguard jobs in affiliate stations, as he had heretofore done. Within six weeks of La Buy’s ruling, in fact, four stations eliminated or downsized their radio orchestras, costing twenty musicians their jobs. WAGA in Atlanta discharged three musicians, while WKBW in Buffalo discharged eight, and two stations in East St. Louis, WTMV and WPEN, together discharged nine.⁴¹

BY THIS TIME Petrillo’s struggle with employers was again the subject of congressional attention. Fred A. Hartley, Jr., of New Jersey, chairman of the House Committee on Education and Labor and co-author of the Taft-Hartley Act, appointed a new subcommittee to investigate the mounting criticisms he and others in Congress had heard of Petrillo and his union. Chaired by Republican Carroll D. Kearns of Pennsylvania, the subcommittee held hearings during the summer of 1947. On July 7 and 8 Petrillo testified at the hearings, fielding criticisms from Kearns as well as Republi-

can representatives Richard M. Nixon of California and O. C. Fisher of Texas, and Democrat Graham A. Barden of North Carolina. The hearings produced no evidence that Petrillo or the union had broken any law, but they set the stage for a barrage of attacks upon him and his dealings with broadcasters. Petrillo, the committee found, wielded the kind of “tyrannical power” that “should not be countenanced nor tolerated in a Free Republic.” He and his union had “held back the technological development of radio” and threatened “to block the . . . development of television.” The recording ban that he was now talking of would “close down over 500 recording companies” and “throw out of employment thousands of people.” Congress should therefore pass legislation curtailing the “monopolistic practices of labor unions which are injurious to the public interest.” Among the practices to be curtailed was that of calling industrywide strikes “such as is threatened by Petrillo in the Recording industry.”⁴²

As a result of the subcommittee report, Hartley scheduled further hearings before the full committee. Broadcasters and other employers of musicians used the hearings to advance their own interests against those of Petrillo and the union. The AIMC spearheaded an effort to line up witnesses and coordinate their testimony. Executives of major radio and record companies and heads of several employer associations testified on behalf of the industry. NAB president Justin Miller, to illustrate the thrust of their testimony, admitted that industrialists cooperated closely when dealing with Petrillo’s union. “Ordinarily, I would not be speaking for the recording companies, the transcription companies, the manufacturers or any of these other groups,” Miller testified, but on “this particular problem we have all gotten together.” As evidence of Petrillo’s “dictatorial” powers, Miller pointed to an interesting fact: fifty-five thousand musicians, roughly a fourth of all AFM members, lived in three media centers, yet at union conventions the locals in these centers cast only 30 of 1,445 votes. This “undemocratic” structure, Miller maintained, accounted for Petrillo’s inordinate control over music services. Miller saved his harshest criticism for Petrillo’s stance concerning FM radio and television. Petrillo’s refusal to permit musicians to work in these media, he insisted, again showed the union leader’s “opposition to modern technology.”⁴³

The highlight of the hearings came on January 21, when Petrillo himself testified. After a week of testimony against the labor leader, committee members had scores of questions for him. “My testimony,” Petrillo said later, “dealt with such diverse subjects as democracy in the AFM, foreign broadcasts, unemployment of musicians, contracts with the motion pic-

ture industry, television and FM, amateur orchestras, and the recording ban.” For more than six hours Petrillo answered questions, once again taking advantage of the spotlight under which his critics had placed him. Asked why people thought of him as a czar or a dictator, he responded by blaming the NAB’s “hold” on “the distribution of communication and news.” He and his union, he explained, were “up against one of the greatest propaganda machines that the city of Washington DC, was ever faced with.” Using its control of “some 400 newspapers [and] every radio station in this country,” he said, the broadcast industry shaped the news for its own purposes and slandered whomever it pleased. “No one was ever more vilified than I have been in the press,” Petrillo contended. “If they would spend half of the money that they spend on cartoons vilifying me as the president of this organization, if they would give it to the musicians, we would all be happy.”⁴⁴ Petrillo ridiculed charges that he or his union opposed technological innovation. “I don’t think anyone in this country,” he scoffed, “is big enough to stop progress.” His union had simply tried to prevent employers from using technology to the detriment of musicians. “We are being destroyed,” he told the committee, and “are trying to protect ourselves in the best way we know how.” Musicians were “ready and willing” to provide services for FM and television, but not on whatever terms their employers offered, and they would return to recording studios when Congress found a way to protect the Record and Transcription Fund.⁴⁵

Petrillo’s performance was impressive. *Variety* thought his “savvy” and “showmanship” had “provided plenty of entertainment for the committee,” while the *Washington Post* called his performance “such that no union member could complain.” *Broadcasting* conceded that he had been “difficult to pin down” and worried that he had effectively countered employers’ attempts to “rattle the chandeliers with tales of suffering.” Even Hartley, who remained convinced of the need for greater restrictions on the power of labor leaders, told reporters, “Mr. Petrillo is a good witness. He’s disarming by his absolute frankness.” Broadcasters and recorders, Hartley added, should have presented a better account of their problems with the union.⁴⁶

A day after Petrillo testified, the AFM’s new legal counsel, Milton Diamond, delivered a more informative and eloquent defense of union practices. Diamond had previously worked for Decca Records, which he helped organize and for which he had been legal counsel and associate chairman of the board of directors. Petrillo selected Diamond to succeed

Gid-Dap!



The press seemed to enjoy portraying Petrillo as a tyrant who opposed progress and ignored the public interest. This Shoemaker cartoon appeared in the *Chicago Daily News*, October 23, 1947.

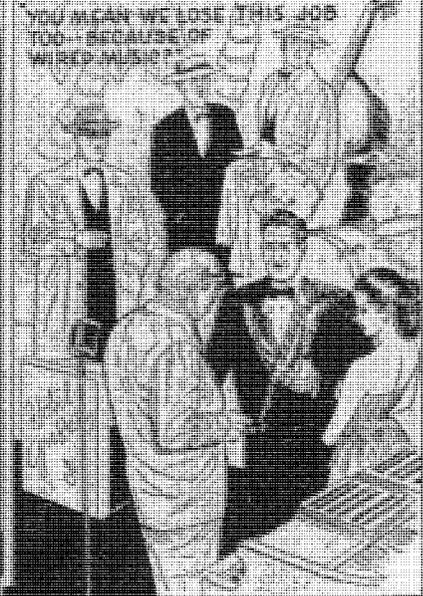
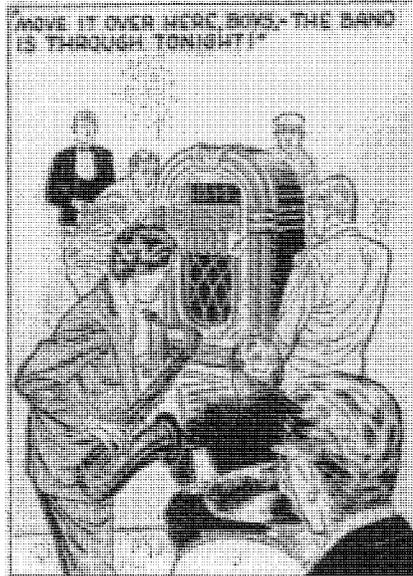
the deceased Joseph Padway as part of a new public relations campaign. Diamond was a respected, mild-mannered expert on the financial and legal structures of the entertainment industry, and his public statements on the union's behalf were all the more effective for his tact. With candor and detail Diamond refuted the charges made in the hearings against the union, and in doing so he undermined the notion that Petrillo had acted against the public interest.⁴⁷

More important, Diamond put the problems of musicians in their social and economic context. The basic question for Congress, he explained, was not how to punish the AFM or its leader but "how to deal with technological displacement of human labor." New methods of recording and broadcasting, he noted, "have displaced, or have the potential of displacing, all but a few of the thousands of musicians who have studied and trained from childhood that their bread might be won by the practice of their profession." Musicians understand "that these wondrous accomplishments have implicit in them the seed of the destruction of musicianship," but they do not oppose progress. Petrillo was not "a modern-day Canute," Diamond said, "peremptorily bidding the tide of scientific progress to halt and recede." He was instead a union leader committed to the well-being of workers confronting problems of technological change.⁴⁸

The effect of Diamond's testimony is unclear, but the Hartley committee made no legislative recommendations. What could the committee have done? Petrillo had violated no law, and his position within the union was secure. "There is no question," the Kearns subcommittee had concluded, "that Mr. Petrillo has the backing of most of the members of the American Federation of Musicians."⁴⁹ The structure of the union and the powers of the president had not changed significantly in half a century. What had changed were employment patterns and opportunities for musicians. It was largely the response of musicians to these changes that brought them and their union to the attention of Congress.

The things said in these public hearing widened the ideological as well as the rhetorical gap separating Petrillo and his critics. Petrillo considered the statements of political and industry leaders insulting. His critics had portrayed him as a backward-looking tyrant, a selfish agitator unmindful of the public good. In defending himself Petrillo presented an interpretation of business history that similarly offended his adversaries. His interpretation stressed themes of monopoly, heartless destruction of jobs, and other evil consequences of concentrated wealth; it also suggested that only aggressive collective action could protect workers from those conse-

WHY THE RECORD BAN - by LEE TERFORD



The AFM labored to answer attacks on Petrillo and justify the second recording ban. This graphic explanation appeared in the *International Musician* of January 1948.

quences. Whatever the merits of these views, they did not seriously threaten employers' control of economic life.⁵⁰

AFTER THE HEARINGS Petrillo and other union officials resumed contract negotiations. On January 26, only five days before the contracts were due to expire, they began a series of talks with network representatives in a final effort to reach an agreement. For several days proposals and counterproposals crossed the negotiating table. Petrillo made the first concession. He agreed to extend the current contracts for sixty days and to accept AM-FM duplication during that time if broadcasters charged advertisers no additional fees for the double exposure. He also agreed to quit pressuring the networks to get their affiliates to hire more musicians. These concessions reflected the union's weakened position. Petrillo surely knew that anything he conceded would be difficult to regain. The green light he gave to FM duplication meant that eight network stations began sending live musical programming to more than 225 outlets, and as the popularity of FM grew, consumers, employers, and public officials would resent any attempt to restrict the medium. Similarly, Petrillo's promise to quit pressuring affiliates through the networks was irreversible. The networks had always resisted the pressure, and the new labor legislation made it illegal.⁵¹

Industry leaders made the most of the contract extension, using it to work out a new negotiating strategy. According to *Variety*, NAB executives met on February 9 and resolved to "hold the line" against Petrillo, noting that it was "more important than ever" that they do so. Thus, as the resumption of negotiations neared, industry leaders were confident they could defeat Petrillo. "The word sifting through to [networks]," reported *Variety* in early March, "is that Petrillo is now anxious to get the whole affair settled as soon as possible."⁵²

When negotiations resumed on March 8, Petrillo suggested that the first order of business be contracts for network orchestras. The union, he said, wanted the networks to increase the number and the wages of their musicians. Network representatives responded that any agreement concerning radio musicians depended on assurances that the musicians would perform on television. They also noted that the networks intended to reduce their musical staffs, and they held the line on wages. The jobs and income of staff musicians, in other words, hinged on new concessions from the union. When Petrillo demurred, the press predicted a strike against radio.

Within a few days, however, Petrillo retreated. When he told negotiators for the networks they would have to "fiddle along on tele" until musi-

cians got what they wanted from radio, the negotiators, according to *Variety*, “arose and started to walk out in a body.” At that point “Petrillo knew the jig was up and threw in the towel.” The new three-year contracts he agreed to guaranteed only that network stations would maintain current levels of employment. In return, the union agreed that the networks could duplicate AM programs on FM and use AM orchestras on television for “reasonable” additional fees (soon set at 66 percent of radio wages). The contracts provided no wage increases.⁵³

Petrillo’s surrender not only revealed the new realities in the working world of musicians; it also showed how dependent on network employment musicians had become. More than 80 percent of the income of musicians in radio now came from fifteen network stations. To strike those stations would cause serious hardship for musicians and would cut off much of the union’s own income from dues. Petrillo’s action thus signaled a major shift in power relations in the industry. The new labor laws gave industry leaders almost complete control of broadcasting and recording technology, and as their control increased, the say-so of musicians over their own work declined.

UNION LEADERS hoped to balance these setbacks in radio with gains in recording. They had reason to be optimistic. Since no instrumentalists worked full-time in recording, the union could afford to maintain the recording ban. In addition, for hundreds of locals the Record and Transcription Fund had become a symbol of pride as well as a vital source of revenue. Support for the recording ban was thus strong. More important, growing numbers of record manufacturers were willing to settle on union terms and continue payments into the Record and Transcription Fund if provisions of the Taft-Hartley Act prohibiting such payments could be circumvented.

By the summer of 1948 union leaders had ample reasons of their own to settle the dispute. If the ban continued much longer, income from the record-royalty fund would disappear. The contracts requiring payments into the fund would expire on July 1, after which the status of the fund itself would become problematic. Furthermore, recording musicians had shown that union solidarity had its limits. Rumors circulated in media centers that record companies were offering musicians long-term employment to break union ranks. Some musicians were apparently contacting those companies and offering to ignore the ban for the right price, even though to do so meant certain expulsion from the union. Moreover, in-



Petrillo and radio network executives (from left, Mark Woods, American Broadcasting Company; Robert Sweezy, Mutual Broadcasting System; Joseph Ream, Columbia Broadcasting System; and Frank Mullen, National Broadcasting Company) enjoy a light moment after signing a three-year contract in March 1948. The trumpet was a gift from Mullen, which Petrillo agreed to play on the first live-music television program broadcast under the new accord. In December Petrillo finally lifted the ban on recordings. (*AP/Wide World Photos*)

creasing numbers of union musicians were making bootleg recordings. Saxophonist Lenny Atkins, who worked for CBS radio during the ban, recalled numerous recordings made in Mexico by AFM members. "Some musicians were taken out of town, to Tijuana," Atkins recalled. "I was shocked at the loyal musicians who went down there. They were hurting the cause."⁵⁴

This disloyalty reflected the fact that some instrumentalists had grown weary of the ban. Musicians in media centers with successful careers in radio, recording, and film studios no doubt resented the periodic disruptions of business. They may have recognized the larger problems of the union, but for them the disruptions meant lost opportunities and income.

Union-imposed quotas, pulling remote broadcasts, and two recording bans had only made the adjustment to new business conditions more difficult for these musicians. Trumpeter Bob Fleming at Walt Disney Studios thought that by 1948 Petrillo had become “obnoxious.” “I thought the union was overdoing it,” Fleming said. Staff guitarist Roc Hilman at radio station KFI in Los Angeles agreed: “I was getting annoyed. I didn’t go for it, the whole idea.” Will Brady of the Kay Kyser Orchestra felt likewise: “The things [Petrillo] was doing with [the union] I didn’t like at all.” Brady and others nevertheless adhered to union policy. After all, as Brady explained, “Petrillo was pretty strong.”⁵⁵

There were other problems too. In the spring of 1948 the AIMC was considering the possibility of filing charges of unfair labor practices against the union on the grounds that the recording ban amounted to a strike against radio and was therefore a secondary boycott as defined by the Taft-Hartley Act. On May 13, attorneys for three transcription companies made the possibility a reality, arguing in separate complaints to the National Labor Relations Board (NLRB) that the union ban had forced transcribers “to cease doing business with . . . the proprietors of approximately 560 radio stations.” The complaints asked for an injunction against the ban, according to provisions of the Wagner Act.⁵⁶

Congress gave union leaders another reason to end the ban when it shelved legislation that would have allowed the union to collect record royalties from the jukebox industry. In early April a House subcommittee on patents and copyrights had recommended eliminating a clause in the 1909 copyright law prohibiting the collection of performance royalties from coin-operated music machines. (The clause had been written for the benefit of player-piano companies.)⁵⁷ Why the recommendation was not acted upon is unclear, but the lobbying efforts of the new trade association, the Music Operators of America, probably played an important role. Well-known crime reporter Lester Velie suggested that big-city mobs with stakes in jukebox businesses and influence in Congress were responsible. Whatever the reason, the failure to amend the copyright law dashed union hopes for a legislative resolution of the struggle over record royalties.⁵⁸

This litany of setbacks, concessions, and anxieties made the annual convention of the union, at Asbury Park, New Jersey, in June 1948, one of the gloomiest in the organization’s history. Clearly disheartened, Petrillo reviewed the preceding year without his customary bluster and bravado. “The cards were stacked against us,” he said of his recent capitulation to the networks. “We had \$26 million in wages tied up in radio and we were

afraid that if we held out too long we might lose that.” He apologized to small locals for being unable to safeguard jobs in local stations, explaining that the new labor laws made that impossible. Because of complaints to the NLRB, he added, he might also have to lift the recording ban. In an especially telling remark he admitted the union’s vulnerability: “Industry is now running the show.”⁵⁹

But all was not lost. As the NLRB considered the complaints against the union and record supplies and sales dwindled, the chances of a favorable settlement with recorders improved. Negotiations continued from September to November, and it became increasingly clear that growing numbers of recorders would agree to continuing payments into a union employment fund. Eventually Milton Diamond and industry representatives hammered out an innovative five-year agreement that got around the legal obstacles raised by the Taft-Hartley Act.

The agreement involved a trusteeship arrangement that circumvented those obstacles by granting the power to collect and spend monies in the fund to a trustee acceptable to both the industry and the union. The trustee would collect from record companies a percentage of the price of each record sold and would in turn see that the revenue thus collected went to finance musical concerts for the public. The royalty payments still ranged from 1 to 2.5 percent of the price of records, transcription companies continued to contribute 3 percent of their gross revenues from leasing records, and AFM locals continued to benefit from the fund. This arrangement received sanction from the federal government in early December, when the NLRB ruled that the boycott of transcription companies did not violate the Taft-Hartley Act, and both the secretary of labor and the attorney general ruled that the trusteeship agreement did not conflict with Taft-Hartley.⁶⁰ The employment fund was thus secure.

The recording ban ended immediately. On December 14, 1948, Petrillo and representatives from eleven record companies signed the trusteeship agreement, which set up the Music Performance Trust Fund. Within three months nearly two hundred companies had endorsed the agreement, and Philadelphia attorney Samuel Rosenbaum had become trustee of the fund. The former radio station owner who represented affiliates in disputes with the union in the late 1930s and early 1940s had since become a friend and confidant of Petrillo and thus stepped into his new role with the union’s blessing.⁶¹

As he customarily did, Petrillo hailed the settlement as a triumph for the labor movement as well as for instrumentalists. The union had indeed

accomplished something meaningful. The settlement saved the royalty fund, thus preserving an important source of income for thousands of musicians and hundreds of union locals. In one year, from the middle of 1949 to the middle of 1950, the new fund provided more than \$1.3 million to finance musical concerts, about the same amount the original fund had generated in 1945. In doing so it financed nearly eighteen thousand performances at veterans' hospitals, symphony halls, and other locations. In this modest but instructive way the AFM showed how labor might be compensated for the effects of technological change. Musicians, then, stood with workers in the automotive, trucking, mining, and other industries who had responded in similarly innovative ways to new circumstances brought on by technological innovation. Among these responses were early retirement plans, increased severance pay, shorter workweeks, voluntary retraining programs, job transfer policies, and assorted fringe benefits tied to specific forms of automation or other forms of technological change.

Securing the Music Performance Trust Fund, however, was a single and limited victory in a period of significant setbacks for musicians and their union. It maintained a benefit won four years earlier and in doing so protected an important source of occasional income for large numbers of musicians. But it was small compensation for the losses in radio or the blighted prospects in FM and television. These new media, musicians now realized, would create few jobs for them in the immediate future. More important, government-business-labor relations had evolved in ways that practically destroyed their union's ability to protect their interests. The collective effects of these changes were soon apparent. Between 1946 and 1950 musicians lost more than five hundred full-time jobs in radio stations affiliated with the networks, and in those years the annual earnings of staff musicians in the industry dropped from \$12 million to \$10 million. Simultaneously, earnings from single-engagement commercial broadcasting fell from more than \$8 million to less than \$5 million.⁶² And this was but a portent of things to come.