A STUDY OF SOME OF THE POLICIES AND PRACTICES OF THE AMERICAN FEDERATION OF MUSICIANS WHICH TENDED TO HAVE A RESTRICTIVE EFFECT ON BROADCAST PROGRAMMING DURING THE DECADE OF THE 1940's

Thesis for the Degree of M. A.

MICHIGAN STATE UNIVERSITY

Albert D. Talbott

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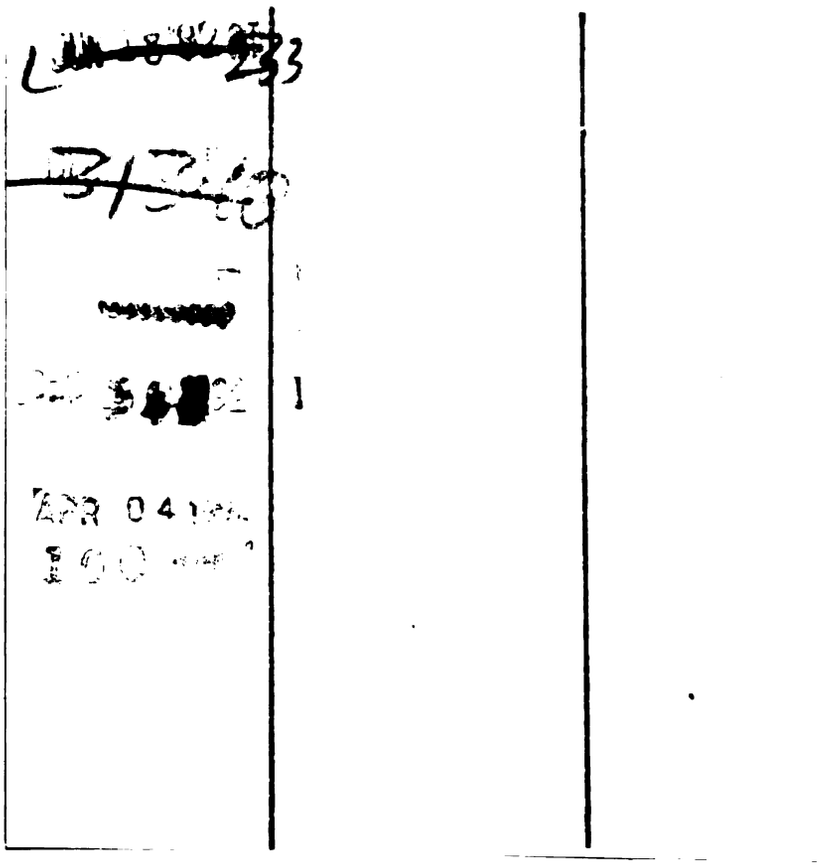
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ABSTRACT

A STUDY OF SOME OF THE POLICIES AND PRACTICES OF THE AMERICAN FEDERATION OF MUSICIANS WHICH TENDED TO HAVE A RESTRICTIVE EFFECT ON BROADCAST PROGRAMMING DURING THE DECADE OF THE 1940's

by Albert D. Talbott

Broadcasting and Federal Policy.--With regard to broadcasting in this country, we are committed to a federal regulatory policy by which the government licenses qualified persons to operate privately owned broadcast facilities on publicly owned broadcast channels. Accompanying the privilege to utilize these channels, the licensee is charged with the responsibility of providing a broadcast operation that serves the "public convenience, interest, or necessity." To implement the latter, both the FCC and the Courts have stressed that the individual licensee must bear the responsibility for the selection and presentation of program material and that this can neither be delegated nor transferred to others, or be unduly affected or restricted by contractual arrangements. Accordingly, this responsibility for maintaining control over programming should not be subject to infringement by outside parties.

The Problem Under Study.--The general problem with which this research was concerned was the restriction of and control over broadcast programming imposed from sources outside the licensee. It was the purpose of the research to make a historical-critical study of this general problem as it was reflected in the policies, practices, and activities of the American Federation of Musicians with respect to the broad-

casting industry during the 1940's.

Sources Used.--The important sources utilized for this study were trade and news publications, official AFM records, and numerous federal government documents of Congress, the FCC, and the Courts. For background material, a number of journal articles and books were consulted as well as numerous accounts in popular contemporary periodicals.

Findings.--A number of instances of AFM policies, practices, and activities which tended to restrict programming were documented. Among them were: (1) secondary boycotts against the national radio networks (1940-1946); (2) restrictions on musicians' employment for FM, TV (both live and film), and cooperatively sponsored programs, and for recordings and transcriptions (1940-1948); (3) restrictions on the TV use of films produced specifically for theatre exhibition (1946-1951); (4) interference with the broadcasting of music programs originating outside the U.S. (1946); and (5) policies affecting the broadcast performances of amateur and military musicians (1940-1947).

In enforcing the above, it was found that the AFM managed to engender considerable opposition and reaction from numerous segments of the American society. At the culmination of this public disapproval, the Lea Act was passed in 1946 as an amendment to the Communications Act for the purpose of stopping such actions of the Union. The study traces the legislative history of the law. Ultimately, the Lea Act had to face a constitutional test which it successfully met. The

decisions which played a part in this test are reviewed. Although the legislation was not immediately and entirely successful in stopping the Union, the AFM ultimately had to bow to the public will. By 1948, the AFM had withdrawn by choice or force nearly every one of its policies of a restrictive nature which had affected broadcast programming.

A STUDY OF SOME OF THE POLICIES AND PRACTICES OF THE AMERICAN FEDERATION OF MUSICIANS WHICH TENDED TO HAVE A RESTRICTIVE EFFECT ON BROADCAST PROGRAMMING DURING THE DECADE OF THE 1940's

By

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I would like to express a debt of gratitude to Dr. Walter B. Emery for his most generous aid and direction in the planning and execution of this project. Also, I would like to dedicate this endeavor to my wife, Rose, and my mother, Mrs. Maude E. Talbott.

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CHAPTER I

INTRODUCTION

Broadcasting and Federal Policy.--In the United States, the public owns the channels which are used for broadcasting.[1] Under the philosophy expressed in the Communications Act of 1934, as amended, we are committed to the policy of private ownership of broadcast facilities, with licenses granted by the federal government to qualified persons to operate on these publicly owned channels in the public interest.[2] Such a policy imposes a responsibility upon the broadcast licensee for the selection and presentation of program material which will serve this public interest.[3] Both the Federal Communications Commission[4] and the courts have stressed that this responsibility rests on the individual licensees, and can neither be delegated nor transferred to others, or be unduly affected or

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[1] 48 Stat. 1064, 1081, 1083 (1934). Sections 301 and 304, respectively.

[2] 48 Stat. 1064, 1083 (1934). Section 307(a).

[3] The Federal Communications Commission stressed this in its report: U. S. Federal Communications Commission, In the Matter of Editorializing by Broadcast Licensees (Docket No. 8516, June 2, 1949), p. 2. (Mimeographed.)

[4] Hereafter in this thesis, the Federal Communications Commission may be referred to as the FCC or the Commission. With respect to the citation of the Federal Communications Commission as an author, hereafter in this thesis, it will be cited as: U.S. FCC.

restricted by contractual arrangements.[5] To be consistent with federal policy, this responsibility for maintaining control over broadcast programming should not be subject to infringement or restriction imposed upon licensees from outside organizations, groups or individuals.

The Nature of the Problem.--During the 1940's, a number of the policies and practices of the American Federation of Musicians[6] tended to have a restrictive effect upon certain types of broadcast programming, notably programs containing

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[5]The FCC stressed this in its report: U. S. FCC, In the Matter of Editorializing by Broadcast Licensees, op. cit., p. 3.

In: Bellingham Broadcasting Co. et al., 8 F.C.C. 159, 165 (1940; the Commission stated:

> The licensee of a radio broadcast station must be necessarily held responsible for all program service and may not delegate his ultimate responsibility for such to others.

In promulgating its regulations on chain broadcasting, the Commission indicated that one of its purposes was to free broadcast licensees from contractual relationships which precluded maintaining control of their broadcast programming. In its report: U.S. FCC, Report on Chain Broadcasting (Docket No. 5060, May 2, 1941), p. 66; the Commission said:

> It is the station, not the network, which is licenseed to serve the public interest. The licensee has the duty of determining what programs shall be broadcast over his station's facilities, and cannot lawfully delegate this duty or transfer the control of his station directly to the network or indirectly to the advertising agency. He cannot lawfully bind himself to accept programs in every case where he cannot sustain the burden of proof that he has a better program. The licensee is obligated to reserve to himself the final decision as to what programs will best serve the public interest.

The network regulations were sustained by the courts in: National Broadcasting Company v. United States, 319 U. S. 190 (1943).

[6]Hereafter in this thesis, the American Federation of Musicians may be referred to as the AFM, the Union, the Federation, or the National.

music. That is, through the implementation of these policies and practices, the AFM was in a position whereby a certain amount of control could be and was exercised over some types of broadcast programs involving the use of instrumental musicians.

Among the earliest of such policies and practicess during the 1940's directly affecting broadcasting was a series of strikes which prevented the networks from presenting late evening radio programs which were originated remotely from night clubs, ballrooms, and other"night spots." The feature of these programs was the popular and "big name" bands and orchestras appearing at the night spots.[7]

Also, the AFM was successful in preventing the broadcasting of the performances of some amateur, school, and military musical groups. The most dramatic and highly publicized of such actions on the part of the Union grew out of the Interlochen dispute. In 1942, the AFM forced the cancellation of the National Broadcasting Company's[8] annual series of summer concerts (of twelve years' standing) featuring the student symphony orchestra of the National Music Camp at Interlochen, Michigan.[9]

Other policies adopted by the Federation affected television. For approximately three years, AFM members were not

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[7]The AFM policies and practices outlined in the above paragraph are covered in detail with full documentation in Chapter III.

[8]Hereafter in this thesis, the National Broadcasting Company may be referred to as NBC

[9]See Footnote 7.

permitted to appear on or perform for any kind of TV program. For a time, the Union was successful in preventing the use on TV of Hollywood feature films containing music of any kind which were produced primarily for theatre exhibition. Also, other policies affected the use of film containing music which was specifically produced for television.[10]

The struggling broadcast medium of FM (frequency modulation) was not exempt from the actions of the AFM. In October of 1945, the AFM demanded that the networks hire double orchestras for all programs which were broadcast simultaneously over AM (amplitude modulation) or standard broadcasting and FM. This policy nearly stopped the use of live music in FM programming. In addition, the Union prevented the feeding of AM network programs containing live music to FM stations. Another Federation Policy prohibited its members from working for FM networks. However, member musicians could be employed for broadcasts of individual stations.[11]

Other policies and practices affected other types of musical programs. The Union almost totally curtailed the broadcasting of musical programs originating outside the United States and Canada in 1946. Another example of such AFM policies and practices was that its members were prohibited from seeking engagments on radio's so-called "cooperative programs." These were commercial programs which were originated by the networks but without sponsorship on the national level. Time was

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[10]See Footnote 7.

[11]See Footnote 7.

reserved during such programs for local sponsors to present commercial messages.[12]

It will be noted from the preceding that the full range of broadcasting services--AM, FM, and TV--was affected in some measure by AFM policies during the forties. However, the important point with respect to this study is that such policies and practices of the AFM did affect the content of certain segments of broadcast programming. Furthermore, a number of these policies were imposed on broadcasters by unilateral determination. In other words, certain policies and practices of the American Federation of Musicians during the 1940's tended to interfere seriously with the ability of duly licensed broadcasters to maintain control over their broadcast programming.

Accordingly, the general problem with which this research is concerned is the restriction on the control over broadcast programming imposed by outside sources, which appears to be inconsistent with federal regulatory policy. It is the purpose of this research to make a historical-critical study of this problem as it is reflected in the policies, practices, and activities of the American Federation of Musicians with respect to the broadcasting industry during the 1940's. Particular emphasis is given to governmental action taken in this matter.

Limitations.--This study is limited to those policies and practices of the American Federation of Musicians which tended to have a restrictive effect on broadcast programming

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[12]See Footnote 7.

presented by U.S. broadcasting facilities during the forties. In addition, with respect to governmental action concerning the AFM and its activities, only the action taken by Congress is of primary concern. One exception involves the judicial review and interpretation of the Lea Act. The Lea Act,[13] passed as an amendment to the Communications Act, represents the most significant action taken by Congress with respect to the problem under consideration.

Definition of Terms.--The American Federation of Musicians is the international labor organization of musicians whose jurisdiction includes instrumental performers, copyists, arrangers of music, and orchestral librarians.[14] It is composed of "local unions of musicians, the individual musicians who form such local unions," and "such organizations active in the field of music which may be granted a charter of affiliation."[15] In 1958, the number of member locals was nearly 700,[16] with a total membership of approximately 264,000.[17] Since this study is limited to the United States, the AFM will

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[13] 60 Stat. 89 (1946). The act had been popularly named after Representative Clarence F. Lea (Calif.) who was instrumental in the passage of the legislation.

[14] American Federation of Musicians of the United States and Canada, Constitution (1958), Art. 3, Sect. 3, p. 6.
With respect to the citation of the American Federation of Musicians of the United States and Canada as an author, hereafter in this thesis, it will be cited as: AFM.

[15] Ibid., Art. 1, p. 5.

[16] AFM. Proceedings, 1958, pp. 189-257.
Hereafter in this thesis, AFM. Proceedings will be cited as: AFM. Proceed.

[17] Ibid., p. 93.

be considered national in scope. Technically speaking, however, the Union is international in scope, i.e., it has members in two countries, the United States and Canada.

By policy of the Federation, what is referred to is that policy formulated in behalf of the national organization by either the national union officers, the executive board, or the convention which was binding on all members.[18] By practices and activities of the Federation, what is referred to is that action which was taken by both the national organization and its member locals to implement the policy of the Federation. Policies, practices, and activities associated with the AFM or its member locals of a strictly local nature involving policies which were not binding on all members of the Union are not within the consideration of this study.

Broadcast programming includes all programming of network organizations (both regional and national), network affiliates, and independent stations. Also, it includes programming on the three broadcast media, AM, FM, and TV.

Significance and Justification.--With respect to some of the policies, practices, and activities of the AFM in the 1940's, one Congressional leader wrote the following in a committee hearing's report to the House:

> In recent years the broadcasting industry has been subjected to extortionate demands enforced by

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[18]The national union officers, the International Executive Board, and the convention are the constituted officers and bodies which can formulate policies, orders, rules, and etc. which are binding on all members. AFM, Constitution, (1958), Art. 4, pp. 7-8; AFM, By-Laws (1958), Art. 1, pp. 19-34. Hereafter in this thesis, the International Executive Board may be referred to as the IEB.

> coercive methods which increasingly threaten to restrict and handicap it in performing its rightful functions to the Nation.[19]

Communication plays an extremely vital role in our complex contemporary society. It would seem that anything that could potentially disrupt the functioning of any segment of our society's complex communications network is worthy of study.

In addition, the general problem still appears to be a current one. In 1959, another labor union of the broadcasting industry, the National Association of Broadcast Employees and Technicians,[20] tried to enforce a policy which was very similar to some of those of the AFM during the 1940's.[21] NABET members refused to handle a video tape recording of a network television program made outside the United States which employed non-union foreign technicians in its production. As a result, there was a work stoppage involving the NABET employees of the National Broadcasting Company. However, only one day's programming was significantly affected. NBC's supervisory employees filled in for the NABET technicians, and near normal

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[19] U.S. House of Representatives, Committee on Interstate and Foreign Commerce, Report: Prohibiting Certain Coercive Practices Affecting Broadcasting, H.R. Rep. No. 1508, pt. 1, 79th Cong., 2nd Sess., 1946, p. 2.

[20] Hereafter in this thesis, the National Association of Broadcast Employees and Technicians may be referred to as NABET.

Membership qualifications for NABET are as follows: "Any person employed or qualified for employment in the broadcasting, telecasting, recording or allied industries, shall be eligible for membership." National Association of Broadcast Employees and Technicians, Constitution (1959), Art. II, Sect. 2.1, p. 4.

[21] For accounts, see: Broadcasting, May 4, 1959, pp. 60-63; New York Times, April 28, 1959, p. 37:4.

programming was resumed on the second day of the work stoppage. This situation does point up the current nature of the problem under consideration. To more fully understand and appreciate the current problem requires a careful study of the situation in the forties which precipitated legislation (the Lea Act) designed to cope with such problems. This legislation is still on the statute books.

Selective Review of the Literature.--With respect to the specific problem being considered, little literature was found which related directly to it. As far as it is known, this study represents one of the first systematic attempts to study the problem and its effects upon broadcast programming and upon the ability of duly licenseed broadcasters to maintain control over their programming.

Charles H. Tower, in an article for Law and Contemporary Problems, examines the general question of union-management relationships in the broadcasting industry.[22] His principal emphasis is on the employer-employee relationship within the framework of collective bargaining and organized labor and not specifically on the possible effects that union policies and practices may have on broadcast programming. However, he does allude to some of the general effects when he discusses the major sources of bargaining strength of broadcast unions.[23] In brief, Tower suggests that some of the broadcast unions may

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[22]Charles H. Tower, "Labor Relations in the Broadcasting Industry," Law and Contemporary Problems, 23 (Winter, 1958), pp. 62-101.

[23]Ibid., pp. 82-85.

derive some additional bargaining power because of the possible interruption that they could cause to broadcast programming through the use of strikes and work stoppages.

In a thesis done at Columbia University entitled, "The American Federation of Musicians and the Radio and Recording Companies: A Report on a Controversy," Anders S. Lunde made a study of the so-called AFM recording ban of 1942.[24] This was a controversy which primarily involved the Federation and the recording and transcription companies. The AFM, in mid-1942 informed the companies that its members would no longer be permitted to make recordings and transcriptions until further notice. The ban resulted in almost complete stoppage of the recording and transcribing of any kind of instrumental music for commercial and home use in certain segments of the recording industry for over two years. Although the radio industry took an active role, it was not directly involved in the dispute except from two standpoints: (1) the radio industry had vested interests in some of the recording and transcription companies, and (2) because of the broadcast industry's extensive reliance on recorded music to fill program schedules, its use of newly recorded music could become seriously affected (especially important in the area of "popular music") if the ban were of prolonged duration. The primary

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[24]Anders S. Lunde, "The American Federation of Musicians and the Radio and Recording Companies: A Report on a Controversy" (Unpublished Master's thesis, Faculty of Political Science, Columbia University, 1947).

The following is based on the thesis: Anders S. Lunde, "The American Federation of Musicians and the Recording Ban," Public Opinion Quarterly, 12 (Spring, 1948), pp. 45-56.

emphasis of the Columbia study is on the recording ban of 1942 and not on the problem under instant consideration as outlined above.

Two other works of some consequence deal specifically with the American Federation of Musicians from other points of view. They are: (1) an extensive two-part article for the University of Chicago Law Review by Vern Countryman,[25] and (2) a book entitled The Musicians and Petrillo by Robert D. Leiter.[26] Countryman's article is concerned with the whole sweep of activities of the AFM which have legal and judicial ramifications with particular emphasis on labor, copyright, and performers' rights with respect to legislation, judicial interpretation and accompanying problems. Leiter's book takes the form of a historical exposition of the national organization of professional instrumental musicians. The emphasis is on the American Federation of Musicians, the national labor organization which survived. Although both of these works touch on the problem under consideration, their chief significances lie in the areas indicated above.

Besides these more extensive studies, there have been a number of journal articles which touch to a lesser degree on

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[25]Vern Countryman, "The Organized Musician: I," University of Chicago Law Review, 16 (Autumn, 1948), pp. 56-85; "The Organized Musician: II," University of Chicago Law Review, 16 (Winter, 1949), pp. 203-297.

A chapter in the following was "reproduced almost verbatim" from Countryman's article: Harry P. Warner, Radio and Television Rights (New York: Matthew Bender and Co., Inc., 1953), pp. 456-521.

[26]Robert D. Leiter, The Musicians and Petrillo (New York: Bookman Associates, Inc., 1953).

the AFM and the Lea Act.[27] Both the journal articles and the above mentioned longer studies tend to regard the Lea Act as a labor law and not as an amendment to the Communications Act. However, the emphasis in this study with regard to the Lea Act is not as a labor law but as a Communications Act amendment. Only one source was found which did regard the Lea Act in this manner, but this was only in one brief section.[28] This was a study completed in 1958 by Monroe Carol at Michigan State University of "Congressional and judicial comments concerning the federal regulation of broadcast programming."

To be sure, the studies and articles cited do deal in some measure and in varying degrees with the possible effects that the policies and practices of labor unions can have on broadcast programming and on the ability of broadcast licensees to maintain control over programming. However, none dealt specifically with this problem area. The research studies seem to be limited, and there appears to be a real need for systematic exploration in the area described.

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[27]As examples, five such journal articles are: Benjamin Aaron, "Governmental Restraints on Featherbedding," Stanford Law Review, 5 (July, 1953), pp. 680-721; Walter L. Daykin, "Featherbedding," Labor Law Journal, 7 (November, 1956), pp. 699-710; "Lea Act, Taft-Hartley and State Remedies for Featherbedding," Columbia Law Review, 15 (May, 1955), pp. 754-62; E. C. Rodriguez, "The Lea Act: An Enactment to Proscribe Certain Coercive Practices Affecting Broadcasting," Georgetown Law Journal, 45 (November, 1946), pp. 79-91; W. A. Roquel, "The Petrillo Problem," Southwestern Law Journal, 2 (Spring, 1948), pp. 211-25.

[28]Monroe E. Carol, "An Analytical Review of Congressional and Judicial Comments Concerning the Federal Regulation of Broadcast Programming" (Unpublished Master's Thesis, Department of Speech, Michigan State University, 1958), pp. 58-60.

Important Sources.--Besides the sources mentioned in the selective review of the literature, there are a number of other sources which were important in the execution of this study. A thorough search of Broadcasting, the broadcasting industry's principal trade publication, and the New York Times was made for all news accounts and editorial comment which were related to the problem under study. Other news periodicals were consulted to a lesser degree such as Business Week, Newsweek, Time, and United States News and World Report. In addition to these sources, popular, mass circulation periodicals were utilized to get some feel of the times with respect to current thinking and public and press reactions. Among such sources were Collier's, Harper's Magazine, Life, Nation, New Republic, Reader's Digest, Saturday Evening Post, and Saturday Review of Literature.

For the industry point of view, one important source was a bulletin published by the National Association of Broadcasters dealing exclusively with the AFM. This special publication was entitled, National Association of Broadcasters. Special A. F. of M. Bulletin.[29] In addition to the industry point of view, this publication contained a lot of material which could be considered primary source material.[30]

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[29]This publication was obtained from the library of the National Association of Broadcasters, Washington, D.C. It was contained in the bound volumes of the N.A.B. Reports, vols, 10-13, 1942-1945.

[30]This publication contained on a number of occasions verbatim reproductions and reprints of letters, telegrams, communications, reports, government documents, labor agreements, articles and editorials from newspapers all over the country,

AFM official records provided a very important source of information about the Union and its activities. The records referred to are the published proceedings of the annual conventions of the Federation cited as: American Federation of Musicians of the United States and Canada, Proceedings. These covered the years 1939 to 1951. They contained the official accounts of the convention proceedings, the annual reports of the AFM officers, and the official minutes of a number of the meetings of the International Executive Board. In addition, a number of pamphlets published by the Union were useful in gaining insight with respect to its point of view.

Regarding governmental action, a number of government documents provided important and useful sources. For the action of Congress, the Congressional Record was consulted. In addition, another significant source was the series of investigations and hearings conducted by Congressional Committees in 1942[31] 1943-1944,[32]

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[30]and etc. In a few instances, there were verbatim excerpts of testimony before Congressional committees and other government agencies.

[31]U.S. Senate, Committee on Interstate Commerce, Hearings: Use of Mechanical Reproduction of Music, 77th Cong., 2nd Sess., 1942 (Washington, D.C.: Government Printing Office, 1943).

[32]The Senate Committee on Interstate Commerce held a series of hearings in 1943-1944 which were conducted by a subcommittee headed by Senator D. Worth Clark of Idaho. In late 1944, Senator Clark announced that none of these hearings were published nor were they reported on to the Senate. He also indicated at that time, that there was no intention to do either. See: Newsweek, October 16, 1944, pp. 67-68; New York Times, October 9, 1944, p. 13:1.

1945,[33] 1947,[34] 1948,[35] and 1956.[36] The official reports of these hearings were consulted, also. The Federal Communications Commission provided some important sources. Among these were the Annual Reports and the series of yearly reports entitled Statistics of the Communications Industry in the United States. Other miscellaneous Commission documents were utilized,

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[32]For accounts of these hearings, other sources had to be utilized. For the most complete source of the hearings held in January of 1943, see: National Association of Broadcasters, Special A. F. of M. Bulletin, No. 15, January 22, 1943, pp. 1-35. This source contains significant verbatim excerpts of the testimony hearing by the Clark subcommittee.

(Hereafter in this thesis, National Association of Broadcasters, Special A. F. of M. Bulletin will be cited as: NAB, Sp. AFM Bul.)

For other accounts of the January, 1943 hearings, see: Broadcasting, January 18, 1943, pp. 9, 36-42; New York Times, January 13, 1943, p. 18:1; January 14, 1943, pp. 1:2, 9:5; January 15, 1943, p. 12:5; "Musicians Want Work," American Federationist, 50 (February, 1943), p. 23.

Other sessions were held in March of 1944. For accounts of these, see: Broadcasting, March 27, 1944, pp. 26, 28, 36; New York Times, March 18, 1944, p. 28:1.

It is not known if the Clark subcommittee held hearings at any other times other than those indicated above.

[33]U. S. House of Representatives, Committee on Interstation and Foreign Commerce, Hearings: Interference with Broadcasting of Noncommercial Educational Programs, 79th Cong., 1st Session., 1945 (Washington, D.C.: Government Printing Office, 1945).

[34]U.S. House of Representatives, Committee on Education and Labor, Hearings: Investigation of James C. Petrillo, the American Federation of Musicians, et. al., 80th Cong., 1st Sess., 1947 (Washington, D.C.: Government Printing Office, 1947).

[35]U.S. House of Representatives, Committee on Education and Labor, Hearings: Restrictive Union Practices of the American Federation of Musicians, 80th Cong., 2nd Sess., 1948 (Washington, D.C.: Government Printing Office, 1948).

[36]U.S. House of Representatives, Committee on Education and Labor, Hearings: Musicians Performance Trust Fund, 84th Cong., 2nd Sess., 1956 (Washington, D.C.: Government Printing Office, 1956)

Hereafter in this thesis, the Congressional hearings cited in Footnotes 31 and 33 through 36 will be cited without

also. United States Reports and Federal Reporter (2d edition) provided the official reports of the test cases in the federal courts concerning the Lea Act.

Particularly in the background chapter (Chapter II), a number of the standard works, commentaries, and histories of the broadcasting industry provided highly useful sources of background information essential for gaining insight into the general contextual setting that the problem under consideration was superimposed against.

Organization.--Chapter I contains the introduction to the study and its purpose is to outline the problem under consideration.

Chapter II.--This is what might be characterized as the background chapter. It purports to provide the setting in which the problem is laid and to convey the essential information needed for a fuller and more complete understanding of the exposition that follows. It is divided into three main sub-sections. Firstly, an overview of the broadcasting industry of the forties is presented. This is followed by a discussion of the American Federation of Musicians with respect to its organization, objectives, general policies, points of view, prior related actions, etc. Lastly, the use of music in its various forms in broadcast programming is considered.

Chapter III.--This chapter is a detailed account in more or less chronological order of the policies, practices, and activities of the American Federation of Musicians which

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publishing information.

tended to have a restrictive effect on broadcast programming during the decade of the forties. Its pattern of development follows rather closely the brief review of these policies and practices enumerated earlier in this chapter under the heading, "The Nature of the Problem." Also, brief accounts of the recording ban of 1942 and a subsequent one in 1948 are included.

Chapter IV.--Chapter IV is primarly concerned with the Congressional action taken with regard to the activities of the AFM documented in Chapter III. This congressional interest and intervention finally culminated in the passage of the Lea Act in 1946.

Chapter V.--What happened after the Lea Act was passed? How were the problems and conflicts finally resolved between the broadcasting industry and the AFM? These are the kinds of questions that are considered in Chapter V. Also, included is a discussion of the test cases instituted in the federal courts with regard to the Lea Act.

Chapter VI.--The last chapter contains the author's summaries, conclusions, and suggestions for possible areas for further research.

CHAPTER II

PRELUDE TO CONFLICT: THE BROADCASTING INDUSTRY AND THE AMERICAN FEDERATION OF MUSICIANS OF THE FORTIES

A. The Broadcasting Industry, 1940-1950

Radio: 1940 Style.--

> THE VASTNESS of American radio needs to be emphasized. There are 915 radio stations, four coast-to-coast networks, 25 regional networks. Stations operate 17 and 18 hours a day. Programs parade past four and five abreast from before daylight to after midnight. In New York City alone there are 20 stations. There are 16 in Chicago, 12 in Los Angeles, eight in Boston.
>
> Over two-thirds of the stations are affiliated with national or regional networks, During the day the stations intermittently join or leave these chains, losing or gaining in the process a national, a regional or a local complexion. Thus is provided to the American public a many-sided, many-sized, diverse, diffuse, far-flung, non-stop broadcasting service. Sometimes it is demagogic, sometimes bucolic, on occasion mildly pedagogic. In its finer moments it is dynamic. It represents perhaps a sort of democratic splendor, a trifle clouded.[1]

This glowing, enthusiastic description of the broadcasting industry as it emerged into the decade of the forties was penned by one of its contemporaries, Robert Landry. This marvel called radio had come into its own and it was not long ago that all radio consisted of was scratching around on a little rock with a "cat whisker" straining your ears to discern some recognizable sounds on an earphone. Just how

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[1]Robert J. Landry, Who, What, Why is Radio? (New York: George W. Stewart, Publisher, Inc., 1942), p. 3.

much radio had come into its own was evidenced by a Fortune survey of the time reported by Landry in his book.[2] Among the leisure time activities pursued by the American people, radio listening led the list followed in second place by the movies. Taking the third, fourth, and fifth spots, respectively, were magazines and books, sports, and hunting and fishing. A radio set was a part of the American home. By 1942, ninety per cent of all American families were equipped with at least one radio and the national average was slightly over one and a half receivers per family.[3]

Radio, 1940-1945.--Sydney Head described the first half of the forties as a "period of stability in which the medium was prosperous and even complacent, with gradual, orderly increase in stations and network competition."[4] Also, he indicated that there was an increase in surveillance by the government and "an artificial stimulation of profits and limitation on competition during the war years."[5] Head suggested that sound broadcasting, standard AM radio, reached its "high water mark" during this period.[6]

Era of Stability and Prosperity.--After the United States entered World War II in late 1941, the broadcasting industry's normal rate of expansion and growth came to a

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[2] Ibid., p. 87.

[3] U.S. FCC, An Economic Study of Standard Broadcasting (October 31, 1947), p. 82. (Mimeographed.)

[4] Sydney W. Head, Broadcasting in America (Boston: Houghton Mifflin Co., 1956), p. 9.

[5] Ibid.

[6] Ibid.

near standstill as to the number of standard AM facilities providing service to the public. This was necessitated by the government's program of conserving critical materials so that they could be diverted to the war effort.[7] Broadcasting Yearbook reported the official count of U.S. Broadcasting stations as taken from the records of the FCC for '40-'45 period as follows:[8]

January 1, 1940	814
January 1, 1941	822
January 1, 1942	923
January 1, 1943	917
January 1, 1944	912
January 1, 1945	943

After the U.S. entered the war, there were no dramatic increases in the number of stations; there was even some backsliding.

The following presents a brief picture of the prosperity AM stations owners were enjoying during this period of time, from 1940-1945:

1. For all AM stations, excluding major network key stations, aggregate broadcast revenues for 1945 were 112 per cent over the 1940 level, while aggregate expenses for the same period only rose 87 per cent.[9]

2. Broadcast income before federal taxes for all AM stations excluding major network key stations for the period ranged between 20 and 34 per cent of broadcast revenues.[10]

3. In 1940, broadcast income before federal taxes represented 72.3 per cent of "tangible depreciated

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[7]U.S. FCC, op. cit., p. 1.

[8]Broadcasting Yearbook, 1945, p. 19.

[9]U.S. FCC, op. cit., p. 9.

[10]Ibid., p. 17.

broadcast property" and by 1944, it had climbed to 204.1 per cent.[11]

4. "Percent increase in return on investment between 1939-1945" was 234 per cent for all classes of radio stations. For one class of AM radio stations, those operating on local channels with unlimited time, the return was a dramatic 964 per cent.[12]

5. In 1940, nearly a quarter of all AM broadcast stations reported losses in their operations. By 1944 and 1945, only about 5 per cent reported losses.[13]

As can be seen from the above, this prosperity that Head referred to was not limited to the networks; stations all over the country were sharing in it.

Era of Increased Government Surveillance.--For a number of years prior to the forties, dissident elements in Congress had been screaming "monopoly" and pointing a collective finger at the radio networks.[14] In response, on the eve of this decade, the FCC instituted an investigation of network practices which culminated in the issuance of a report on May of 1941[15] accompanied by some "rules applicable to stations engaged in chain broadcasting."[16] With the industry protesting loudly and strongly--in particular, the networks[17]--it took a court battle to establish the legality

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[11] Ibid., p. 14.

[12] Ibid., p. 16

[13] Ibid., p. 18.

[14] Walter B. Emery, "An Ambivalent Congress--and a Frustrated FCC," NAEB Journal, 19 (March-April, 1960), p. 71.

[15] U. S. FCC, Report on Chain Broadcasting (Commission Order No. 37, Docket No. 5060, May, 1941).

[16] 6 F.R. 2282 (1941).

[17] Some of the protests and charges espoused by NBC

of these rules.[18]

In March of the same year--before the Report on Chain Broadcasting was off the press and after some more charges of monopoly from Congress--the fiery and colorful chairman of the FCC, James Lawrence Fly,[19] announced that the Commission was going to examine very carefully the inroads that newspaper and publishing interests were allegedly making into the ownership and control of broadcasting stations.[20] After much activity and publicity, finally in 1944:

> ....a short statement of policy was made to the effect that there would be no general rule against newspaper ownership of radio stations but that the fact of creating a monopoly would be taken into account in specific cases of applications for new licenses or transfers of license.[21]

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and CBS which by the way, were supported by the NAB will be found in: Clifford J. Durr, Freedom of Speech for Whom? (Speech delivered when serving term as FCC Commissioner, 1944), pp. 1-2. (Mimeographed.)

[18]National Broadcasting Company v. United States, 319 U. S. 190 (1943).

[19]Siepmann, in one of his books, related an incident which brings out very pointedly the fire and color of the controversial Chairman Fly. In a statement to the press, after being snubbed by broadcasters at the NAB Convention in 1941, he told reporters that radio's management reminded him of a "dead mackerel in the moonlight which both shines and stinks." See: Charles A. Siepmann, Radio's Second Chance (Boston: Little, Brown and Co., 1946), pp. 212-13.

Also, see the following popular biography: Henry F. Pringle, "The Controversial Mr. Fly," Saturday Evening Post, 217 (July 22, 1944), pp. 9-10, 41-42.

[20]Llewellyn White, The American Radio (Chicago: University of Chicago Press, 1947), p. 159; U.S. FCC, Annual Report, 1941, pp. 25-26.

For the formal announcements of the hearings, see: 6 F.R. 1580 (1941); 6 F.R. 3302 (1941).

[21]White, op. cit., p. 159. For the statement of policy referred to above, see: 9 F.R. 702 (1944).

Near the end of this five year period in April of 1945, the Commission indicated that it was embarking on "a policy of more detailed review of broadcast station performance when passing upon applications for license renewal" which finally resulted in the publication of the Public Service Responsibility of Broadcast Licensees, better known as the Blue Book.[22] Such action Congress had been urging for a number of years, also.[23] This was followed by a storm of protest and many accusations of "censorship," particularly from the industry.[24]

During this time, Congress became bi-focal with certain elements becoming more interested in the actions of the Commission than the industry. Amid numerous charges that FCC actions were capricious, arbitrary, and even unconstitutional emanating from both the industry and Capitol Hill, the House launched the highly publicized Cox Investigation in 1943 headed by Representative Eugene Cox of Georgia.[25] This ill-fated adventure came to an unexpected close shortly after the sensational charge was made that the Congressional crusader, Cox, had accepted part-interest in a new radio station in exchange for his influence in seeing that the station got a

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[22]U. S. FCC, Public Service Responsibility of Broadcast Licensees (FCC Report, March 7, 1946), p. 3.

[23]Emery, op. cit., p. 73.

[24]As an example, the industry reaction and accusations were evidenced by the following title of an editorial appearing in the trade press occasioned by the release of the Blue Book: "F(ederal) C(endorship) C(ommission)." See: Broadcasting, March 18, 1946, p. 58.

[25]Emery, op. cit., pp. 72-73.

license from the very body that he was investigating.[26] No formal charge was ever instituted against him by the Justice Department. The aftermath was Cox's resignation as chairman of the investigation and a report that, in general, exonerated the Commission of serious malfeasance.[27]

The War and the OWI.--After Pearl Harbor, the radio industry mobilized for war. In mid-June of 1942, President Roosevelt combined a number of war information agencies and created the Office of War Information with a former broadcaster in charge.[28] Elmer Davis, Director of the OWI, described the duties of his agency in the following way:

> Our office is charged with informing the American public about the issues of the war, the nature and progress of the war effort and the war activities, mostly of our Government. They are also charged with informing other nations about the same thing,...[29]

About radio, he stated:

> This Office has a direct and vital concern with the maintenance of the radio coverage in this country. It is one of the most important media for the conveyance of war information in general to the people, and may become of still greater importance when

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[26]Walter B. Emery, Government and Broadcasting in a Free Society (Background working paper for a session on "Freedom and Responsibility in Broadcasting" at the 30th Institute for Education by Radio and Television, Ohio State University, May 4-7, 1960), pp. 15-16. (Mimeographed.)

[27]Ibid., p. 16

[28]U.S. Bureau of Public Inquiries, Office of War Information, United States Government Manual, Fall, 1941, pp. 82-83; "Two Exciting Decades," Broadcasting, October 16, 1950, p. 130.

[29]U.S. Senate, Committee on Interstate Commerce, Hearings: Use of Mechanical Reproduction of Music, 77th Cong., 2nd Sess., 1942, p. 3.

> there is occasion for an emergency message from the national leadership. A policy which threatens the continued existence of many of these stations is injurious to the national system of communication, and may seriously hamper the work for which this Office was established, of informing the people about the status and progress of the war effort and the war policies, activities, and aims of this government.[30]

With the coming of the war, radio assumed a new role of importance as suggested by the words of Elmer Davis. Another measure of broadcasting's importance during the war was evidenced by the fact that the Selective Service "defined as critical a score of broadcast occupations."[31] This was the era of radio commentators and radio reporters with the latter's dramatic eyewitness descriptions and accounts of the progress of the war from the battlefields scattered around the world.[32] During the war years, broadcasters submitted to a voluntary system of censorship as did the other media.[33]

AM and TV.--As we entered the war, AM and FM were emerging as promising new media of radio communications. A halt was put on all new broadcast construction.[34] This put a temporary stop to any further growth in these newer broadcast media for the duration of the war. However, throughout the war years, "about 40 prewar FM stations continued to

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[30] Ibid., p. 5.

[31] "Two Exciting Decades," Broadcasting, October 16, 1950, p. 131.

[32] Robert J. Landry, This Fascinating Radio Business (Indianapolis, Ind.: Bobbs-Merrill Co., 1946), p. 258.

[33] Ibid., pp. 252-53.

[34] "Two Exciting Decades," Broadcasting, October 16, 1950, p. 131.

serve some 400,000 receivers"[35] and six TV stations remained in operation.[36]

Broadcasting and the Postwar Period of the Forties.--During the postwar period of the forties, the whole complexion of broadcasting was altered. The "freeze" on the wartime construction of new broadcast facilities was lifted in October, 1945. Following it was a period of technological change and innovation which brought with it numerous problems and uncertainties which always accompany such periods. AM underwent tremendous expansion. FM took its first faltering steps toward public acceptance. TV became established, bringing with it many problems.

Head divided the postwar period into two sections:

> ....1946-1948. Period of rapid change. Sudden great increase in the number of stations, with resulting sharper competition. FM introduced. Television imminent.
> ....1948 and following. Period of adjustment to television, at first accelerating to a panic, then settling down to a series of strategic withdrawals and build-ups of strong points.[37]

AM Expansion.--A report of the Commission described the tremendous growth of AM following the war:

> The high level of earnings and the interruption during war of normal expansion necessitated by the critical materials conservation program have since VJ-Day brought about an extraordinary fermentation in the broadcasting industry. While, on October 8, 1945, after a history of 24 years, there were 909 commercial standard broadcast stations authorized

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[35]U.S. FCC, Radio and Television Broadcast Primer (INF Bulletin No. 2, April, 1956), p. 8. (Mimeographed.)

[36]Ibid., p. 11.

[37]Head, op. cit., pp. 135-36.

> in the United States, by February 7, 1947; .... sixteen months later, approximately 600 new stations were either on the air or under construction and more than 700 applications were still pending for new stations. By the end of 1948 there will undoubtedly be 2,000 AM stations in operation.[38]

By 1948, the Commission reported:

> From an engineering viewpoint, the desirable AM facilities are becoming scarcer, with unlimited time facilities practically non-existent, and daytime only facilities extremely hard to find in the more heavily populated areas of the country.[39]

The following figures indicate the very rapid expansion that took place in the number of AM facilities after the war:[40]

Date	No. of AM Authorized	No. of AM Licensed
June 30, 1945	955	951
June 30, 1946	1,215	961
June 30, 1947	1,795	1,298
June 30, 1948	2,034	1,693
June 30, 1949	2,179	1,963
June 30, 1950	2,303	2,118

FM.--At thebeginning of the war, FM had been described as being "on the verge of immediate commercial development."[41] By the time of the U.S. entry into the war, only about 30

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[38] U.S. FCC, An Economic Study of Standard Broadcasting, op. cit., p. 1.

[39] U.S. FCC. Annual Report, 1948, p. 30.

[40] Ibid., 1950, p. 102.

[41] W. Rupert Maclaurin, Invention and Innovation in the Radio Industry (New York: Macmillan Co., 1949), p. 230.

stations were on the air.[42] Much further development was then precluded. In 1941, 35 channels had been allocated for "commercial FM and 5 channels for noncommercial educational FM use" in the 42-50 megacycle portion of the radio frequency spectrum.[43]

FM is purported to have a number of advantages over its sister type of broadcasting, AM. Among these are:

1. FM transmission is not subject to the static interference that AM transmission is.[44]
2. Because the band width allocated to an FM channel is much wider than the band width allocated to a similar AM channel, a greater frequency range of sound can be transmitted.[45]
3. FM has an improved dynamic range over AM, i.e., FM has a greater ability than AM to reproduce a wider range of loudness or intensities of sound.[46]
4. FM has a greater ability to override competing signals than does AM; hence, there is considerably less interference from other FM stations.[47]

The above advantages are used to support the claim that FM broadcasting is high fidelity broadcasting and, hence, the broadcast medium best suited to present music.

Through the war years and before, there had been "concern that FM broadcasting in the vicinity of 50 megacycles would be subject to serious skywave interference, nullifying

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[42] Head, op. cit., p. 42.

[43] U.S. FCC, Radio and Television Broadcast Primer, op. cit., p. 8. Also, see: U.S. FCC. Annual Report, 1941, p. 29.

[44] Head, op. cit., p. 33.

[45] Ibid., pp. 35-40.

[46] Ibid., p. 40.

[47] Ibid., p. 34.

to a great extent the possibilities of interference-free reception of FM."[48] After extensive hearings with controversial engineering evidence,[49] the Commission relocated FM in June, 1945 and allocated the 88-108 portion of the radio spectrum to it which included 20 channels for noncommercial educational use, 70 channels for commercial use, and 10 channels for facsimile which could be reverted to FM broadcast use.[50] Stations operating on the old frequencies were given until January 1, 1947, to make the transition to the new ones.[51]

The initial response to FM broadcasting was very enthusiastic, at least in some quarters. Its most optimistic supporters were predicting a very rosy future for FM. An advertising executive predicted that "FM will be the standard type of broadcasting in 10 years."[52] Broadcasting reported in 1945 that a number of industry leaders and government

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[48] U.S. FCC. Annual Report, 1945, p. 20.

[49] The Commission conceded that there was a "divergence of opinion" at these hearings. U.S. FCC. Annual Report, 1945, p. 20.

Also, Dr. Edwin H. Armstrong--the acknowledged inventor of FM--contended that a former FCC engineering official made a very serious technical error at these hearings upon which a great deal of the Commission's eventual decision in the matter was based. See Armstrong's testimony in both of the following: U.S. House of Representatives, Committee on Education and Labor, Hearings: Restrictive Union Practices of the American Federation of Musicians, 89th Cong., 2nd Sess., 1948, pp. 158-60; U.S. Senate, Committee on Interstate and Foreign Commerce, Hearings: Progress of FM Radio, 80th Cong., 2nd Sess., 1948 (Washington, D.C.: Government Printing Office, 1948), p. 16.

[50] U.S. FCC Annual Report, 1946, p. 16

[51] Ibid.

[52] Broadcasting, November 6, 1944, p. 74.

officials were of the opinion that FM would eventually replace AM.[53] Among the government officials specifically mentioned was FCC Chairman Paul Porter. Others were predicting there would be 5,000 FM stations on the air by 1954 and that the only use for AM would be for a few high power stations for remote rural coverage.[54] A couple of the critics who were not too pleased with the public service performance record of American radio in the mid-forties viewed FM as "radio's second chance."[55]

This bright future that was supposed to be assured for FM never materialized. The peak of activity and interest in FM, as suggested by the following figures, was about 1948:

Date	No. of FM Authorized[56]	No. of FM Licensed[56]	No. of FM In Operation[57]
June 30, 1945	53	46	53
June 30, 1946	456	48	55
June 30, 1947	918	48	283
June 30, 1948	1,020	142	587
June 30, 1949	865	377	737
June 30, 1950	732	493	691

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[53] Ibid., August 6, 1945, pp. 16-17, 44.

[54] Ibid., pp. 16-17.

[55] Durr, op. cit., pp. 11-12; Siepmann, op. cit., pp. 254-76.

[56] Figures in the column were compiled from: U.S. FCC, Annual Report, 1950, p. 102.

[57] Figures in the column were compiled from: U.S. FCC, Annual Report, 1945, p. 19; 1946, p. 19; 1947, p. 20; 1948, p. 35; 1949, p. 39; 1950, p. 109.

Even from the beginning of the postwar period, FM seemed to be beset with difficulties. Broadcasting reported that the production of FM receivers for the public was lagging seriously and for this reason, at the beginning of 1946, there would be fewer potential listeners than before the war.[58] By 1948, the pear year of FM activity, there were other signs that FM might be in difficulty. A survey of a cross-section of the nation's advertising executives and time buyers showed that 85 per cent were planning no expenditures on FM advertising for the 1948-1949 season.[59] Another survey showed that advertising agencies, on the whole, were not too favorably disposed to FM.[60] By 1950, there were definite signs that FM was in trouble. An American Research Bureau study conducted for the NAB of FM listening in the Washington, D.C., metropolitan area revealed that 13.2 per cent of the area families had sets capable of receiving FM, while only 7.3 per cent of the total area population listened to FM regularly.[61] The rosy picture of FM's future was changing to one of pessimism.[62]

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[58] Broadcasting, December 17, 1945, p. 20. It must be remembered that the shift to the 100 megacycle band from the 50 megacycle band at the end of the war made all prewar FM receivers obsolete. The receivers designed for the 50 megacycle band could not pick up FM signals transmitted in the 100 megacycle band.

[59] Survey conducted by Broadcasting, see: Broadcasting, September 13, 1948, pp. 23, 80.

[60] Survey conducted by the AAAA, see: Broadcasting, October 4, 1948, pp. 23, 68.

[61] Broadcasting, January, 2, 1950, p. 21.

[62] For examples of this pessimism, see: Broadcasting, January 9, 1950, p. 18.

Just how serious the situation was becoming for FM was evidenced by an announcement in early 1950 by Walter J. Damm, vice president fo the Journal Company of Milwaukee, owner of the Milwaukee Journal, WTMJ (AM), and two FM stations--WTMJ-FM (Milwaukee) and WSAU-FM (Wausau, Wisc.).[63] Damm announced that the Journal Company, after thorough consideration, was dropping its two FM outlets. The principal cause for the action, according to Damm, was that FM had 'not lived up to its 'bright promise of ten years ago.'"[64] Further, he stated that the public had not seen fit to invest in sufficient numbers of receivers to warrant operation on a permanent basis. This event assumes greater importance because of the involvement of FM pioneer, Walter J. Damm. Broadcasting described Damm as having been:

> ....one of FM's most enthusiastic supporters. He was president of the FM Broadcasters Inc. when the association was formed in the early '40's and was a director of the successor FM Assn. which last autumn merged into NAB.[65]

Also, WTMJ-FM was the first FM station to go into operation west of the Alleghenies on both the 50 and 100 megacycle bands.

By the end of the forties, the prospects for FM broadcasting were rather gloomy, to say the least. One member of the industry in January, 1950 described FM as having been

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[63] Broadcasting, April 3, 1950, p. 80.

[64] Ibid.

[65] Ibid.

"still born."[66] Many reasons were given for this apparent failure of FM to establish public acceptance. From the variety of reasons given, it is clear that the "FM problem" was a very complex issue with many ramifications and implications. Some said that FM's failure could be traced to the opposition from the established interests in AM broadcasting.[67] Congress investigated certain charges involving a relationship between the development of FM radio and RCA patent policies.[68] One FM broadcaster felt that the supposed superior advantages of FM over AM were more theoretical than operational.[69] An FM listener suggested that FM set manufacturers were partly to blame in that they did not engineer receiving sets to take full advantage of FM's superior qualities.[70] Another FM broadcaster put part of the responsibility on the FCC because the Commission, in his opinion, had taken too little positive action "to foster its growth."[71]

One Congressman summed up the whole situation in the following way:

> ....FM has been obstructed, stepped on, blocked, or ignored from the start....

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[66] Ibid., January 9, 1950, p. 18.

[67] Charles A. Siepmann, Radio Television and Society (New York: Oxford University Press, 1950), pp. 57-58.

[68] U.S. Senate, Committee on Interstate and Foreign Commerce, Hearings: Progress of FM Radio, 80th Cong., 2nd Sess., 1948 (Washington, D.C.: Government Printing Office, 1948).

[69] Broadcasting, January 9, 1950, p. 18.

[70] Ibid.

[71] Ibid.

> Ever since the superiority of FM radio was first demonstrated in a field scale -- in 1934 -- it has been beset by opposition, and it has had to go over and around road blocks.[72]

Specifically mentioned by the Congressman as having impeded the development of FM were the FCC, Broadcast Measurement Bureau, the NAB, RCA, the "big networks," FM receiver manufacturers, and the "big interests in AM radio."

Some suggested that the development of TV was at the heart of FM's downfall.[73] Still others felt that certain policies of the American Federation of Musicians with respect to the use of musicians on FM had a dilatory effect on the development of FM.[74] At any rate, it can be easily seen that FM presented a very complex and knotty problem to the broadcasting industry throughout the entire second half of the forties.[75]

The Rise of TV.--On the eve of World War II, TV had not quite progressed to the same stage of development as FM. TV was not ready for immediate commercial utilization as was

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[72]Remarks of Rep. Francis Walter (D.-Pa.), see: 95 Cong. Rec. A2205 (1946).

[73]Broadcasting, January 9, 1950, p. 18.

[74]This point will be developed more fully later in this thesis.

[75]There were many plans and panaceas proposed for the wolution of FM's problems. One interesting proposal was suggested by Irving R. Merrill, then Director of the University of South Dakota's KUSD, Vermillion. In a letter to Senator Ed C. Johnson (D.-Colo.), Merrill inquired about the possibility of a law or FCC regulation requiring FM tuners to be installed in all TV sets manufactured. Merrill observed that the SMA Co. of Chicago had FM tuners that could be used for this purpose at a cost of about 3-5 dollars. Broadcasting, July 24, 1950, p. 81.

FM.[76] In the latter years of the 1930's, it was generally conceded that TV had not developed sufficiently to warrant the establishment of technical standards of transmission.[77] As a result, the Commission had taken no action in the matter. After a series of studies and investigations beginning in 1939 conducted by both the FCC and the National Television System Committee:[78]

> ....The Commission announced that a public hearing would be held beginning March 20, 1941, to consider the various engineering standards suggested, and also to determine when television broadcast stations should be permitted to broadcast commercial programs as a public service.[79]

On April 30, 1941, the FCC promulgated rules embodying the standards of television transmission proposed by the NTSC.[80] Our monochrome TV standards of today date to this FCC decision. Subsequently, "rules were adopted for commercial operation effective July 1, 1941."[81] Before manufacturers could get their operations tooled for TV receiver production and broadcasters could build new stations, Pearl Harbor intervened.

Following the war, further delays in the full development of TV were encountered. First, an acute postwar materials

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[76]Head, op. cit., p. 149.

[77]U.S. FCC. Annual Report, 1937, p. 37; 1938, p. 65.

[78]Ibid., 1939, pp. 45-46; 1940, pp. 70-72; 1941, pp. 32-33. The National Television System Committee--abbreviated NTSC--was a body created through the joint cooperation of the FCC and the Radio Manufacturers Association to study the problem of television transmission standards and to make recommendations.

[79]U.S. FCC. Annual Report, 1941, p. 33.

[80]Ibid. For the rules promulgated, see: 6 F.R. 2286 (1941).

[81]U.S. FCC. Annual Report, 1941, p. 34. For the rules adopted, see: 6 F.R. 2284 (1941).

shortage precluded the building of stations and the manufacturing of sets immediately following the lift in the wartime construction freeze.[82] Before this problem was overcome, the Columbia Broadcasting System, Inc.[83] raised the issue of color.[84] On the basis of wartime experimentation and invention to meet military needs, the FCC was able to extend the usable portion of the spectrum "from a prewar ceiling of 300 to 30,000 megacycles."[85] As a result, the Commission, in 1945, allocated 13 channels in the VHF band[86] to be used for commercial TV and assigned a block of frequencies in the UHF band for experimentation.[87]

What CBS contended was that TV should possibly move up into the newly discovered usable frequency band (UHF) where wider channels could be utilized for its color TV system.[88] CBS highly publicized its contentions with the

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[82]Head, op. cit., p. 157.

[83]Hereafter in this thesis, the Columbia Broadcasting System, Inc. may be referred to as CBS.

[84]Head, op. cit., p. 157.

[85]U.S. FCC. Annual Report, 1945, p. VII.

[86]VHF is the abbreviation used for Very High Frequency. Very high frequencies are a band of frequencies in the radio spectrum extending from 30 to 300 megacycles. Gordon R. Partridge, A Dictionary of Electronic Terms (4th ed.; Chicago: Allied Radio Corporation, 1956), p. 69.

[87]U.S. FCC. Annual Report, 1945, pp. 21-22. Also, see: 10 F.R. 6259 (1945).

UHF is the abbreviation used for Ultra High Frequency. Ultra high frequencies are a band of frequencies in the radio spectrum extending for 300 to 3,000 megacycles. Partridge, op. cit., p. 67.

[88]U.S. FCC. Annual Report, 1947, p. 23.

result that many electronic manufacturers and prospective station licensees preferred to wait for the outcome of this possibility before investing too heavily in TV.[89] Finally, in late 1946 and early 1947, the Commission held hearings on a petition from CBS "seeking operation of its (Columbia's) particular color television system in the ultra-high-frequencies of 480 to 920 megacycles."[90] On March 18, 1947, the petition was denied on the basis that the CBS color TV proposal was not ready for use and that futher experimentation was needed.[91]

For the first half of 1948, the Commission reported that there was a "sudden surge in TV applications."[92] Head described 1948 as the "crucial year in the history of television" because "for the first time the expansion of the industry could go ahead on firm technical and economic grounds."[93] However, TV's problems were not over yet.

As 1948 progressed with its expanded activity in TV, it became increasingly evident to the Commission that the 12 channels then allocated to commercial television[94] would be "inadequate to provide a truly nationwide competitive TV

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[89]Head, op. cit., pp. 157-58.

[90]U.S. FCC. Annual Report, 1947, p. 23.

[91]Ibid.

[92]Ibid., 1948, p. 2.

[93]Head, op. cit., p. 158.

[94]The original allocation in 1945 was for 13 channels. However, these channels were shared with certain other radio services. Due to objectionable interference from these other services, one of the channels (ch. 1) was deleted so that frequencies would be available for these services so as to avoid sharing. U.S. FCC. Annual Report, 1948, pp. 39-40.

service."[95] As a result, on September 30, 1948, after a hearing and the Joint Commission-Industry conference on this problem, the FCC instituted its famous "freeze" policy.[96] Under this so-called freeze policy, the Commission stopped granting any further authorizations for new TV stations pending a study of the entire situation and the problems facing the TV industry. Before the freeze was lifted, the following areas were taken under extensive consideration:

> ....new engineering standards; opening UHF channels for TV broadcasting; consideration of color systems, reservation of channels for noncommercial educational use; and a national assignment plan incorporating VHF and UHF channels.[97]

With the adoption of the Sixth Report and Order on April 11, 1952, the freeze came to an end.[98] This was followed "by a tremendous expansion in television broadcasting."[99]

After the freeze was imposed, any dramatic increases in the potential number of TV stations which could serve the country were not possible. The following summarizes the

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[95]U.S. FCC, Radio and Television Broadcast Primer, op. cit., p. 11.

[96]U.S. FCC. Annual Report, 1949, pp. 42-43.

[97]U.S. FCC Radio and Television Broadcast Primer, op cit., p. 12.

[98]U.S. FCC. Annual Report, 1952, p. 197. For text of the report, see: 17 F.R. 3095 (1952).
A Senate committee became interested in the "freeze" before it was over and conducted a short investigation of it on July 18, 1951 which primarily involved just the testimony of the FCC chairman, Wayne Coy. See: U.S. Senate, Committee on Interstate and foreign Commerce, Hearings: FCC Policy on Television Freeze and Other Communication Matters, 82nd Cong., 1st Sess., 1951 (Washington, D.C. Government Printing Office, 1951).

[99]U.S. FCC. Annual Report, 1953, p. 93.

growth of TV facilities during the last half of the 1940's:

Date	No. of TV Authorized[100]	No. of TV Licensed[100]	No. of TV In Operation[101]
June 30, 1945	25	6	6
June 30, 1946	30	6	6
June 30, 1947	66	6	12
June 30, 1948	109	7	30
June 30, 1949	117	13	71
June 30, 1950	109	47	106

Prosperity of the Broadcasting Industry, 1946-1950.-- The postwar period of the forties was not one of unparalleled prosperity as had been the war period. Income from the industry's total AM operation decreased throughout the period except for 1950.[102] For the TV end of the industry, no income was realized throughout the whole period.[103] However, the FCC did report that 3 TV stations in 1949 did show an income.[104] It was not until 1951 that the TV industry as a whole experienced revenues which were in excess of expenses.[105]

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[100] Ibid., 1950, p. 102.

[101] Ibid., 1945, p. 21; 1946, p. 17; 1947, p. 23; 1948, p. 39; 1949, p. 41; 1950, p. 102.

[102] See Table 1.

[103] U.S. FCC. Annual Report, 1949-1951. The Annual Reports only report financial data for the TV industry for the years 1948-1950.

[104] Ibid., 1950, p. 122.

[105] Ibid., 1952, p. 123.

The brighter side of the picture for TV was that total revenues were making some dramatic increases. The 1949 level was almost four times the 1948 level[106] and the 1950 level was more than triple the 1949 level.[107] Financial data for FM operations that could be found were very incomplete.[108] What little data there were available in the FCC Annual Reports revealed that FM broadcasting was operating at a loss during the entire 5-year period, and that there were no dramatic increases in total revenues.[109] An FM Association survey in 1947 revealed the following:[110]

1. 86 per cent of the respondents reported operating at a loss.
2. 8 per cent of the respondents reported profit from operations.
3. 6 per cent of the respondents reported that their operations were breaking even.
4. 70 per cent of the respondents reported no increases in total revenues.

The FCC reported that for the entire broadcasting industry including AM, FM, and TV operations, broadcast income before federal taxes dropped to a prewar level of 27.4

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[106] Ibid., 1950, p. 122.

[107] Ibid., 1951, p. 129.

[108] The reason that little financial data were available on FM operations was because most FM stations were jointly operated in connection with an AM station. Financial data were generally filed jointly, also. The FCC noted that there was no way to separate the data accurately from such joint statements.

[109] U.S. FCC, Annual Report, 1949-1951. The Annual Reports only report financial data for the FM industry for the years 1948-1950.

[110] New York Times, October 12, 1947, p. 31:3.

TABLE 1.--INCOME (TOTAL REVENUES LESS TOTAL EXPENSES) BEFORE FEDERAL INCOME TAXES FOR ALL AM RADIO STATIONS AND REGIONAL AND NATIONAL RADIO NETWORKS FOR THE YEARS 1946-1950[c]

Calendar Year	No. of Stations and Networks Included in Data				Income in Millions of Dollars	%Increase or Decrease Over Previous Year	Source
	AM	FM	Reg. Nets	Nat. Nets			
1946	1,025	127[d]	4	3	76.5	- 8.52	a
1947	1,464	279[d]	3	4	71.8	- 6.11	a
1948	1,824	404	3	4	64.1	-10.73	a
1949	2,021	619	3	4	56.2	-12.21	a
1950	2,143	669	3	4	68.2	+21.35	b

Note.--Footnotes are on the following page.

TABLE 1 (cont.).--INCOME (TOTAL REVENUES LESS TOTAL EXPENSES BEFORE FEDERAL INCOME TAXES FOR ALL AM RADIO STATIONS AND REGIONAL AND NATIONAL RADIO NETWORKS FOR THE YEARS 1946-1950[c]

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[a]Compiled from: U.S. Federal Communications Commission. Statistics of the Communications Industry in the United States, 1946, p. 185; 1947, p. 194; 1948, pp. 187-88; 1949, pp. 201-103.

Hereafter, in this thesis, U.S. Federal Communication Commission. Statistics of the Communications Industry in the United States will be cited as follows: U.S. FCC. Stat. of the Comm. Industry.

[b]Compiled from: U.S. FCC. Annual Report, 1951, pp. 130-32.

[c]It should be noted that the data for all AM stations and networks contain data for some FM operations which have been indicated in the table. A number of AM and FM stations were joint operations and financial data for such operations were generally filed jointly, The FCC noted that there was no way separate such data accurately.

[d]The number of FM stations included in the income data was not indicated except that it was stated that the FM data was included for all FM stations affiliated with AM stations The FCC Annual Reports for 1947 (p. 20) and 1948 (p. 36.) showed that between 75 and 80 per cent of all FM applications and authorizations involved AM station owners. The directories of FM stations in Broadcasting Yearbooks for 1947 (pp. 224-37) and 1948 (pp. 286-322) indicated that approximately 171 FM stations were on the air at the end of 1946 and approximately 372 at the end of 1947. The figures in the column represent 75 per cent of these two counts, respectively.

Abbreviations Used: Reg.--Regional
Nat.--National
Nets--Networks

million in 1949.[111] This was a drop of 40.8 per cent over the previous year's 46.1 million.[112] By 1950, income figures rose 116.1 per cent over the 1949 level to 79 million.[113] Income data for the entire period of the 1940's will be found summarized in Table 2.

Public Acceptance of AM, FM, and TV.--In 1947, the Commission described the public acceptance of standard radio (AM) with respect to the purchase of AM receiving sets in the following way: "It is obvious that a virtual saturation in radio homes has been reached."[114] Table 3 suggests this very readily. The Table also suggests that FM was in trouble. In 1948, there were approximately four FM sets in use for every TV set. However, by 1950, the number of TV sets in use exceeded the number of FM sets in use by about a million and a half. The Table suggests that the public was accepting television at a more rapid pace than FM broadcasting.

Growth of Broadcasting During the Forties.--The following is the official count of all U.S. broadcasting stations reported in Broadcasting Yearbook:[115]

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[111] U.S. FCC. Annual Report, 1950, p. 118. The similar broadcast income figure for 1940 for the whole industry was 33.3 million. U.S. FCC. Stat. of the Comm. Industry, 1940, p. 130.

[112] U.S. FCC. Annual Report, 1950, p. 118.

[113] Ibid., 1951, p. 130.

[114] U.S. FCC, An Economic Study of Standard Broadcasting, op. cit., p. 82.

[115] The official count is taken from the records of the FCC. Broadcasting Yearbook, 1951, p. 40.

TABLE 2.--TOTAL REVENUES, TOTAL EXPENSES, AND INCOME (TOTAL REVENUES LESS TOTAL EXPENSES) BEFORE FEDERAL INCOME TAXES FOR THE ENTIRE BROADCASTING INDUSTRY FOR THE YEARS 1939--1950

Calendar Year	No. of Stations and Networks Included in Data					Total[e] Revenues	Total[e] Expenses	Income[e] Before Federal Taxes	% of Income Increase or Decrease Over Previous Year	Source
	AM	FM	TV	Reg. Nets	Nat. Nets					
1939	705	---	---	---	3	123.9	100.1	23.8	----[d]	a
1940	765	---	---	1	3	147.1	113.8	33.3	+ 39.9	a
1941	817	---	---	7	3	168.7	123.9	44.8	+ 33.9	a
1942	851	---	---	7	4	178.8	134.2	44.6	- 0.4	a
1943	841	---	---	5	4	215.3	148.8	66.5	+ 49.0	a
1944	875	---	---	5	4	275.3	185.0	90.3	+ 35.8	a
1945	901	---	---	6	4	299.3	215.7	83.6	- 7.4	a
1946	1,025	127[c]	---	4	4	322.6	246.1	76.5	- 8.5	a
1947	1,464	279[c]	---	3	4	363.7	291.9	71.8	- 6.1	a
1948	1,824	682	50	3	4	416.8	370.7	46.1	- 35.8	b
1949	2,019	733	98	3	4	449.5	422.2	27.3	- 40.8	b
1950	2,143	669	107	3	4	550.4	491.4	59.0	+116.1	b

Note.--Footnotes are on the following page.

TABLE 2 (cont.).--TOTAL REVENUES, TOTAL EXPENSES, AND INCOME (TOTAL REVENUES LESS TOTAL EXPENSES) BEFORE FEDERAL INCOME TAXES FOR THE ENTIRE BROADCASTING INDUSTRY FOR THE YEARS 1939--1950

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[a]Compiled from: U.S. FCC. Stat. of the Comm. Industry, 1939, p. 233; 1940, p. 130; 1941, p. 201; 1942, p. 226; 1943, p. 223; 1944, p. 206; 1945, p. 198; 1946, p. 185; 1947, p. 194.

[b]Compiled from: U.S. FCC. Annual Report, 1949, p. 54; 1950, pp. 118-21; 1941, pp. 130-32.

[c]See Footnote d for Table 1.

[d]Not possible to compute from FCC records available.

[e]Figures are expressed in millions of dollars.

Abbreviations Used: Reg.--Regional
Nat.--National
Nets--Networks

TABLE 3.--ESTIMATED NUMBER OF AM, FM, AND TV RECEIVERS IN USE FOR THE YEARS 1946-1950

Date	No. of FM[a]	No. of TV[b]	No. of AM	% of Families Having AM
June 30, 1946	500,000	---[c]	58,000,000[d]	90%[d]
June 30, 1947	800,000	50,000	62,000,000[d]	93%[d]
June 30, 1948	2,000,000	500,000	75,000,000[e]	94%[e]
June 30, 1949	3,500,000	1,750,000	79,000,000[e]	95%[e]
June 30, 1950	5,500,000	7,000,000	81,000,000[e]	---[c]

[a]Column of estimates compiled from: U.S. FCC. Annual Report, 1946, p. 16; 1947, p. 22; 1948, p. 37, 1949, p. 40; 1950, p. 109.

[b]Column of estimates compiled from: U.S. FCC. Annual Report, 1947, p. 23; 1948, p. 39; 1949, p. 41; 1950, p. 102.

[c]No estimates contained in FCC records available.

[d]Estimates taken from: U.S. FCC, An Economic Study of Standard Broadcasting, op. cit., pp. 82-83. It should be noted that these estimates are as of January 1 on the respective years rather than June 30.

[e]Estimates taken from: U.S. FCC. Annual Report, 1948, p. 30; 1949, p. 36; 1950, p. 101.

January 1, 1940.....	814
January 1, 1941.....	822
January 1, 1942.....	923
January 1, 1943.....	917
January 1, 1944.....	912
January 1, 1945.....	943
January 1, 1946.....1,004	
January 1, 1947.....1,520	
January 1, 1948.....1,962	
January 1, 1949.....2,662	
January 1, 1950.....2,917	

To paraphrase Landry a bit, the picture of the American broadcasting as it left the forties and emerged into a new decade was as follows:

> THE VASTNESS of American broadcasting needs to be emphasized. There are nearly three thousand broadcasting stations providing three types of service to the public: standard AM, frequency modulation, and television. There are four coast-to-coast radio networks, numerous regional radio networks, and four major television networks. In the New York City metropolitan area alone, there are 60 broadcasting stations in operation which include 30 AM, 24 FM, and 6 TV.[116] There are 51 broadcasting stations in Chicago, 50 in Los Angeles, and 23 in Boston.[117]

Summing Up.--This then, represents a brief picture of the broadcasting industry of the forties. The whole decade was one that can hardly be characterized as a period of normalcy. The first half was dominated by World War II and an increase in government surveillance. The second half was dominated by tremendous technological innovation and rapid expansion. The conditions present in either of the periods do not tend to promote a true state of stability and security. Both were associated with and accompanied by many very complex and difficult

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[116]Compiled from the "Directory of AM, FM, and TV stations of the United States" in: Broadcasting Yearbook, 1950, pp. 69-325.

[117]See Footnote 116.

problems and issues. The conflict between the American Federation of Musicians and the broadcasting industry was superimposed against such a background. This conflict represented only one of many serious conflicts, problems, and issues that were facing both the industry and the country during the decade of the 1940's.

B. The American Federation of Musicians[118]

Early History.--The American Federation of Musicians, the national labor union composed primarily of instrumental musicians and their locals, dates to 1896 when it was organized and chartered by the American Federation of Labor.[119] The organization of the AFM did not represent the first attempt to organize the musicians on a nation-wide scale. There were other attempts before 1896, but it was the AFM that succeeded in becoming the dominant national labor organization representing instrumental musicians.[120]

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[118]For the principal systematic works on the AFM, see: Robert D. Leiter, The Musicians and Petrillo (New York: Bookman Associates, Inc., 1953); Vern Countryman, "The Organized Musician: I," University of Chicago Law Review, 16 (Autumn, 1948), pp. 56-85; Vern Countryman, "The Organized Musicians: II," University of Chicago Law Review, 16 (Winter, 1949), pp. 203-297; Anders S. Lunde, "The American Federation of Musicians and the Radio Recording Companies: A Report on a Controversy" (Unpublished Master's thesis, Faculty of Political Science, Columbia University, 1947)

Note.--As near as can be determined, any references in this section to the provisions of the 1958 edition of the AFM's Constitution or By-laws were in effect during the decade of the forties unless otherwise specified.

Hereafter, the two articles by Countryman will be cited respectively as follows: Countryman (I), op. cit. and Countryman (II), op. cit.

[119]Leiter, op. cit., p. 16.

[120]For discussions of the earlier attempts at national

Early success of the AFM.--Very early in its existence, the Federation was able to make its strength felt. This was echoed in the complaints of a New York theatre owner in 1904:

> "I notice that the union does not make any distinction between good and bad musicians. The bad ones, and they are many, get just as much pay as the good ones. Besides their regular pay they charge $2 extra for every holiday. There not being a sufficient number of legal holidays to suit them, they make holidays themselves. Easter Monday, St. Patricks Day, and the eve's of New Year's, Washington's birthday, Thanksgiving and Christmas are all holidays in the eyes of musicians.[121]

Two years later, John R. Commons--one of the great students of the American labor movement--observed that one of the outstanding characteristics of the AFM was its "growth as a trade union into a more complete control of their business throughout the United States.... than that enjoyed by any other large union in the American Federation of Labor."[122]

Through the years, the Union prospered and became well established organizationally. It became powerful enough to make the closed shop a characteristic of its collective bargaining relationships.[123] By 1940, there was little or no dual unionism of instrumental musicians left.[124] Effectively,

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organization of musicians, see: Leiter, op. cit., pp. 1-15; Countryman (I), op. cit., pp. 56-69.

[121]Leiter, op. cit., p. 24.

[122]John R. Commons, "Types of American Labor Unions.--The Musicians of St. Louis and New York," Quarterly Journal of Economics, 20 (May, 1906), p. 419.

[123]Leiter, op. cit., p. 25.

[124]Ibid.

the AFM was the only national labor organization representing instrumental musicians.

Organization and Centralized Power of the AFM.--Strictly speaking, the American Federation of Musicians is a national labor organization of local unions of musicians. However, the Constitution not only grants membership in the national organization to the locals which comprise it, but it also grants national membership to the individual members who comprise the locals.[125] Through this arrangement, the AFM--as the national body--not only is able to exert control over its member locals but can exert control over the individual musicians of those locals. The supreme body of the Federation is the convention composed of duly elected representatives of the member locals.[126] Each convention elects a slate of national officers to act in its behalf between conventions.[127] The officers consist of a president, vice-president, secretary, treasurer, and an executive committee composed of five members elected at large.[128] Collectively, these officers constitute the International Executive Board.[129]

Centralized Power.--The power of the Federation is centralized. That is, the national organization dominates

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[125] AFM, Constitution (1958), Art. 1, p. 1.

[126] Ibid.

[127] AFM, By-Laws (1958), Art. 29, pp. 179-81

[128] AFM, Constitution (1958), Art. 8, Sect. 1, p. 11.

[129] Ibid.

its member locals. This is accomplished in a number of ways. Among them are the following:[130]

1. The convention representation policies insure against the larger locals assuming a dominant position or role in the conventions. (Rules operate like the law governing the election of U.S. senators.)

2. There is wide and discretionary executive, legislative, and judicial power vested in the national officers, International Executive Board, and, in particular, the national president.

3. A number of provisions in the Constitution and By-laws insure the supremacy and dominance of the national power over local power in such areas as membership requirements, initiation fees, transfers of local membership, certain types of contracts, strikes, traveling musicians, and certain segments of collective bargaining and representation. As one example of such provisions, the International Executive Board must sanction all strikes called by member locals.

Powers of the President.--One manifestation of this centralization was reflected in the By-Laws up until a few years ago which related to the powers and duties of the national president. That provision was as follows:

> Duties of the president: It shall be the duty of the president to preside at all meetings of the federation and executive board; sign all documents of an official character pertaining to the federation; sign all vouchers; appoint all committees unless otherwise ordered. It shall be his duty and prerogative to exercise supervision over the affairs of the federation; to make decisions in cases where, in his opinion, an emergency exists; and to give effect to such decisions he is authorized and em-

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[130]According to Leiter and Countryman, the centralized power of the Federation resulted from the peculiar problems, difficulties, and practices associated with the employment of musicians, e.g., the transitory and itinerate nature of the average musician's employment, large numbers of part-time instrumentalists, and the use of the contractor and booking agent. For discussions of the centralized power of the AFM, see: Leiter, op. cit., pp. 1-32; Countryman (I), op. cit., pp. 56-69.

> powered to promulgate and issue executive orders, which shall be conclusive and binding upon all members and/or locals; any such order may by its terms (a) enforce the constitution, by-laws, standing resolutions, or other laws, resolutions, or rules of the federation, or (b) may annul and set aside same or any portion thereof, except such which treat with the finances of the organization and substitute therefor other and different provisions of his own making, in which case such change shall be published in the next issue of the International Musicians after its promulgation; the power so to do is hereby made absolute in the president when, in his opinion, such orders are necessary to conserve and safeguard the interests of the federation, the locals, and/or members; and the said power shall in like manner extend to and include cases where existing laws are inadequate or provide no method of dealing with a situation.[131]

Much of the same power is vested in the International Executive Board.[132]

Extent of Unionism.--After telling some House investigators how large his Union was, AFM president James C. Petrillo added with pride: "That includes all the professional musicians."[133] That the AFM has for its membership virtually every professional musician in this country has been attested to by writers on the subject of the Union and by Congressional

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[131]U.S. House of Representatives, Committee on Education and Labor, Report: Investigation of James C. Petrillo, and the American Federation of Musicians, H.R. Rep. No. 1162, 80th Cong., 1st Sess., 1947, pp. 7-8.

The above section of the By-Laws (Art. 1, Sect. 1 of the edition from which the quote was taken) was in effect during the 1940's. However, it was apparently later repealed. The 1958 edition of the AFM's By-Laws contains no such provision.

[132]AFM, By-Laws (1958), Art. 1. Sect. 5-B, p. 27.

[133]Testimony of James C. Petrillo, see: U.S. House of Representatives, Committee on Education and Labor, Hearings: Investigation of James C. Petrillo, the American Federation of Musicians, et al., 80th Cong., 1st Sess., 1947, p. 181.

investigators.[134] During the period of the forties, the membership--as compiled from Union records--was as follows:[135]

Year	No. of Locals	No. of Members
1940	723	134,372
1941	721	137,005
1942	718	134,835
1944	696	146,772
1946	693	181,794
1947	704	216,469
1948	711	232,370
1949	705	237,535
1950	698	239,777

Continuance of Membership.--As indicated above, the AFM was able to make the closed shop a characteristic of its bargaining relationships. This means that any musician who wants to make playing an instrument his livelihood must join the Union in order to secure a maximum of employment opportunities, and, in turn, maintain his membership if he wishes to continue to avail himself of such expanded opportunities. If a member violates the rules and regulations of the Federation or engages in acts detrimental to the aims of the Federation, he may be expelled.[136] As can be seen, this would severely limit employment possibilities, which in turn would

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[134]See: Countryman (I), op. cit., p. 71; Leiter, op. cit., p. 7; Lunde, op. cit., p. 4.

[135]Leiter, op. cit., p. 80

[136]AFM, By-Laws (1958), Art. 13, pp. 86-95.

encourage obedience of the rules and regulations and result in maintenance of membership.

Objectives of the AFM.--Countryman summarized rather succinctly the major objectives of the American Federation of Musicians:

> Since his occupation is almost completely free from physical hazards, the musicians had little interest in workmen's compensation laws and safety legislation.... In most cases his employment is too transitory for him to be greatly concerned about such matters as working conditions, seniority arrangements, and vacations. Since it is a rare engagement which calls for more than four hours of performance, he has no need of maximum-hours legislation. For the same reason, minimum wage legislation geared to the eight-hour day is of no value to him. And his union was so strong and so well organized by 1935 that it has had no occasion to invoke the certification machinery or protection for collective bargaining activity provided by the Wagner Act.
>
> In short, the Federation's primary concern has been with only two objectives: higher wages and more employment. Generally, the first of these two objectives has been pursued at the local level,.... and even in those instances in which the national organization intervened, its activities have not raised any special problems nor provoked any serious complaint from employers. It is to the second objective that the Federation has always addressed its principal efforts. And, in its constant endeavor to secure more work for its members, no possible threat had been regarded as either too large or too small to be attacked. It is this single-minded devotion to the employment problem which characterizes nearly all AFM activity and which has involved the union in its most serious difficulty.[137]

Unfair Competition.--There are three general sources of "unfair" competition that the AFM has always considered a

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[137] Countryman (I), op. cit., pp. 71-72.

Countryman's conclusions are supported by the following from an article by Petrillo: "....the major objectives of the A. F. of M. have been complete organization, adequate pay and greater employment opportunities." James C. Petrillo, "Musicians' Progress," American Federationist, 56 (October, 1949), p. 33.

possible threat to employment opportunities: (1) military musicians,[138] (2) foreign musicians,[139] and (3) amateur musicians.[140]

Military and Foreign Musicians.--It was only through a series of laws passed by Congress at the constant urging of the Federation that the competition from military[141] and foreign musicians[142] was successfully controlled to the satisfaction of the Union. However, this Congressional action was accomplished before the advent of popular radio. With the coming of radio, competition from these two groups, according to the union, became serious again.[143] Radio could go into the camps and pick up military musicians by remote control or recordings could be utilized. With respect to foreign musicians and radio, the actual musicians need not be imported. Their performances could be recorded and played back over the air which, in the eyes of the Union, constituted the same kind of "unfair" competition.

Amateur Musicians.--Also, the AFM has always considered amateur and non-union music groups as a possible source of

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[138]For discussions, see Leiter, op. cit., pp. 37-40; Countryman (I) op. cit., pp. 72-73.

[139]For discussions, see: Leiter, op. cit., pp. 32-36; Countryman (I), op. cit., pp. 73-75.

[140]For discussions, see: Leiter, op. cit., pp. 149-56; Countryman (I) op. cit., pp. 75-77.

[141]In general, the statutes prohibit military musicians from going into competition with civilian musicians with respect to their customary employment. These statutes are: 35 Stat. 110 (1908); 39 Stat. 188 (1916); 39 Stat. 612 (1916).

[142]For the statute, see: 47 Stat. 67 (1932).

[143]This point will be more fully developed later

unfair competition. The Union has tended to view any musical performance as a possible source of employment for its member musicians and, as a result, has attempted to control such competition.

One means of control is accomplished by the very liberal entrance requirements. Countryman has classified the AFM with respect to membership qualifications as an "open" union, i.e., its rules encourage membership rather than limit it.[144] The By-Laws define professional instrumental musicians as any performers "who render musical services of any kind for pay," and hence, are eligible for membership.[145] There is no mention at all in the Constitution or By-Laws of any level of skill required for membership. This is backed up by another provision which states that any local law which prohibits the admission of any eligible musician, male or female sixteen years or older, shall be null and void.[146] In other words, membership qualifications are measured not in terms of musical ability, but in terms of ability to secure employment. Such liberal policies have tended to eliminate a certain amount of job competition created by the existence of rival union and nonunion groups because almost any person who plays a musical instrument can become a member of the

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in this thesis.

[144] Countryman (I), op. cit., p. 62.

[145] AFM, By-Laws (1958), Art. 3, Sect. 1, p. 37.

[146] Ibid., Art. 3, Sect. 19, p. 41.

Union.[147] This has probably tended to cut down on the number of nonprofessional and nonunion musical groups in existence.

Another means of effective control of school musicians, probably the most numerous of amateur musicians, is achieved through its control of its members who are teachers and conductors of school and nonunion music groups. A large number of music teachers supplement their income through outside professional engagements and are thereby members of the Federation. In this regard, the By-Laws provide:

> The right of a member of the Federation to teach a nonunion band or orchestra (amateur or otherwise), or to conduct or perform with it at any time and place, is always subject to the orders of the Executive Board of the Local.[148]

Also, the By-Laws specifically state that "students of colleges, music schools, universities, or similar institutions" are eligible for membership.[149] In addition, the International Executive Board is empowered to grant membership to any instrumental musician under the age of sixteen if it "finds it advisable."[150]

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[147] In addition, there are certain fiscal policies of the Federation which encourage the musician who only plays his instrument occasionally for pay or who is unemployed to maintain his membership. The yearly dues to maintain membership are among the lowest in the trade union movement. The revenue from these charges represents only a minor source of income. By far, the major source of income used to operate the Federation is derived from a per capita tax on earnings of varying percentages depending on the nature of the employment. As can be seen, this could encourage maintenance of membership because there would be very little financial burden to the unemployed or partially employed member. For a discussion, see: Countryman (I), op. cit., pp. 64-65.

[148] AFM, By-Laws (1958), Art. 13, Sect. 12, p. 89.

[149] Ibid., Art. 3, Sect. 5, p. 38.

[150] Ibid., Art. 3, Sect. 20, p. 41.

Attitude Toward Nonunion Musicians.--The AFM has definite views with respect to the use of amateur, and other nonunion and nonprofessional musicial groups on the air.[151] The Union contends that broadcast time is limited. Hence, any time that is devoted to such groups limits the amount of time that can be devoted to the use of professional musicians. From time to time, this argument has been used as justification for preventing broadcast performances of such groups. In other words, the Union does not want amateur, foreign, and military musicians to go into competition with its members.

Canned Music and Technology.--Canned music or mechanized music are terms that the AFM has often used to refer to the reproduction and/or distribution of musical performances by mechanical and electrical means.[152] Under such a classification would come the following:

A. Devices for the reproduction of musical performances.
    1. Phonograph records.
    2. Electrical transcriptions.
    3. Motion picture sound tracks.
        a. Use in theatres.
        b. Use on commercial TV
    4. Magnetic recordings.
        a. Audio wire.
        b. Audio tape.
        c. Video tape.
B. Devices or machines for the distribution of musical performances.
    1. Broadcasting by individual stations.
        a. AM.
        b. FM.
        c. TV.
    2. Network broadcasting.
        a. AM.

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[151]For a discussion, see: Leiter, op. cit., pp. 155-56.

[152]For the Union's point of view on this matter, see: AFM, The Record on Records (New York: AFM, N.D. [1948?]).

b. FM.
c. TV.

3. Recording playback machines
   a. Jukeboxes.
   b. Use in all kinds of broadcasting.
4. Distribution by wire.
   a. Muzak
   b. Other "piped" music systems.

It is contended by the Union that the extensive use of canned or mechanized music and the machine seriously threaten the employment possibilities of its member musicians.[153] According to president Petrillo, the AFM is engaged in a perpetual battle "against the machine."[154]

Union Attitude Toward Technology.--The whole attitude of the Union toward technology in the music field was colored by the disastrous effects accompanied by the introduction of the sound motion picture in 1926.[155] Approximately 22,000 musicians were employed in local theatres throughout the country at the peak of the popularity of the silent film. Three years after the introduction of the sound film, 18,000 musicians had lost their jobs. Approximately 500 musicians

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[153]For statements of the Union's point of view, see: "Musicians Want Work," American Federationist, 50 (February, 1943), p. 23; "Plight of the Professional Musician," American Federationist, 49 (October, 1942), p. 8.

[154]Testimony of James C. Petrillo before the Senate Committee on Interstate Commerce in January, 1943 as reported in the verbatim excerpts found in: NAB. Sp. AFM Bul., No. 15, January 22, 1943, p. 4.
These hearings were never published nor reported on, see Footnote 32, Chapter I.

[155]This coloring can be detected in excerpts from an article by Petrillo appearing in the International Musician, the AFM's official publication, reported in: New York Times, May 1, 1946, pp. 1:2, 28:2.

in Hollywood eventually replaced these 18,000.[156]

The AFM has summed up the problem, as it sees it, of technology and its effects on employment as follows:

> Fifty years ago, a concert orchestra, a dance band, or a military band could be heard at one time by as many as a thousand or two thousand persons. If a band played in a stadium, perhaps fifty thousand might hear the performance.
>
> Today our progressive technology makes it possible for an orchestra to be recorded on a strip of magnetic tape from which broadcast programs will be heard, not by one, two or fifty thousand listeners, but by as many as fifty million. The musicians play but once, then pack up their instruments. Their work has been recorded forever. Where once they would have played a hundred or a thousand performances, they are now employed for one.
>
> The result was inevitably increasing unemployment for the professional musician.[157]

Also, the Union resents the situation which allows the extensive user of recorded musical performances, e.g., jukebox operator, radio station, wired and "piped in" music service, etc., to derive "huge" profits from such use and who, at the same time, pays nothing "directly to the music-makers whose talent.... (the extensive user) exploits so profitably."[158]

With respect to the commercial use of recorded music, Petrillo once asked the following rhetorical questions: "How many jobs are musicians going to play for one price? What right has anybody to sell the services of musicians over and

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[156]For accounts of the effects of the introduction of sound motion pictures, see: Leiter, op. cit., pp. 54-61; Countryman (II), op. cit., pp. 244-46.

[157]AFM, Crescendo (New York, AFM, N.D. [1959?]), p. 4. This resentment also finds expression in the article by Petrillo: Petrillo, op. cit., p. 34.

[158]AFM, The Fifth Freedom (New York: AFM, N.D. [1952?]), p. 7.

over again?"[159] On another occasion, Petrillo estimated that "a good recording.... costs musicians about a million dollars in wages before it runs its course."[160] These comments of Petrillo reveal the attitude of the Union toward the commercial use of recorded music.

The rights of performing artists with respect to the commercial use of recorded performances have not been recognized in this country neither at common law nor by legislation.[161] The only extensive performer's rights that have been recognized are the so-called "residual rights" established through collective bargaining.[162] The average instrumental musician--exclusive of leaders, conductors, and solo artists--generally receives no pay other than that which he received at the time of the recording of the original performance.

The AFM also contends that the alleged declining number of employment opportunities not only seriously threatens the economic future of practicing professional instrumental

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[159] U.S. House of Representatives, Committee on Education and Labor, Hearings: Investigation of James C. Petrillo, the American Federation of Musicians, et al., 80th Cong., 1st Sess., 1947, p. 200.

[160] C. Williams, "Mr. Petrillo's Hopeless War," Nation, 155 (October 3, 1942), p. 291.

[161] For discussions of the rights of performing artists, see: Countryman (II), op. cit., pp. 252-62; J. G. Moser and Richard A. Lavine, Radio and the Law (Los Angeles: Parker and Co., 1947), pp. 129-35; Herbert T. Silverberg, "Authors' and Performers' Rights," Law and Contemporary Problems, 23 (Winter, 1958), pp. 150-64; Harry P. Warner, Radio and Television Rights (New York: Matthew Bender and Co., Inc., 1953), pp. 945-72.

[162] For a discussion of "residual rights," see: Robert W. Gilbert, "'Residual Rights' Established by Collective Bargaining in Television and Radio," Law and Contemporary Problems,

musicians but it also discourages prospective musicians from pursuing such a career. The Union points out that it takes long years of study, practice, and professional experience to produce a first-class, accomplished instrumental musician. It is argued that because of the declining employment opportunities youthful talent will not be willing to invest in such time and expense if they will be unable to make a suitable living. This will, in time, result in a serious shortage of first class instrumental musicians. Hence, the musical culture of our country will be endangered.[163] That danger, according to the Union, is:

> The day fast approaches when there will be no adequate supply of skilled musicians. The present dearth of competent string instrumentalists is desperate enough to evoke immediate concern. Without orchestras and ensembles to employ them the incentive for students to play stringed instruments will disappear completely. One depends on the other and without them, our nation's heritage of music will eventually consist only of historical libraries of recordings. There will be no new music, no youthful talent coming along to man our symphonies or make new records. There will be only memories of a better day when musical culture was a cherished part of the American way of life. We can hope that our generation won't see the debacle, but it approaches so fast that even we may see that sorry day.[164]

Using a slightly different approach, one Union official dramatized the Union's point of view in the form of an analogy.[165]

23, (Winter, 1958), pp. 102-24.

[163]For the most complete statement in a single source of the point of view expressed in the paragraph, see: AFM, Diminuendo (New York, AFM, 1954).

[164]Ibid., p. 23.

[165]Leo Cluesmann, "Music's Plight," American Federationist, 62 (October, 1955), p. 1.

It was suggested that makers and users of recorded music were like a farmer who planted the same crop year after year on the same plot of ground without using fertilizer or any other technique to replenish and revitalize the soil. In time, the farmer could raise no crop at all because the soil became depleted. In the same manner, the Union official contended that extensive reliance on "canned music" and doing nothing to replenish the supply of those who create this music through instrumental interpretation, the danger becomes much greater that, in time, there will not be an adequate and desirable supply of instrumental musicians to create our music.

The Musician and the Machine.--Countryman described one very important characteristic of the machine in the music field as it relates to the musician:

> This problem can best be understood if one significant characteristic of the machine in the field of music be noted at the outset. In whatever form, the machine has never eliminated or even altered the musician's function. The machine does not make music--it merely provides a means of preserving and giving wider dissemination of those performances possible, the machine has created a greater demand for music without creating a correspondingly greater demand for the services of musicians. Secondly, the machine is still dependent on the musician for the original performance--a fact which has at once served to dramatize the musician's plight and to aid him in his struggle against mechanization.[166]

In this connection regarding the relationship between the musician and the machine, the AFM is quick to point out one very interesting aspect.[167] In this situation--unlike most, where the worker being displaced has nothing to do with

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[166]Countryman (II), op. cit., pp. 239-40.

[167]Testimony of James C. Petrillo, see: U.S. House of

that which displaces him--the musician is being asked to provide the "machine" that replaces him. For example, the ice man had nothing to do with the making of the refrigerator. Such is not the case with the musicians and, in the words of the Union, the AFM is being asked to play at its own "funeral."

Progress and the AFM.--Leiter concluded in his study of the AFM that: "The musicians union has accepted the principle that in a democracy labor cannot permanently stifle technological progress."[168] This conclusion has been borne out by statements of two of the leading spokesmen of the Union. Joseph N. Weber, president of the AFM from 1900 to 1940 except for one year, emphasized in his 1939 report to the annual convention that it was the function of unions, not to fight technological progress, but to protect the workers from the ill effects of it.[169] Weber's successor, James C. Petrillo, again emphasized this point in testimony before a Congressional Committee in 1947. In answer to whether it was the purpose of the Union to stop progress in radio and television, Petrillo answered: "There is no question about stopping progress. I do not think that anybody is big enough in this country to stop progress."[170] Over the years, the aim of

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Representatives, Committee on Education and Labor, Hearings: Restrictive Union Practices of the American Federation of Musicians, 80th Cong., 2nd Sess., 1948, p. 337.

[168]Leiter, op. cit., p. 187.

[169]AFM. Proceed., 1939, pp. 71-73.

[170]U.S. House of Representatives, Committee on Education and Labor, Hearings: Restrictive Union Practices of the American Federation of Musicians, 80th Cong., 2nd Sess., 1948, p. 337.

the AFM--as Weber suggested--appears to have been, not to stop progress and technological innovation in the music field, but to attempt to protect musicians from the ill effects of them. The principal ill effect, in the eyes of the Union, seems to be the diminishing employment opportunities for professional musicians.

Union Featherbedding Practices.--In its fight with technology, the Union has become associated with featherbedding practices over the years.[171] Featherbedding has been defined as "a method of creating or spreading employment by unnecessary maintaining or increasing the number of employees or the time to complete a particular job."[172] Featherbedding appears to be frequently associated with advancing technology. One writer indicated that it most frequently occurs among skilled workers who have a lot to lose in the event of technological innovation, i.e., job security, skill, high earnings, prestige, etc.[173] This writer emphasized: "In the main, featherbedding practices developed for economic reasons, that is, to protect or mitigate technological unemployment, to protect job opportunities, to divide the existing work, or

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[171]For general discussions of featherbedding, see: Benjamin Aaron, "Governmental Restraints on Featherbedding," Stanford Law Review, 5 (July, 1953), pp. 680-721; Walter L. Daykin, "Featherbedding," "Labor Law Journal, 7 (November, 1956), pp. 699-710; "Featherbedding and Taft-Hartley," Columbia Law Review, 52 (December, 1952), pp. 1020-33.

[172]"Featherbedding and Taft-Hartley," op. cit., p. 1020.

[173]Daykin, op. cit., p. 700.

to spread the burden of unemployment."[174]

Quota Rules and Standby Demands.--With respect to the AFM, the manifestations of these featherbedding practices have, in the main, taken two forms: (1) quota rules,[175] and (2) standby demands.[176] The basis of the quota rules is contained in the By-Laws of the Federation.[177] The member locals are empowered to specify "the minimum number of men who shall be allowed to play for engagements of any kind" within their respective jurisdictions.[178] Also, if a local has difficulty in enforcing its quota rules, the International Executive Board may intervene if it deems it necessary "to adjust the matter."[179] These provisions date back to the early 1900's.[180]

Unlike the quota rules, the standby technique has not been formalized in either the Constitution or the By-Laws of the Federation. In fact, Countryman has indicated that "the Federation has scrupulously avoided any public declaration of policy on the matter."[181] Apparently, the standby demands and

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[174] Ibid., p. 701. Other writers concur on this point, see: Aaron, op. cit., p. 680; "Featherbedding and Taft-Hartley," op cit., p. 1020.

[175] For a discussion, see: Countryman (I), op. cit. pp. 77-80.

[176] For a discussion, see: Countryman (I), op. cit., pp. 80-85.

[177] AFM, By-Laws (1958), Art. 12, Sect. 16-19, pp. 79-80.

[178] Ibid., Art. 12, Sect. 16, pp. 79-80.

[179] Ibid., Art. 12, Sect. 19, p. 80.

[180] Countryman (I), op cit., p. 78

[181] Ibid., p. 81.

practices have evolved out of custom and practice. Countryman described this evolution in the following way:

> Originally, as used by the AFM, it meant that the employer, in order to placate union objections to performances by nonunion musicians, actually hired a certain number of union members to do nothing but stand by while the performance went on. But since the union musicians performed no services, the employer was not disposed to complain if they departed before the end of the performance, or if they failed to appear at all. And when the custom had developed to this extent, it was frequently arranged to have the employer pay the agreed number of salaries directly into the Local's unemployment fund rather than to the individual musicians. Thus the "standby" has gradually been transformed from a live musician to a bookkeeping device used to calculate the amount of payment to be made to the union.[182]

It is not difficult to see that the ultimate aim of both the quota rules and the standby demands are consistent with the main objective of the Federation of securing a maximum of employment possibilities for its members.

Leadership of the AFM.--One very important variable in the AFM's fight with the broadcasting industry during the forties was reflected in the predispositions and personalities of its two principal leaders, Joseph N. Weber[183] and James C. Petrillo.[184] Weber served as president of the AFM from 1900

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[182] Ibid., pp. 80-81.

[183] For biographical information about Weber, see: Leiter, op. cit., pp. 20-24; "Joseph N. Weber: Master Builder of the American Federation of Musicians," American Federationist, 47 (July, 1940), pp. 14-15.

[184] For biographical information about Petrillo, see: Leiter, op. cit., pp. 42-53, 181-83; "James C. Petrillo," Current Biography, 1940, pp. 650-52.

In addition to the above, there were numerous popular biographies appearing in the current mass circulation periodicals during the forties. Among them were the following: Robert

to 1940 (except for one year[185]) when he decided to retire.[186] Subsequently, the convention of 1940 unanimously elected Petrillo to succeed Weber.[187]

Joseph N. Weber.--During Weber's term in office, no evidence was found that the Federation formulated any extensive national policies which had a restrictive effect on broadcast programming. The key to this lies in the predisposition of Weber. In successfully thwarting a movement to get certain restrictions placed on the use of radio's remote lines which picked up musical performances from hotels, night clubs, dance halls, etc., he stated in his annual report:

> Outstanding in the entire question is that we have no authority and never will have, to decide as to what should go over the air, as this authority strictly rests with the broadcaster, as a prerequisite to their responsibility to the Government concerning the purposes for which broadcasting is used.[188]

Coughlan, "Music's Stormy Petrillo," Reader's Digest, 41 (October, 1942), pp. 77-81; Robert Coughlan, "Petrillo: Little Caesar of Symphony and Swing Wages War on Juke Boxes, Musical Children, Army Bands," Life, 13 (August 3, 1942), pp. 68-76 George Frazier, "Santa Claus with a Horn," Collier's, 119 (March 8, 1947), pp. 17, 83-84; Jack Gould, "Portrait of Musician's Leader: James C. Petrillo, Head of the American Federation," New York Times, September 1, 1940, IX, p. 5:5; "Pied Piper of Chi," Time, 51 (January 26, 1948), pp. 18-22; Victor Riesel, "Petrillo of the Musicians Union," American Mercury, 63 (July, 1946), pp. 56-63.

To appreciate some of the color and controversy that was associated with Petrillo during the forties, some of these popular biographies should be consulted.

[185] Weber was president continuously except for the year 1914 when he declined to run on account of ill health. Leiter, op. cit., p. 26.

[186] Leiter, op. cit., pp. 73-74.

[187] Ibid., p. 74.

[188] AFM, Proceed., 1939, p. 102.

In other words, Weber recognized and accepted the philosophy associated with the federal regulation of broadcasting which indicates that the broadcast licensee has an affirmative responsibility to maintain control over his programming material. In short, Weber was not predisposed favorably to the Federation enacting policies which would interfere with the ability of broadcasters to maintain this control.

James C. Petrillo.--Not a single bit of evidence was found which indicated that Petrillo had any predisposition along these lines. Hence, after Petrillo became president, it should not have been too surprising that the Federation did enact policies which tended to have a restrictive effect on broadcast programming. Before ascending to the national presidency, Petrillo had been the president of the Chicago local since 1922.[189] A brief look at some of the policies and practices of the Chicago local under Petrillo's direction would give some hint of things to come after he emerged as the national leader in 1940.[190]

Late in 1931, a strike was called against Chicago radio stations to be effective New Year's Eve.[191] One of the declared intentions of the proposed strike was to prevent the use of recorded music in commercial broadcasting in the

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[189] American Federationist, 47 (July, 1940), p. 30.

[190] For a description of the operation of the Chicago local under Petrillo's supervision in the late thirties, see the chapter by C. Lawrence Christenson in: Twentieth Century Fund, How Collective Bargaining Works (New York: American Book-Stratford Press, Inc., 1942), pp. 848-66.

[191] "Two Exciting Decades," Broadcasting, October 16, 1950, p. 72.

jurisdiction of the Chicago local.[192] Although unsuccessful in this demand, the strike was averted when the Chicago area's Class A stations agreed to increase the minimum size of their studio orchestras from 10 to 15 musicians.[193] Also, in 1931, a strike was threatened against the Chicago radio station which was carrying the inauguration of the newly elected mayor, Anton J. Cermak.[194] The Chicago local objected to the proposed use of a high school band in connection with the ceremonies. Subsequently, the strike threat was withdrawn when the school band was dropped and union musicians were employed. The recording ban of 1942 was no new experience for Petrillo, either. In 1937 and 1938, in the Chicago local under his direction had imposed such a ban on recordings and transcriptions in the Chicago area which lasted eighteen months.[195] It is interesting to note that very soon after Petrillo assumed the national presidency, the restriction on radio's remote lines which Weber had opposed were put into effect.[196]

Leiter summarized very nicely what this change in national leadership was going to mean for the decade of the forties:

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[192] Leiter, op. cit., p. 68.

[193] "Two Exciting Decades," Broadcasting, October 16, 1950, p. 72.

[194] Leiter, op. cit., pp. 46-47.

[195] Ibid., p. 132.

[196] AFM. Proceed., 1941, p. 43.

> Weber had the qualities needed by a good leader and he was able to build the union from a small organization into a huge and successful enterprise. But by nature he was cautious and slow to act. It was his policy generally to gather, sift, and weigh the facts in each situation carefully before making any major decision. As a result, many tasks which should have been considered, but which were not critical at the moment, were pushed aside. Only in an emergency did he show boldness and daring.
>
> Persons who knew Petrillo expected a more aggressive action from the musicians union after the change in leadership in 1940, and they were not disappointed. Petrillo has been more willing to take a chance and more likely to act impetuously. He has been more familiar with what he wants than Weber had been. It was not long before employers, union members, and the public realized this.[197]

Summing Up.--The American Federation of Musicians, upon entering the 1940's, was a strong, well organized, and recognized labor organization. Its whole outlook and attitude toward technology was deeply colored by the disastrous results of the introduction of the sound motion picture on musicians' employment. Its leader, James C. Petrillo, had a past record of fighting the "machine." Moreover, he was aggressive and willing to take a chance. With the centralized power of the Federation to back him, when Petrillo assumed the presidency as the decade of the forties began, he was ready to take action and wage an aggressive, extensive, nation-wide campaign against the "machine" which he believed wholeheartedly was seriously threatening the means of livelihood of his "brothers" of the Federation. With such a background, it is not so surprising that the AFM pursued the course it did in its fight

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[197] Leiter, op. cit., p. 112.

with the broadcasting industry during the first ten years of Petrillo's term in office.

C. Music and Broadcast Programming

Music and Radio Programs.--

> Not SNIFFS AND SNAILS and puppy dog tails but
> WORDS
> MUSIC
> SOUND EFFECTS
> SILENCE
> are what radio programs are made of,....[198]

This was Landry's amusing conception of the essential ingredients that are used in varying quantities to create radio programs for the American public. On the serious side, the above does show that Landry does conceive of music as being a very important essential in radio programming. The importance of music in its various forms in radio programming can be seen in some of the descriptive phrases that have been used to describe it such as: "staple of broadcasting,"[199] "backbone of small stations programming,"[200] and without recorded music, many small radio stations "would be unable to keep going."[201] Music has been closely associated with broadcasting since its inception.

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[198] Landry, Who, What, Why is Radio?, op. cit., p. 61.

[199] New York Times, October 20, 1940, IX, p. 12:3.

[200] Broadcasting, November 19, 1945, p. 48.

[201] Testimony of Elmer Davis, Director of the Office of War Information, see: U.S. Senate, Committee on Interstate Commerce, Hearings: Use of Mechanical Reproduction of Music, 77th Cong., 2nd Sess., 1942, p. 4.

Music and a Vision.--In 1916, a young visionary foresaw the commercial possibilities of radio and proposed the following scheme:

> "I have in mind a plan of development which would make radio a 'household utility' in the same sense as the piano or phonograph. The idea is to bring music into the house by wireless.
>
> "....For example--a radio telephone transmitter having a range of say 25 to 50 miles can be installed at a fixed point where instrumental or vocal music are produced. ....The receiver can be designed in the form of simple 'Radio Music Box' and arranged for several different wave lengths....
>
> "....The box can be placed on a table in the parlor or living room, the switch set accordingly and the transmitted music received. There should be no difficulty in receiving music perfectly when transmitted within a radius of 25 to 50 miles. Within such a radius there reside hundreds of thousands of families;....
>
> "The same principle can be extended to numerous other fields as, for example, receiving lectures at home.... events of national importance.... Baseball scores.... By the purchase of a 'Radio music Box' they could enjoy concerts, lectures, music, recitals, etc.,....
>
> "....The main revenue to be derived will be from the sale of 'Radio Music Boxes' which if manufactured in quantities of one hundred thousand or so could yield a handsome profit....
>
> "Aside from the profit to be derived from this proposition the possibilities for advertising for the Company are tremendous; for its name would ultimately be brought into the household and wireless would receive national and universal attention."[202]

That young visionary was David Sarnoff. It is interesting that his proposal relied so heavily on the use of music.

Music "Broadcasting" Before Radio.--It is also interesting to note that the concept of broadcasting as a means of "distributing entertainment and news" pre-dates radio or

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[202]Cited in: Gleason L. Archer, History of Radio to 1926 (New York: American Historical Society, Inc., 1938), pp. 112-13.

wireless and was associated with the development of the telephone in the 1870's.[203] LaPrade credited Bell with not only the invention of the telephone as a means of point to point communication but with the invention of "wire broadcasting."[204] According to Banning, "the entertainment idea" was distinguishable in Bell's earliest demonstrations of the telephone. For example, a handbill of 1877 for one demonstration promised that "vocal and instrumental music and conversation will be transmitted a distance of 27 miles and be received by the audience."[205] In the descriptions of the demonstrations by both LaPrade and Banning, music was a constituent part of the entertainment that was to be transmitted by wire.

Music and Early Radio.--Westphal, in a dissertation completed at the Eastman School of Music, documented the close association of music to the early history of broadcasting.[206] Among some the memorable events in the history of broadcasting which were associated with music are the following:

1. Fessenden was successful in making "the first actual broadcast received publicly" from Byrant Rock, Massachusetts, on Christmas Eve in 1906. Among

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[203]This point was emphasized by the following two writers: William P. Banning, Commercial Broadcasting Pioneer: The WEAF Experiment 1922-1926 (Cambridge: Harvard University Press, 1946), pp. 3-6; Ernest LaParde, Broadcasting Music (New York: Rinehart and Co., Inc., 1947), pp. 7-9.

[204]LaParde, op. cit., p. 7.

[205]Banning, op. cit., p. 3.

[206]Frederick W. Westphal, "Music in Radio Broadcasting" (Unpublished Ph.D. dissertation, Department of Music Education, Eastman School of Music, University of Rochester, 1948).

the material broadcast was a vocal solo and a violin solo.[207]

2. In the summer of 1908, deForest, in his experiments in France, broadcast "recorded music and speech" from the Eiffel Tower which was heard "as far away as 500 miles."[208]

3. Later in New York City, deForest successfully broadcast portions of two operas direct from the stage of the Metropolitan Opera House on January 13, 1910. Enrico Caruso appeared in one of the operas.[209]

4. Shortly after obtaining a license in April, 1920, Dr. Frank Conrad began broadcasting "the first regularly scheduled broadcasts of entertainment" from his home in Pittsburgh. Programs "made up entirely of phonograph records of music" were broadcast from 7:30 to 9:30 on Wednesday and Saturday evenings.[210]

5. Samuel L. Ross was appointed music director, "a new position in the annals of radio broadcasting," of radio station, WBAY, New York City, in August of 1922.[211]

6. "The first simultaneous broadcast by two stations in different cities occurred on January 4, 1923 when station WNAC in Boston was linked by long distance wires with WEAF in New York...." Among material broadcast was a saxophone solo.[212]

7. Dr. Walter Damrosch started his long career in radio broadcasting on October 29, 1923, with a lecture-concert on the music of Beethoven."[213]

8. The National Broadcasting Company began operations on November 15, 1926, with a program

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[207] Ibid., p. 46

[208] Ibid., pp. 47-48.

[209] Ibid., pp. 48-50.

[210] Ibid., pp. 51-52.

[211] Ibid., p. 69.

[212] Ibid., pp. 79-80.

[213] Ibid., p. 73.

originating from the Grand Ballroom of the Waldorf-Astoria which "involved an impressive array of musical talent," e.g., Walter Damrosch conducting the New York Symphony Orchestra, Harold Bauer, the New York Oratorio Society, the Goldman Band, and a "grand opera company under the baton of Casare Sodero."[214]

9. The Columbia Phonograph Broadcasting System, precusor of the Columbia Broadcasting System, began broadcast operations on September 18, 1927, with the performance of Deems Taylor's "The King's Henchman" by the Metropolitan Opera Company.[215]

Another event, early in the history of radio, dramatizes the intimate association of music with broadcasting. It was in the fall of 1922 that the American Society of Composers, Authors, and Publishers (ASCAP) first demanded that broadcasters pay royalties for their use of recorded music.[216] To fight ASCAP's demands was one of the reasons the National Association of Broadcasters was formed.[217] It is hoped that the foregoing has demonstrated that music has been closely allied with broadcasting since its very beginning.

Music in Broadcast Programming.--Music can be and is utilized in broadcast programming in many and varied ways.[218] Music can be the integral portion of the program or it can provide only an incidental part of it. Music can be used

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[214] Ibid., p. 84.

[215] Ibid., p. 89.

[216] White, op. cit., p. 28.

[217] Ibid., pp. 28, 70.

[218] For an attempt to classify the various uses of music in radio programming, see: Jack K. Lee, "An Analysis of Current Practice in the Use of Music for Radio Broadcasting" (Unpublished Master's thesis, Ohio State University, 1947).

for transitional purposes or for creating background moods. Sometimes music is used to identify a program or personality and sometimes music is used to emphasize or highlight something. Anyone who has listened to radio or watched television programs can think of many more uses of music. The point is that music is used quite extensively in broadcast programming for many and varied purposes.

Live and Recorded Music.--There are two principal forms in which music can be used in broadcasting. It can either be "live" or "recorded." Live music needs little explanation except that it is music which is performed by actual musicians at the time the program is broadcast. Recorded music involves a prior performance of some kind of actual musicians which is mechanically or electrically reproduced by one of a number of methods into a form which is played back at the time the program is broadcast. The significant thing with respect to recorded music is that the same performance of the musicians can be utilized over and over again.

Recordings Used in Broadcasting.--Prior to the introduction of television, there were primarily two types of recordings used in broadcasting; processed and instantaneous recordings.[219] Processed recordings are manufactured in varying quantities from a master recording. With respect to instantaneous recordings, the actual vehicle, i.e., disc, magnetic wire, or magnetic tape, used to record the performance is used in the playback. After the introduction of TV, two

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[219]For a more detailed discussion, see: Westphal, op. cit., pp. 220-22.

other means of recordings began to be utilized; the motion picture film sound tract and the magnetic video tape recording.[220]

The Phonograph Record and the Electrical Transcription.--Processed recordings as used in radio generally take either the form of the "phonograph record" or the "electrical transcription."[221] The term phonograph record refers to disc recordings which are manufactured and released for sale to the general public. Such recordings are also available to broadcasters for use on the air. In 1942, it was estimated by the U.S. Department of Justice that 80 per cent of all phonograph records manufactured were sold to the general public for home use, 19 per cent were sold for use in juke boxes, and about one per cent were sold to radio stations.[222] However, electrical transcriptions are disc recordings which are made specifically for broadcast purposes and cannot be purchased for use in the home. In fairly general usage in the broadcasting industry, the term "recording" refers to phonograph records, the term "transcription" or "ET" refers to electrical

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[220]There is not further discussion of the motion picture on television in the remainder of this chapter. Any further discussion that will be needed for expositional purposes will be handled later in the thesis. Magnetic video tape recordings were not developed for operational use during the time chosen for consideration and hence, needs no further discussion.

[221]For a more detailed discussion of the differences, see: Westphal, op. cit., pp. 222-23.

[222]Testimony of Thurman W. Arnold, U.S. Assistant Attorney General, see: U.S. Senate, Committee on Interstate Commerce, Hearings: Use of Mechanical Reproduction of Music, 77th Cong., 2nd Sess., 1942, pp. 100-101.

transcriptions.

Use of Phonograph Records and ET's.--Phonograph records are simply used as a source of ready-made and readily available music and entertainment by radio stations. However, electrical transcriptions can be categorized on the basis of four general usages:[223]

1. Custom-made transcriptions of radio programs especially produced for specific sponsors.

2. Open-end transcriptions of radio programs which were not produced for specific sponsors. Time is allowed on each transcription for the commercial messages of any advertiser, generally a local one, who may desire to sponsor the program. Such programs are sometimes called syndicated programs.

3. Transcription libraries which are rented to broadcast stations generally consisting of recorded musical selections to be used as a possible source of program material.

4. Transcriptions of sound effects and special music effects available from a number of concerns which are generally used in connection with dramatic programs.

Use of Instantaneous Recordings.--The principal use of the instantaneous recording or transcription in radio is in connection with the so-called "delayed broadcast."[224] Delayed broadcasts generally take two forms. First, when an affiliated station cannot air a network program at the time it comes over the wire, sometimes the station will transcribe such programs and broadcast them when time becomes available. Second, networks sometimes make off the line transcriptions of their programs for two purposes: (1) for rebroadcast to their

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[223]For a discussion, see: Westphal, op. cit., p. 221.

[224]For a discussion, see: Westphal, op. cit., p. 221-22.

affiliates along the wire at a later time due to time zone differentials, and (2) for distribution to unaffiliated stations.

Advantages of Recordings and Transcriptions.--The Commission, in the Blue Book, listed "five particular advantages" of transcriptions in their use in broadcasting:

> (a)....Transcriptions make possible the compilation of a permanent archive of the best in radio,....
> (b) Transcriptions make possible the placing of programs at convenient hours....
> (c) Transcriptions make possible the sharing of programs among stations not directly connected by wire lines....
> (d) Transcriptions offer to the writer, director, and producer of programs the same technical advantages that the moving picture industry achieves through cutting room techniques....
> (e) Portable recorders make it possible to present to the listener the event as it occurs rather than a subsequent re-creation of it.... actual press conferences, for example,....[225]

With respect to recorded music, Westphal listed a number of advantages:

> First, any station can play recordings of music at any time,....Second, a relatively small budget for recordings, over a period of time, will build a sizeable record collection for the station, ...Third, in many instances the carefully prepared performances will be superior to the performances of local groups outside the metropolitan centers. Fourth, recordings provide a means for repeated hearings of the same composition, ...Fifth, recordings greatly extend the variety of selections heard; ....Sixth, a greater amount of music can be heard;....[226]

Economic Advantage of Recorded Music.--The use of recorded music also offers one very significant economic advantage

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[225]U.S. FCC, Public Service Responsibility of Broadcast Licensees, op. cit., p. 37.

[226]Westphal, op. cit., pp. 213-14.

which could be rather important to the commercial broadcaster as the operator of a business enterprise for profit. Any performance of a copyrighted musical composition, whether live or recorded over a commercial broadcast station is protected by the Copyright Code.[227] As a result, the commercial broadcaster cannot escape the cost of the clearances on protected musical compositions by utilizing recorded music instead of live. However, since our legal system does not recognize "performers rights," the commercial broadcaster will incur no additional costs in this area if recordings are used (provided that there are no labor contracts calling for residual rights). Further, the use of recorded music involves no musicians' wages. This results in a tremendous economic advantage for the use of music in its recorded form as opposed to its being performed by "live" or actual musicians with regard to commercial stations.

Extent of the Use of Recordings and Transcriptions and Music in Radio Programming in the Forties.--The estimates of the amount of broadcast time devoted to recorded program fare have tended to vary somewhat and have been expressed in a number of ways. In a study of radio programming released in early 1941, it was estimated that the national and regional network affiliated stations devoted an average of 10 to 15 per cent of their time to electrical transcriptions and that local unaffiliated stations devoted up to 85 per cent to the

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[227]Walter B. Emery, "Legal Restrictions on Use of Program Materials," Journal of Broadcasting, 4 (Summer, 1960), pp. 242-43.

same.[228] A survey of "mechanized music" conducted by the AFM phrased the estimate differently.[229] The report estimated that out of seven hours broadcast daily by the average radio station in this country, only about 58 minutes originated live in the studios. FCC Chairman Fly told a Senate committee in September, 1942, that recordings and transcriptions constituted the program source of over 40 per cent of all radio time.[230] In the Blue Book, the Commission estimated that "in January of 1945, approximately 32.3% of all the time of standard broadcast stations was devoted to transcriptions and recordings."[231] Late in the following year, Time reported an estimate that 43 per cent of all radio time was filled with recordings and characterized them as radio's "staff of live."[232] By 1947, it was being concluded by some that the disc jockey or DJ programs had recently emerged as a popular type of radio entertainment and that the disc jockeys themselves were becoming regarded as "respectable radio talent."[233] As some indication of this trend, a few of the leading DJ's were commanding

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[228]Kenneth G. Bartlett, "Trends in Radio Programs," American Academy of Political and Social Science. Annals, 213 (January, 1941), p. 19.

[229]AFM. Proceed., 1941, pp. 272-80.

[230]U.S. Senate, Committee on Interstate Commerce, Hearings: Use of Mechanical Reproduction of Music, 77th Cong., 2nd Sess., 1942, p. 25.

[231]U.S. FCC, Public Service Responsibility of Broadcast Licensees, op. cit., p. 37.

[232]Time, December 30, 1946, p. 82.

[233]Ed James, "Will Petrillo Unseat the Jockeys," American Magazine, 144 (December, 1947), pp. 31, 82.

yearly salaries of 200-400 thousand dollars per year.[234] Although it is difficult to state with precision the proportion of radio time devoted to recorded program material, the above does suggest that recordings and transcriptions did provide the radio industry with a rather significant source of program material during the forties.

Music in Radio Programming Prior to the '40's.--With respect to the thirties, Bartlett, in a study of the trends in radio programming compiled the following estimates of the percentage of network radio time which was devoted to music programs:[235]

1932.....63.0	1936.....63.0
1933.....67.3	1937.....59.7
1934.....67.7	1938.....58.2
1935.....63.3	1939.....57.2

Bartlett concluded that there was a trend away from music programs (programs in which the feature was music) to a higher proportion of "talk" programs. Nevertheless, music constituted a very significant element of all broadcast programming at the beginning of the forties.

FCC Survey.--Probably the most extensive survey of music in radio programming was conducted by the FCC in 1942. The results of this survey were reported to a Senate investigating committee by Chairman Fly.[236] It was found that radio

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[235]Bartlett, op. cit., p. 16.

[236]U.S. Senate, Committee on Interstate Commerce, Hearings: Use of Mechanical Reproduction of Music, 77th Cong., 2nd Sess., 1942, pp. 13-56.

stations were on the air an average of 112 hours per week of which an average of 86 of these hours contained music in some form. In other words, approximately 76 per cent of all broadcast time was devoted to programs which contained some kind of music. In slightly greater detail, the breakdown was:

Type of Program	%of all Radio Time
Entire program musical.....	48.2
Integral part of program musical.....	13.8
Music an incidental part of program....	14.3
Programs containing no music.....	23.7

With respect to whether music was live or recorded, the Commission found:

Type of Program	% of all Radio Time
Programs containing recorded music.....	42.6
Programs containing live music.....	33.7
Programs containing no music.....	23.7

The above citation will serve as the documentation for the entire section entitled: "FCC Survey."

The purpose of the Commission's survey was to determine the extent to which the radio industry was dependent on recordings and transcriptions. The data was compiled from a questionnaire which was mailed out to all AM broadcast licensees on August 15, 1942. The questionnaire covered all programming presented during the week of April 5 through 11. "Licensees were asked to indicate what portion of their programs, both commercial and sustaining, broadcast during the week contained music (1) recorded on phonograph records, (2) recorded on transcriptions, (3) played live by professional musicians, or (4) played live by amateur musicians." Other information was asked for, also. By the date of the hearings (September 17, 18, 21, 1942), 796 of the 890 AM stations in operation had replied. Upon checking, it was found that the 796 stations provided a representative sample.

Regarding the time devoted to programs containing recorded music, it was found that programs which utilized phonograph records constituted 37.6 per cent of this time and programs utilizing electrical transcriptions constituted 62.4 per cent. Broken down into three categories of programs containing music, the time devoted to programs containing recorded music was as follows:[237]

	% of Total Time Devoted to Programs containing Recorded Music	
Type of Program	Phonograph Records	Electrical Transcriptions
Entire program musical	30.3	40.1
Integral part of program musical	5.4	10.1
Music an incidental part of program	1.9	12.2
TOTAL	37.6	62.4

In the survey, the FCC found that the proportionate use of recorded music in radio programming was not uniform by any means. Its use tended to vary according to certain variables as Table 4 demonstrates. A number of generalizations can be made, based on the FCC survey, about the use of recorded music by radio stations in the early forties:

1. Low-power stations did, in the main, use a higher proportion of recorded music than did high-power stations.

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[237]The cited figures do not include paid spot announcements on electrical transcriptions containing music which were broadcast during the week under survey. In addition to the above, there were 32,470 such spot announcements broadcast on the 796 stations during the week. This represented an average of 40.8 per station. The revenue derived from the sale of time for these spots amounted to $209,514 or an average of $263 per station.

2. Stations located in smaller cities and towns tended to utilize a greater proportion of recorded music than their counterparts in large cities and metropolitan areas.

3. As the time sales of radio stations increased, the programming time devoted to recorded music was apt to decrease.

4. As the income before taxes of radio stations decreased, recorded music tended to fill a greater proportion of programming time.

5. National network affiliated stations generally used less music proportionally to fill programming schedules than did stations which were not affiliated with national networks.

In summing up then, the smaller, local, low-power, less prosperous radio stations without network affiliation located in smaller cities or towns tended in the forties to utilize a much higher proportion of recorded music in their programming than did the larger, high-power, more prosperous stations with major network affiliation located in larger metropolitan areas.

AFM Survey of Network Key Station Programming.--Table 5 summarizes a survey of the programming of the four major network key AM stations located in New York City. It should be noted that the Table includes both network and local programs of the stations. As might be expected from the generalizations, these stations utilized a rather high proportion of live music programs and live programs, in general. Over the five-year period covered, programs which featured instrumental music ranged between approximately 33 and 43 per cent of all programming for the three key stations operated by NBC, CBS, and ABC. The MBS key station tended to use fewer music programs proportionately than did the other three keys. Despite the MBS key, this again serves to demonstrate that

TABLE 4.--USE OF RECORDED MUSIC BY RADIO BROADCAST STATIONS ACCORDING TO CERTAIN SELECTED VARIABLES DURING THE WEEK OF APRIL 5 THROUGH 11, 1942[a]

Variable	Sub-Variable	Total No. of Stations[b]	Breakdown of Total No. of Stations	% of Total No. of Stations	% of Total Time Devoted to Programs Containing Music Which Utilized Recorded Music
Power of Station	500 Watts or Under	459	160	35 %	Less than 50 %
			299	65 %	More than 50 %
	Over 500 Watts	334	223	67 %	Less Than 50 %
			111	33 %	More Than 50 %
Population of City in Which Station is Located	50,000 and Under	386	127	33 %	Less Than 50 %
			259	67 %	More Than 50 %
	Over 50,000	407	251	62 %	Less Than 50 %
			156	38 %	More Than 50 %
Net Time Sales	$75,000 or Less	419	131	31 %	Less Than 50 %
			288	69 %	More Than 50 %
	Over $75,000	330	237	72 %	Less Than 50 %
			93	28 %	More Than 50 %

TABLE 4 (cont.).--USE OF RECORDED MUSIC BY RADIO BROADCAST STATIONS ACCORDING TO CERTAIN SELECTED VARIABLES DURING THE WEEK OF APRIL 5 THROUGH 11, 1942[a]

Variable	Sub-Variable	Total No. of Stations[b]	Breakdown of Total No. of Stations	% of Total No. of Stations	% of Total Time Devoted to Programs Containing Music Which Utilized Recorded Music
Income Before Federal Taxes	Under $5,000	331	106	32 %	Less Than 50 %
			225	68 %	More Than 50 %
	$5,000-$25,000	208	96	46 %	Less Than 50 %
			112	54 %	More Than 50 %
	Over $25,000	212	169	80 %	Less Than 50 %
			43	20 %	More Than 50 %
National Network Affiliation	Affiliated	498	368	74 %	Less Than 50 %
			130	26 %	More Than 50 %
			43	9 %	0- 20 %
			232	46 %	21- 40 %
			159	32 %	41- 60 %
			40	8 %	61- 80 %
			24	5 %	81-100 %

TABLE 4 (cont.).--USE OF RECORDED MUSIC BY RADIO BROADCAST STATIONS ACCORDING TO CERTAIN SELECTED VARIABLES DURING THE WEEK OF APRIL 5 THROUGH 11, 1942[a]

Variable	Sub-Variable	Total No. of Stations[b]	Breakdown of Total No. of Stations	% of Total No. of Stations	% of Total Time Devoted to Programs Containing Music Which Utilized Recorded Music
National Network Affiliation (cont.)	Non-Affiliated	298	18	6 %	Less Than 50 %
			280	94 %	More Than 50 %
			5	2 %	0- 20 %
			9	3 %	21- 40 %
			12	4 %	41- 60 %
			42	14 %	61- 80 %
			230	77 %	81-100 %

[a]Table 4 was compiled from the results of a survey of radio programming conducted by the Federal Communications Commission as reported by Chairman Fly in his testimony before a Senate committee. See: U. S. Senate, Committee on Interstate Commerce, Hearings: Use of Mechanical Reproduction of Music, 77th Cong., 2nd Sess., 1942, pp. 23-33. For details about the survey, see footnote 236 of this chapter.

[b]"Total No. of Stations" represents the number of stations which would comprise the group of stations identified by the "Sub-Variable."

TABLE 5.--ANALYSIS OF THE TOTAL RADIO TIME BETWEEN 8:00 AM AND 1:00 PM DAILY OF THE FOUR KEY STATIONS LOCATED IN NEW YORK CITY OF THE FOUR MAJOR NATIONAL RADIO NETWORKS FOR THE YEARS

Network	Key Station	% of Total Time Devoted to "Live Music"					% of Total Time Devoted to "Recorded Music"				
		1945	1946	1947	1948	1949	1945	1946	1947	1948	1949
NBC	WNBC	40.8	39.9	37.6	31.3	25.3	1.5	2.8	3.9	6.6	13.2
CBS	WCBS	38.7	36.9	33.3	22.6	19.5	1.7	2.9	4.1	10.3	16.5
ABC	WJZ	38.6	35.2	26.5	21.6	27.9	2.6	2.9	7.3	12.8	14.5
MBS	WOR	22.8	19.3	14.7	10.6	10.3	10.5	11.3	10.2	9.8	10.9

Network	Key Station	% of Total Time Devoted to "Live and Recorded Music"				
		1945	1946	1947	1948	1949
NBC	WNBC	42.3	42.7	41.5	37.9	38.5
CBS	WCBS	40.4	39.1	37.4	32.9	36.0
ABC	WJZ	41.2	38.1	33.8	34.4	42.4
MBS	WOR	33.3	30.6	24.9	20.4	21.2

Note.--The "music" classification indicates that the feature of the programs was instrumental music. The "sketches" classification indicates that the programs contained no music or that music played only an incidental role in them.

Abbreviations used:
NBC--National Broadcasting Company
CBS--Columbia Broadcasting System
ABC--American Broadcasting Company
MBS--Mutual Broadcasting System

TABLE 5 (Cont.).--ANALYSIS OF THE TOTAL RADIO TIME BETWEEN 8:00 AM AND 1:00 PM DAILY OF THE FOUR KEY STATIONS LOCATED IN NEW YORK CITY OF THE FOUR MAJOR NATIONAL RADIO NETWORKS FOR THE YEARS 1945-1949[a]

Network	Key Station	% of Total Time Devoted to "Live Sketches and News"					% of Total Time Devoted to "Recorded Sketches"				
		1945	1946	1947	1948	1949	1945	1946	1947	1948	1949
NBC	WNBC	57.2	56.3	56.6	59.1	57.1	0.5	1.0	1.9	3.0	4.4
CBS	WCBS	58.3	58.8	59.2	62.9	58.6	1.3	1.4	3.4	4.2	5.4
ABC	WJZ	58.4	61.5	63.1	60.6	52.8	0.4	0.4	3.1	5.0	4.8
MBS	WOR	65.0	65.9	71.5	72.0	69.4	1.7	3.5	3.6	7.6	9.4

Network	Key Station	% of Total Time Devoted to "Live and Recorded Sketches and News"				
		1945	1946	1947	1948	1949
NBC	WNBC	57.7	57.3	58.5	62.1	61.5
CBS	WCBS	59.6	60.2	62.6	67.1	64.0
ABC	WJZ	58.8	61.9	66.2	65.6	57.6
MBS	WOR	66.7	69.4	75.1	79.6	78.8

[a]Table 5 was compiled from the president's reports to the annual conventions of the American Federation of Musicians. See: AFM. Proceed., 1947, p. 63; 1948, p. 117; 1949, p. 124; 1950, p. 110; 1951, p. 131.

Note.--For explanations of program classifications and abbreviations used, see Note on previous page.

music represents a significant source of radio programming material. The most important trend that should be noted in the data over time is that the proportionate use of recorded music increased rather significantly for three of the network stations (NBC, CBS, and ABC). However, over the five-year period, the overall use of music programs did not change very much except for the MBS station.

Concern for Recorded Program Material in Radio Broadcasting.--As early as 1930, the AFM complained to the Federal Radio Commission [238] that too much recorded music was being used by radio stations.[239] However, the AFM was not the first to become overtly concerned about the use of recordings in radio programming as was evidenced by the following excerpt from the Annual Report of the Department of Commerce in 1929:

> During the early days the programs of a majority of the stations consisted almost entirely of phonograph records. The announcers usually had favorite records which they repeated numerous times during a program. The Secretary of Commerce foresaw the danger of stations losing public interest if a change was not made in the programs.[240]

Department of Commerce Concern.--Seven years earlier to avert this danger to the public interest, the Department of Commerce, under Herbert Hoover's direction, had "by regulation prohibited the playing of phonograph records by stations having the better (Class B) channel assignment except in

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[238] Hereafter in this thesis, the Federal Radio Commission may be referred to as the FRC.

[239] Lunde, op. cit., p. 57.

[240] Cited in: Countryman (II), op. cit., p. 242.

emergencies or to fill in between program periods; and later in the same year, it amended the regulation to prohibit even such use of records by Class B stations."[241]

FRC Concern.--The Federal Radio Commission, created in 1927, showed some concern for recorded program fare also. In its 1928 Annual Report, the FRC stated:

> ....the commission, while not condemning the practice of using mechanical reproductions such as phonograph records or perforated rolls, required that all broadcasting of this nature be clearly described in the announcement of each number. The commission has felt, and still feels, that to permit such broadcasting without appropriate announcements is, in effect, a fraud upon the public.... On the whole,....the commission is inclined to believe that the use of ordinary commercial records in a city with ample original program resources is an unnecessary duplication of service otherwise available to the public, and the crowded channels should not be wasted in this manner.[242]

FCC Concern.--The Federal Communications Commission continued the policy of identifying mechanical reproductions but it did make some refinements on it. Over the years, the FCC has applied this policy with varying degrees of stringency. As of 1939, the regulations in this regard required the following:[243]

1. For mechanical reproductions or series of them which exceeded 15 minutes in length, identifying announcements were required at the beginning, at every 15 minute interval, and at the end. Exceptions were made for programs of a continuing nature such as plays or symphony concerts.

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[241] U.S. FCC., Public Service Responsibility of Broadcast Licensees, op. cit., p. 36.

[242] Cited in: Countryman (II), op. cit., pp. 248-49.

[243] 4 F.R. 2721 (1939).

2. For mechanical reproductions or series of them lasting from 5 to 15 minutes, identifying announcements must be made at both the beginning and end.

3. For mechanical reproductions of less than 5 minutes' duration, identifying announcements must precede them.

4. The complete wording that such identifying announcements should have was not specified in detail, but some suggestions were offered. It was clearly stated that the wording of the announcements must accurately describe the kind of mechanical reproduction used. For example, it was required that such announcement must differentiate between "electrical transcriptions" and "recordings."

However, throughout the decade of the forties, these regulations became somewhat relaxed. In 1940, the 15-minute interval in parts 1 and 2 of the rules outlined above was increased to 30 minutes.[244] Four years later, in 1944, a provision was added which stated that "a licensee shall not attempt to create the impression that any program being broadcast by mechanical reproduction consists of live talent."[245] Then in 1945, all specific suggestions for the wording of the required announcements were deleted.[246] In the following year, an amendment exempted mechanical reproductions of one minute or less from the requirement of identifying announcements.[247] Finally, in 1947, a further amendment provided that delayed recorded re-broadcasts of programs by networks due to daylight time differentials in the summer no longer needed to be

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[244] 5 F.R. 112 (1940).

[245] 9 F.R. 10268 (1944).

[246] 10 F.R. 8381 (1945).

[247] 11 F.R. 14291 (1946).

identified as being mechanically reproduced.[248]

Broadcasters seemed to be concerned about these regulations of the Commission. Everytime the FCC proposed or promulgated regulations in this regard, the pros and cons on the severity of such regulations would be heard from various segments of the industry.[249] Needless to say, the AFM went on record as "strongly" supporting the FCC regulations with respect to identifying recorded programs, particularly music.[250]

Network Concern.--Alarm over the fairly widespread use of mechanical reproductions or recordings for program material was not confined only to the AFM and the government. Countryman pointed out that it was shared by some of the networks, in particular, NBC and CBS:

> The small radio station which otherwise might be driven to a network contract by the dearth of local talent has in many cases been able to fill out its broadcasting hours with recorded music. Moreover, the electrical transcription affords a means for nationwide broadcasting of an entire program without resort to the networks.... Recognizing the threat of such competition, NBC in 1934 began gradually to eliminate all recorded programs on the stations it operates. CBS adopted the same policy,....[251]

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[248] 12 F.R. 2435 (1947).

[249] For some accounts of the discussions of the pros and cons of disc announcements and the activities of the FCC concerning them, see: Broadcasting, April 24, 1944, p. 13; May 22, 1944, pp. 12, 60; August 21, 1944, p. 14; July 2, 1945, pp. 18, 81; May 6, 1946, pp. 16, 76; June 10, 1946, p. 32; August 26, 1946, p. 20; September 2, 1946, pp. 15, 79; November 25, 1946; p. 93; December 9, 1946, pp. 15, 85.

[250] This point was emphasized in the president's report to the 1939 AFM convention, see: AFM Proceed., 1939, pp. 99-101.

[251] Countryman (II), op. cit., p. 251.

Apparently, ABC and MBS adopted much the same policy also.[252] This policy was reflected in the results of the FCC survey of one week's programming in 1942. During the week in question, neither NBC or CBS had any programs containing recorded music and MBS had only a limited number.[253] However, with the advent of television, the situation changed. Late in 1948, NBC and CBS announced that they were embarking on a new policy. Instead of summer replacements for their regular programs, the two networks decided to start using "recorded reruns."[254] However, NBC and CBS were not the first to relax the former policy of only "live talent." ABC and MBS had started to utilize transcribed programs in 1946.[255] It was not until 1949 that NBC and CBS permitted the general use of recordings and transcriptions.[256]

AFM Action Against Recordings Prior to 1940.--Prior to the decade of the forties, the AFM's most active concern for

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[252]Although not specifically mentioned, it was implied by Head that ABC did adopt such a policy, see: Head, op. cit., p. 148.

MBS reportedly had such a policy, see: New York Times, September 18, 1941, p. 31:3.

[253]Testimony by James L. Fly, FCC Chairman, see: U.S. Senate, Committee on Interstate Commerce, Hearings: Use of Mechanical Reproduction of Music, 77th Cong., 2nd Sess., 1942, p. 26.

Fly told the committee that he understood that it was the policy of NBC and CBS to broadcast live talent only.

[254]Broadcasting, November 8, 1949, p. 26.

[255]Head, op. cit., p. 148.

[256]Ibid.

The gradual relaxation of the policy against the use of recorded program material by the networks can be detected in Table 4.

broadcasting's use of recorded music was manifested in the so-called "quota agreements" negotiated and executed in 1937 and 1938.[257] In effect, the AFM told the broadcasting industry that if it wanted to continue to use recordings and transcriptions made by Union members, receive network programs, or even employ musicians, the industry as a whole would have to increase the employment of staff musicians to a level satisfactory to the Federation. A nation-wide strike of musicians was threatened against both the radio and recording industries. The Union first made its demands known to the major networks. Since the networks had adopted a policy of utilizing "live talent" only, a nation-wide strike of musicians could affect them quite severely.

The affiliates of the national networks finally banded together and formed the Independent Radio Network Affiliates,[258] an organization specifically designed to cope with the Union demands that the industry must increase musicians' employment. After lengthy and intense negotiations, the AFM finally reached

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[257]For accounts of the so-called "quota agreements," see: "Two Exciting Decades," Broadcasting, October 16, 1950, pp. 104, 106, 110, 116-17, 122; Leiter, op. cit., pp. 69-70; U.S. Senate, Committee on Interstate Commerce, Hearings: Use of Mechanical Reproduction of Music, 77th Cong., 2nd Sess., 1942 p. 16; U.S. House of Representatives, Committee on Interstate and Foreign Commerce, Hearings: Interference with Broadcasting of Noncommercial Educational Programs, 79th Cong., 1st Sess., 1945, pp. 69, 90-91; AFM, Proceed., 1938, pp. 38-39, 76-77; 1940, pp. 51, 55-56.

The above citations will serve as the documentation for the entire section entitled: "AFM Action Against Recordings Prior to 1940."

[258]Hereafter in this thesis, the Independent Radio Network Affiliates may be referred to as the IRNA.

a two-year agreement with the key stations of the networks and the IRNA to be effective January 17, 1938. The networks and their affiliates agreed to increase their current annual expenditure of $3,500,000 for musicians by approximately $2,000,000. The key stations of the major networks were to assume a quarter of this increase.

Later in 1938, a similar "quota agreement" was reached with stations not having network affiliations. Under this agreement, unaffiliated stations were to spend 5.5 per cent of their net income over $15,000 for the employment of musicians. However, all stations whose annual income did not exceed $20,000 were exempted from the terms of the agreement. In return for this increased employment by both groups, the AFM was to withdraw any objections to the broadcast use of recordings and transcriptions.

In 1940, when the agreements came up for renewal, the Department of Justice notified the parties involved that they were illegal and if renewed, an anti-trust suit would be instituted. No new agreements were negotiated or signed in 1940, but the quota arrangements were continued informally at the local level.

Musicians' Employment in Broadcasting During the '40's.--There appears to be two general groups of musicians who are employed in broadcasting which are distinguishable. The first group is composed of those whose wages are paid by stations and networks. The bulk of these musicians are full-time employees and are generally referred to as "staff musi-

cians."[259] The other group involves those musicians whose wages are paid by sponsors and advertising agencies.[260] Generally, this latter category involves employment for specific broadcasts only.

Staff musicians who were employed by broadcast stations were among the most highly paid broadcast employees during the forties. In 1943, among all broadcast employees excluding executives, there were only two occupational classifications which had a higher average weekly wage than staff musicians (see Table 6). In the same year, on an industry-wide basis, the average weekly wage of staff musicians was $69.39 compared with an industry average of $49.35 for all employees except executives or when executives were included, $55.60. Network staff musicians were exceptionally well compensated (see Table 9). Table 7 suggests that as the power of radio stations increased, so did the average wage paid to musicians. All in all, staff musicians in radio, during the forties, appear to have been a group of well paid broadcast employees.

With respect to what kind of stations employ musicians, stations with the greater power appeared to have hired the highest number of musicians per station, and as the power decreased, the average number of musicians employed also decreased, (see Table 7).

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[259] It will be noted from Table 11 that the bulk of the gross salaries paid by radio stations to musicians went to full-time employees, that is, those who were employed 50-52 weeks per year.

[260] See Table 11.

Regarding the volume of musicians' employment in radio, what data of any consequence that was found is summarized in Tables 8 through 12. Lunde pointed out in his thesis that the dearth of descriptive and complete data for the decade of the forties made it almost impossible to make any accurate evaluation of the volume of musicians' employment. However, on the basis of what data he found available, Lunde concluded that there was some increase in radio employment during the first half of the decade and that after 1946 it declined.[261] The data compiled for this study suggest that if there were an increase in the number of musicians employed during the 1940-1945 period, it was very slight and did not compare very favorably with the general increase in the number of all broadcast employees (see Tables 10 and 12). Figures for the same period on the number of musicians employed in AM stations exclusive of network operations tend to show a slight decline in employment (see Table 8). This would suggest that any increase in the number of employed musicians might have occurred at the network level and the stations in the large metropolitan areas. In other words, the increases, if any, probably came from stations which utilized a higher proportion of "live" music in their programming. The AFM was more apt to be successful in its bargaining relationships with those stations which depended on live music in contrast to those stations which did not. Table 9 does show some increase in

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[261]Lunde, op. cit., p. 32.

TABLE 6.--FULL-TIME EMPLOYMENT AND COMPENSATION DATA FOR ALL EMPLOYEES WHOSE WAGES WERE PAID BY AM STATIONS AND REGIONAL AND NATIONAL RADIO NETWORKS FOR THE WEEK BEGINNING OCTOBER 17, 1943[a]

Employee Classification	Number Employed	Average Wage
EXECUTIVES:		
General Managerial	1,011	144.95
Technical	577	69.09
Program	537	74.21
Commercial	411	109.71
Publicity	121	79.17
Other	224	81.34
TOTAL, Executive	2,881	103.83
EMPLOYEES (other than executive):		
TECHNICAL:		
Research and Development	97	74.84
Operating	4,492	51.79
Other	329	36.62
PROGRAM:		
Production	1,037	54.45
Writers	823	41.02
Announcers	3,189	46.88
Staff Musicians	2,191	69.39
Other Artists	1,402	63.75
Other	1,201	44.34
COMMERCIAL:		
Outside Salesmen	1,390	81.94
Promotion and Merchandising	594	51.75
Other	489	40.06

TABLE 6 (cont.).--FULL-TIME EMPLOYMENT AND COMPENSATION DATA FOR ALL EMPLOYEES WHOSE WAGES WERE PAID BY AM STATIONS AND REGIONAL AND NATIONAL RADIO NETWORKS FOR THE WEEK BEGINNING OCTOBER 17, 1943[a]

Employee Classification	Number Employed	Average Wage
EMPLOYEES (other than executives): (cont.)		
GENERAL AND ADMINISTRATIVE:		
Accounting	961	36.68
Clerical	1,151	25.21
Stenographic	1,204	28.38
Other	1,258	28.61
MISCELLANEOUS:	419	28.40
TOTAL, Employees	22,227	49.35
GRAND TOTAL, Executives and Employees	25,108	55.60

[a]The data for Table 6 were compiled from: U.S. FCC. Stat. of the Comm. Industry, 1943, pp. 264-65.

Although not specifically indicated by the FCC, it is assumed that the data are for full-time employees.

The data collected by the FCC were based on 855 AM stations, 4 major national radio networks, and 5 regional radio networks.

TABLE 7.--FULL-TIME EMPLOYMENT AND COMPENSATION FOR STAFF MUSICIANS WHOSE WAGES WERE PAID BY AM RADIO STATIONS (EXCLUDING NETWORK KEY STATIONS) BY CLASS AND TIME OF STATION FOR THE WEEK BEGINNING OCTOBER 17, 1943[a]

Class and Time of Station	No. of Stations	No. of Musicians Employed	Average No. per Station	Average Wage
CLEAR CHANNEL:				
50kw Unlimited	41	437	10.7	69.53
50kw Part-time	3	61	20.3	75.59
5-20kw Unlimited	25	116	4.6	55.24
5-20kw Part-time	2	11	5.5	77.55
TOTAL	71	625	8.8	67.18
REGIONAL CHANNEL:				
Unlimited	270	739	2.7	47.24
Part-time	62	177	2.9	42.37
TOTAL	332	916	2.8	46.46
LOCAL CHANNEL:				
Unlimited	417	130	0.3	34.60
Day and Part-time	26	3	0.1	70.00
TOTAL	443	133	0.3	35.40
GRAND TOTAL	846	1,674	2.0	53.39

[a]The data in Table 7 were compiled from: U.S. FCC, Stat. of the Comm. Industry, 1943, pp. 261-63.

Although not specifically indicated by the FCC, it is assumed that the data are for full-time staff musicians. Staff musicians, by definition, are full-time employees.

Note.--"Kw" is the abbreviation used for kilowatts. "Unlimited" stations have no restrictions with respect to time of operation. "Part-time" stations have restrictions with respect to time of operation. "Day" or "Daytime" stations may operate only between local sunrise and local sunset.

TABLE 8.--FULL-TIME EMPLOYMENT AND COMPENSATION DATA FOR STAFF MUSICIANS AND ALL EMPLOYEES WHOSE WAGES WERE PAID BY AM STATIONS (EXCLUDES ALL NETWORK OPERATIONS) FOR ONE WEEK IN OCTOBER FOR THE YEARS 1939-1945[a]

Year	Number of AM Stations	Staff Musicians			All Employees		
		Number Employed	Average No. Per Station	Average Wage	Number Employed	Average No. per Station	Average Wage
1939[b]	705	1,871	2.7	47.53	16,100	22.7	41,94
1940[b]	765	1,803	2.4	48.01	17,805	23.3	43.51
1941[b]	817	1,748	2.1	49.25	19,567	23.9	45.15
1942[b]	851	1,771	2.1	57.42	19,716	23.2	49.79
1943[c]	846	1,674	2.0	53.39	19,365	22.9	52.26
1944[c]	834	1,675	2.0	58.75	20,452	24.6	57.18
1945[c]	852	1,660	1.9	62.24	22,280	26.2	62.18

[a]The data for Table 8 were compiled from: U.S. FCC. Stat. of the Comm. Industry, 1939, p. 251; 1940, pp. 140-41; 1941, p. 249; 1942, p. 269; 1943, p. 265; 1944, p. 251; 1945, p. 241.

Although only specifically indicated for the years 1939-1942 by the FCC, it is assumed that the data are for full-time employees for the remaining years. Staff musicians, by definition, are full-time employees. "All employees" include executives, also.

[b]The data for this year include data for local operational employees of the network key stations.

[c]The data for this year exclude all data for employees of the network key stations.

TABLE 9.--FULL-TIME EMPLOYMENT AND COMPENSATION DATA FOR STAFF MUSICIANS AND ALL EMPLOYEES WHOSE WAGES WERE PAID BY THE MAJOR NATIONAL RADIO NETWORKS AND THEIR KEY STATIONS FOR ONE WEEK IN OCTOBER FOR THE YEARS 1943-1945[a]

Year	Number of Networks	Number of Key Stations	Staff Musicians		All Employees	
			Number Employed	Average Wage	Number Employed	Average Wage
1943	4	9	500	122.59	5,602	66.69
1944	4	10	534	130.38	6,084	71.35
1945	4	10	540	139.69	6,643	76.12

[a]The data for Table 9 were compiled from: U.S. FCC. Stat. of the Comm. Industry, 1943, p. 265; 1944, p. 251; 1945, p. 241.

Although not specifically indicated by the FCC, it is assumed that the data are for full-time employees. Staff musicians, by definition, are full-time employees. "All employees" include executives, also.

TABLE 10.--FULL-TIME EMPLOYMENT AND COMPENSATION DATA FOR STAFF MUSICIANS AND ALL EMPLOYEES WHOSE WAGES WERE PAID BY AM STATIONS AND REGIONAL AND NATIONAL RADIO NETWORKS FOR ONE WEEK IN OCTOBER FOR THE YEARS 1942-1945[a]

Year	Number of AM Stations	No. of Reg. Nets	No. of Nat. Nets	Staff Musicians			All Employees		
				Number Employed	Average No. per Station	Average Wage	Number Employed	Average No. per Station	Average Wage
1942	815	6	4	2,104	2.5	67.54	23,780	27.9	51.93
1943	855	5	4	2,191	2.6	69.39	25,108	29.4	55.60
1944	844	4	4	2,226	2.6	76.20	26,688	31.6	60.52
1945	876[b]	5	4	2,220	2.5	81.20	29,405[b]	33.6[b]	65.40[b]

[a]The data for Table 10 were compiled from: U.S. FCC. Stat. of the Comm. Industry, 1942, p. 269; 1943, p. 265; 1944, p. 251; 1945, p. 241.

Although only specifically indicated for the year 42 by the FCC it is assumed that the data are for full-time employees for the other years. Staff musicians, by definition, are full-time employees. "All employees" include executives, also.

[b]Includes data from 14 stations in U.S. territories involving 238 employees with an average wage of $50.40. None of these 14 stations employed staff musicians during the week in question.

TABLE 11.--EMPLOYMENT OF MUSICIANS IN RADIO BROADCASTING FOR THE YEARS 1944-1949[a]

Calendar Year	Staff Musicians' Employment Paid by Radio Stations: No. of Musicians Employed	No. of Weeks Employed	Gross Salaries Paid by Radio Stations	Gross Salaries Paid by Sponsors and Advertising Agencies for Local Radio Station Engagements	Gross Salaries Paid by Sponsors and Advertising Agencies for Network Radio Engagements	Total Gross Salaries Derived from all Types of Radio Employment
1944	2,353	50-52	$ 9,395,942			
	116	40-49	229,673			
	220	30-39	349,663			
	20	-30	20,217			
	Misc.	Variable	1,916,486			
	2,719	Variable	$11,911,981	---[b]	---[b]	$11,911,981[c]
1945	2,519	50-52	$10,483,735			
	101	40-49	217,175			
	206	30-39	321,405			
	106	-30	102,169			
	Misc.	Variable	1,289,835			
	2,932	Variable	$12,514,337	---[b]	$ 8,759,526	$21,273,863[c]
1946	2,433	50-52	$12,056,653			
	31	40-49	60,144			
	257	30-39	305,594			
	79	-30	64,064			
	Misc.	Variable	3,016,877			
	2,800	Variable	$15,503,302	$ 1,814,352	$ 8,213,787	$25,531,441

TABLE 11. (cont.).--EMPLOYMENT OF MUSICIANS IN RADIO BROADCASTING FOR THE YEARS 1944-1949[a]

Calendar Year	Staff Musicians' Employment Paid by Radio Stations: No. of Musicians Employed	No. of Weeks Employed	Gross Salaries Paid by Radio Stations	Gross Salaries Paid by Sponsors and Advertising Agencies for Local Radio Station Engagements	Gross Salaries Paid by Sponsors and Advertising Agencies for Network Radio Engagements	Total Gross Salaries Derived from all Types of Radio Employment
1947	2,230	50-52	$11,110,457.00			
	113	40-49	215,168.00			
	212	30-39	420,858.00			
	120	-30	106,705.00			
	Misc.	Variable	2,160,243.00			
	2,675	Variable	$14,013,431.00	$ 1,242,137.00	$ 7,695,699.00	$22,951,267.00
1948	2,193	50-52	$10,789,841.38			
	61	40-49	108,199.55			
	130	30-39	249,290.27			
	144	-30	117,418.91			
	Misc.	Variable	2,151,524.15			
	2,528	Variable	$13,416,274.26	$ 997,903.99	$ 7,177,246.19	$21,591,424.44
1949	2,073	50-52	$10,277,052.49			
	47	40-49	83,019.74			
	115	30-39	188,389.92			
	215	-30	162,185.80			
	Misc.	Variable	2,322,549.41			
	2,450	Variable	$13,033,197.36	$ 1,282,877.01	$ 5,372,483.00	$19,688,457.37

TABLE 11 (cont.).--EMPLOYMENT OF MUSICIANS IN RADIO BROADCASTING FOR THE YEARS 1944-1949[a]

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[a]Table 11 was compiled from data contained in the president's reports to the annual conventions of the American Federation of Musicians. The data were originally compiled by the Union's research department. See: AFM. Proceed., 1946, p. 53; 1947, pp. 61-62; 1948, pp. 115-16; 1949, pp. 122-23; 1950, pp. 108-109; 1951, pp. 128-29.

[b]Data were not included in the Union source utilized.

[c]Represents an incomplete total for the year.

TABLE 12.--FULL-TIME EMPLOYMENT OF STAFF MUSICIANS IN RADIO BROADCASTING WHOSE WAGES WERE PAID BY RADIO STATIONS FOR THE YEARS 1944-1949[a]

Calendar Year	No. of AM Stations on the Air[b]	No. of AM Stations Employing Musicians[c]	% of all AM Stations Employing Musicians	No. of Full-time Musicians Employed[c]	Average No. of Musicians Employed per Station for all AM on the Air
1944	915	314	34.3	2,353	2.6
1945	950	369	38.8	2,519	2.7
1946	1,265	382	30.2	2,433	1.9
1947	1,646	422	25.6	2,230	1.4
1948	1,923	430	22.4	2,293	1.1
1949	2,063	451	21.5	2,073	1.0

[a]Full-time employment, with respect to Table 12, is defined as employment of from 50-52 weeks per year.

[b]The data in this column were compiled from: Broadcasting Yearbook, 1945, pp. 73-174; 1945, pp. 71-190; 1947, pp. 73-209; 1948, pp. 73-258; 1949, pp. 69-285; 1950, pp. 69-324. The figures represent the number of AM stations on the air at the end of the calendar years.

[c]The data in this column were compiled from: AFM. Proceed., 1946, p. 53; 1947, p. 61; 1948, p. 115; 1949, p. 122; 1950, p. 108; 1951, p. 128.

employment of musicians at the network level. For the industry including all levels, Table 10 indicates some slight increases also. The data do give some support to the above generalization, but it is far from being conclusive.

With respect to the gross salaries paid by radio stations there appears to have been an increase between 1944 and 1946 (see Table 11). However, this does not necessarily reflect an increase in the number of musicians employed. It might be just a reflection of increasing wages. Tables 8, 9, and 10 indicate that the average wage paid to musicians was increasing throughout the period. This tends to support the conclusion that the increase in gross salaries reflected increasing wages more than it reflected increasing numbers of musicians employed.

It appears, then, that the data compiled for this study suggest that the employment of musicians by radio stations and networks was fairly stable during the first half of the decade of the forties and that no dramatic increases or decreases were experienced. However, it should be noted that the data available and reported for this period ignore one significant area of employment in radio broadcasting, the musicians whose wages were paid by sponsors and advertising agencies. If figures were available for this sector, the whole picture could be changed.[262]

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[262]J. Harold Ryan, former NAB president, testified to a Congressional investigating committee that up to 1944, the gross amount paid to musicians from the radio industry and sponsors had shown a steady increase. He gave no figures to back up his statement. See: U.S. House of Representatives,

After 1946, a definite decline in musicians' employment can be detected in the number of full-time musicians employed, in the gross salaries paid, and in the average number of musicians employed per station (see Tables 11 and 12). In terms of gross salaries, there was, by 1949, a drop of nearly $6,000,000 under the 1946 level. In 1945 and 1946, about one in three stations hired at least one musician, but by 1949, only one in five had at least one musician on the payroll. The data do support Lunde's conclusion that employment of musicians in radio declined after 1946.

Summing Up.--There is little doubt that music represented a significant source of radio program material during the 1940's. In 1942, the FCC found that 76 per cent of all radio time was devoted to programs which contained music in some form or other. Of the two principal forms of music, "live" and "recorded," the latter was used quite extensively by the smaller radio stations even in the earliest part of the forties. As the decade of the forties progressed, there is evidence that the practice of using recorded music was on the increase even at the network level. Given the stand of the Union, such a situation would be deplored most emphatically by the American Federation of Musicians. The Federation could only interpret it as the gradual curtailment of employment opportunities. To a union leader, the general picture of musicians' employment in radio throughout the whole

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Committee on Interstate and Foreign Commerce, Hearings: Interference with Broadcasting of Noncommercial Educational Programs, 79th Cong., 1st Sess., 1945, p. 66.

period would appear rather bleak. Even during the 1940-45 period when there may have been some slight increase in employment, if the union leader had contrasted this to the general economic picture of the rest of the industry, he would not have been able to derive a great deal of satisfaction. He would have noticed that the industry as a whole was making the highest level of profits ever experienced. Also, he would have noticed that employment in the other segments of the industry was increasing to a much greater extent than his own segment. After 1946, there was little question that the employment picture for the musicians would be rather disheartening. In the face of such a situation, if a union leader would not attempt to take some remedial action it is doubtful if he could remain a union leader very long. Given the temper of the organized musicians' national leader, James C. Petrillo, it is not at all surprising that the American Federation of Musicians asserted itself in the dramatic way that it did during the decade of the forties.

CHAPTER III

POLICIES, PRACTICES, AND ACTIVITIES OF THE AMERICAN FEDERATION OF MUSICIANS WHICH TENDED TO HAVE A RESTRICTIVE EFFECT ON BROADCAST PROGRAMMING DURING THE DECADE OF THE FORTIES

A. AFM Strikes Against the Major National Radio Networks Which Were related to Disputes Between AFM Locals and Network Affiliated Stations

The first AFM Action Against the Broadcasting Industry During the Forties.--About the middle of June, 1940, James C. Petrillo assumed national presidency of the American Federation of Musicians. It did not take the broadcasting industry long to feel the effects of this change in leadership. On June 28, 1940, Petrillo called a strike of all "remote bands" performing for the National Broadcasting Company.[1] The strike order grew out of a dispute between an AFM local and radio station KSTP, St. Paul, Minnesota, an NBC affiliated. NBC remained without the services of remote bands until July 8, 1940, when the dispute between the AFM local and the NBC affiliate was settled "in a manner satisfactory to the St. Paul Local."[2] The event signaled the beginning of a whole series of policies and practices instituted by the American Federation

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[1]For Petrillo's account of the KSTP dispute, see: AFM. Proceed., 1941, pp. 37-38. Also, see No. 1 of Table 13 of this chapter.

[2]Ibid., p. 38.

of Musicians during the decade of the 1940's which tended to have a restrictive effect on broadcast programming.

AFM's Network Strikes Associated with Local Disputes.--The above event also hearlded the beginning of one specific Federation policy and practice of a restrictive nature with respect to programming--in particular, the "remote band" programs originated by the major radio networks during the late evening hours. Since the policies of the networks prohibited the use of recorded program material, they had devised a method of programming in the late evening--after 11 PM--without resorting to the use of recordings and electrical transcriptions. These late hours were filled by musical broadcasts originating by remote control from hotels and night clubs featuring the bands or orchestras performing at them.[3] Broadcasting characterized the late night schedules of the networks as "almost entirely dependent on name bands from the various night spots throughout the country."[4] The bands and orchestras featured on such broadcasts were referred to as "remote bands." There was one very important economic advantage of these remote broadcasts. The networks could present "live" music programming at a very low cost since the wages of the musicians were being paid by the establishments where they were performing. Generally, there was no additional charge as far as the performing musicians were concerned for the privilege

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[3] Broadcasting, September 9, 1946, pp. 13, 83; September 16, 1946, p. 17.

[4] Ibid., September 9, 1946, p. 13.

of picking up their performances from such places.[5] The publicity value both to the musicians and the establishments involved was usually sufficient.

The "quota agreements" executed in 1937 and 1938 elasped in 1940 and were continued only on an informal basis. It appeared that the AFM locals had difficulty in a number of instances of getting stations to continue their "quotas." During the first half of the forties, there was a rash of disputes between AFM locals and radio stations throughout the country over the "quotas" or the number of musicians a particular station should employ and a number of other questions pertaining generally to the terms and conditions of work.[6] The locals, soon after Petrillo took office, began appealing to the national president's office, for aid in settling these disputes. With respect to the disputes involving network affiliates, Petrillo devised a method whereby the Federation could aid its locals which involved strikes or strike threats against the affiliate's network with regard to the remote bands.

The Remote Band Network Strike Procedure.-- Briefly, the method, when put into operation, was as follows.[7] There

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[5]Resolutions introduced at the AFM convention in 1950 suggested that it was not a general practice to charge broadcasters for remote musical broadcasts originating from night clubs, etc., see: AFM, Proceed., 1950, pp. 77, 80.

[6]See Tables 13 and 15 of this chapter.

[7]For Petrillo's description of this method, see his testimony in: U.S. House of Representatives, Committee on Education and Labor, Hearings: Investigation of James C. Petrillo, the American Federation of Musicians, et al., 80th

would be a dispute between an AFM local and a major network affiliated station concerning the number of musicians the station should employ or some other question related to the terms and conditions of employment. The local would appeal to the national president's office for aid in settling the dispute. The national president, Petrillo, would look into the dispute and, if he felt the local was justified in its demands, he would contact the affiliate's network and request aid in settling the dispute. Also, the network would generally be notified that if the dispute between the local and the affiliate was not settled shortly, the AFM would be forced to withdraw the services of remote bands. If this threat failed to bring about the desired results, a strike of a number of the remote bands would be called. Such a strike would be very disruptive to late evening programming for the network involved and, in turn, for all of its affiliates. A number of these strikes were ordered by the national president's office between 1940-1943 and have been summarized in Table 13. During the first year of the strikes, 88 bands were taken out of service for periods ranging from one to thirty days.[8]

Cong., 1st Sess., 1947, p. 281.

This method has also been described by J. Harold Ryan, when NAB president, in his testimony in: U.S. House of Representatives, Committee on Interstate and Foreign Commerce, Hearings: Interference with Broadcasting of Noncommercial Educational Programs, 79th Cong., 1st Sess., 1945, p. 70.

[8]The period covered was June, 1940 through May, 1941. See AFM. Proceed., 1941, pp. 37-40.

Also, at the same place, the names of many of the bands that were withdrawn were listed. Some of the popular name bands involved in the strikes during the first year were the following:

Refinement of the method.--Although the pattern outlined above was apparently very successful,[9] Petrillo began to make refinements on the method. If, after calling out the remote bands, Petrillo did not think the settlement of the dispute was forthcoming, he would threaten to call a strike of one or more of the studio bands employed by the network.[10] After this strike threat was made, the settlement was generally achieved in a day or two.[11] Finally, Petrillo made his threat good in the WJAS and KQV disputes (See No. 10 and 11 in Table 13) in October, 1941.[12] The remote bands on CBS and NBC had been withdrawn on October 8. Since "it did not appear that any settlement was in sight," President Petrillo issued strike or-

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Tommy Dorsey	Guy Lombardo
Charlie Barnet	Eddy Duchin
Woody Herman	Claude Thornhill
Horace Heidt	Henry Busse
Gene Krupa	Lawrence Welk
Xavier Cugat	Alvino Rey
Louis Prima	Duke Ellington
Harry James	Shep Fields
Jimmy Lunceford	Freddy Martin
Jan Garber	Dick Jurgens
Ray Noble	

[9]From Table 13, it will be noted that, according to the Union, the agreements achieved in 13 of the 19 known disputes were listed as "satisfactory" to the local involved. Satisfactory to the Union generally meant that the station gave into the full demands of the local.

[10]This occurred during the following disputes listed in Table 13: KSTP (No. 1), AFM. Proceed., 1941, p. 37; KWK (No. 6), AFM. Proceed., 1941, p. 40; WGRC (No. 8), AFM. Proceed., 1942, p. 47.

[11]The local came to terms the day after the threat in the KSTP dispute, immediately in the KWK dispute, and two days after in the WGRC dispute.

[12]For Petrillo's account of these disputes, see: AFM. Proceed., 1942, p. 48.

ders on October 14 and 15 covering some of the studio bands performing for sustaining programs on NBC and CBS in New York, Chicago, and Los Angeles.[13] However, some of the networks' more important public service programs were exempted.[14] No commercial programs were affected by the strike orders. Petrillo emphasized that this was the first time that regular studio musicians under contract to the networks had ever been called out on strike. The disputes between the local and stations WJAS and KQV were settled on October 17 and all musicians returned to work.

In April of the following year, still further refinement was made in the method. After calling out the remote bands because of a dispute between the Nashville local of the AFM and MBS affiliate WSIX (See No. 13 in Table 13),[15] Petrillo "realized that this matter could not be settled without drastic action."[16] On April 1st, he issued a strike order covering all musicians on all MBS programs, commercial, sustaining, and otherwise, which were being carried by station WSIX. Such a strike would affect a great deal of Mutual's total programming schedule. Since nearly all commercial programs containing live music would be affected, rather substantial economic loss could result. With the prospects of

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[13] Ibid.

[14] Broadcasting, October 20, 1941, p. 10.

[15] For Petrillo's account of this dispute, see: AFM. Proceed., 1942, pp. 49-50; 1944, p. 53.

[16] AFM Proceed., 1942, p. 48.

TABLE 13.--SUMMARY OF STRIKES BY THE AFM OF REMOTE BANDS AGAINST THE MAJOR NATIONAL RADIO NETWORKS BETWEEN 1940-1943 IN WHICH THE DISPUTE WAS BETWEEN AN AFFILIATED STATION AND AN AFM LOCAL

	Station Involved in Dispute	Location	Network Affiliation	Nature of Dispute With AFM Local	Duration of Strike[a]	Other Action Associated With Strike[b]	Settlement[c]	Source
1.	KSTP	St. Paul, Minn.	NBC	Unable to reach agreement	June 28-July 8, 1940	AFM threatened studio strike	S	d
2.	WRVA	Richmond, Va.	CBS MBS	Disagreement on wages and conditions of work	July 1-10, 1940	Unknown	S	e
3.	WADC	Akron, Ohio	CBS	Unable to reach agreement	Oct. 14-26, 1940	Unknown	S	f
4.	WGBI	Scranton, Pa.	CBS	Unable to reach agreement	Oct. 14-Nov. 14, 1940	Unknown	S	g
5.	WSIX	Nashville, Tenn.	MBS	Breakdown in contract negotiations	Feb. 17-29, 1941	Unknown	S	h
6.	KWK	St. Louis, Mo.	MBS	Unable to reach agreement	April 10-12, 1941	AFM threatened a strike of Philadelphia Symphony Orchestra	S	i
7.	WTSP	St. Petersberg, Fla.	MBS	Unable to reach agreement	Aug. 15, 1941	Unknown	S	j
8.	WGRC	Louisville,	MBS	Disagreement over number of musicians to be employed	Sept. 12-19, 1941	AFM threatened studio strike	S	k

TABLE 13 (cont.).-- SUMMARY OF STRIKES BY THE AFM OF REMOTE BANDS AGAINST THE MAJOR NATIONAL RADIO NETWORKS BETWEEN 1940-1943 IN WHICH THE DISPUTE WAS BETWEEN AN AFFILIATED STATION AND AN AFM LOCAL

Station Involved in Dispute	Location	Network Affiliation	Nature of Dispute With AFM Local	Duration of Strike[a]	Other Action Associated With Strike[b]	Settlement[c]	Source
9. WSMB	New Orleans, La.	NBC-Red	Disagreement over number of musicians to be employed	Sept. 12-Oct. 1, 1941	AFM requested NBC's aid in settling dispute	S	l
10. WJAS	Pittsburgh, Pa.	CBS	Disagreement over number of musicians to be employed	Oct. 8-17, 1941	AFM threatened studio strike; threat executed Oct. 14th and 15th	A	m
11. KQV	Pitsburgh, Pa.	NBC	Unable to reach agreement	Oct. 8-17, 1941	AFM threatened studio strike; threat executed Oct. 14th & 15th	A	n
12. WGRC	Louisville, Ky.	MBS	Unable to reach agreement	March 16-26, 1942	Unknown	S	o
13. WSIX	Nashville, Tenn.	MBS	Unable to reach agreement	March 26-April 1, 1942	AFM threatened studio strike; MBS dropped WSIX from network	A	p
14 KSTP	St. Paul, Minn.	NBC-Red	Disagreement over wages and number of musicians to be employed	July 13-30, 1942	Unknown	A	q

TABLE 13 (cont.).--SUMMARY OF STRIKES BY THE AFM OF REMOTE BANDS AGAINST THE MAJOR NATIONAL RADIO NETWORKS BETWEEN 1940-1943 IN WHICH THE DISPUTE WAS BETWEEN AN AFFILIATED STATION AND AN AFM LOCAL

Station Involved in Dispute	Location	Network Affiliation	Nature of Dispute With AFM Local	Duration of Strike[a]	Other Action Associated With Strike[b]	Settlement[c]	Source
15. KFRC	San Francisco, Calif.	MBS	Disagreement over wages and number of musicians to be employed	July 27-Aug. 4, 1942	Unknown	A	r
16. WARM	Scranton, Pa.	MBS	Disagreement over wages and number of musicians to be employed	July 27-Aug. 4, 1942	AFM threatened studio strike; WARM dropped itself from MBS	A	s
17. WACO	Baltimore, Md.	CBS	Disagreement over wages and number of musicians to be employed	Sept. 9, 1942	Unknown	S	t
18. WJAS	Pittsburgh, Pa.	NBC-Blue	Disagreement over number of musicians to be employed	Jan. 20-26, 1943	NBC participated in negotiations	S	u
19. KQV	Pittsburgh, Pa.	CBS	Disagreement over number of musicians to be employed	Jan. 20-26, 1943	CBS participated in negotiations	S	v

TABLE 13 (cont.).--SUMMARY OF STRIKES BY THE AFM OF REMOTE BANDS AGAINST THE MAJOR NATIONAL RADIO NETWORKS BETWEEN 1940-1943 IN WHICH THE DISPUTE WAS BETWEEN AN AFFILIATED STATION AND AN AFM LOCAL

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[a]Under "Duration of Strike," the strike referred to is a strike of the remote bands (either all or in part) called by the AFM against one of the major national radio networks during a dispute between an affiliated station and an AFM local.

[b]"Other Action Associated With Strike" refers to action either threatened or taken by either the AFM or the network involved (who took the action will be specified in each instance) in addition to the strike of remote bands against the network called by the AFM.

[c]"Settlement" refers to the settlement that was achieved in the various strikes. A, S, and C represent a code for the various general types of settlements as follows:

A---indicates that an agreement of some kind was reached;

S---indicates that an agreement satisfactory to the AFM local involved was reached. In other words, the affiliated station involved yielded to all of the demands of the AFM local involved.

C---indicates a compromise settlement was reached. In other words, the AFM local involved had to give in on some of its demands.

[d]AFM. Proceed., 1941, pp. 37-38; New York Times, July 2, 1940, p. 17:3; July 4, 1940, p. 10:8; July 10, 1940, p. 16:1; "Two Exciting Decades," Broadcasting, October 16, 1950, p. 122.

[e]AFM. Proceed., 1941, p. 38; New York Times, July 2, 1940, p. 17:3; July 4, 1940, p. 10:4; "Two Exciting Decades," Broadcasting, October 16, 1950, p. 122.

[f]AFM. Proceed., 1941, pp. 38-39.

[g]Ibid.

[h]Ibid., p. 39.

[i]Ibid.

[j]Ibid., 1942, p. 46.

[k]AFM. Proceed., 1942, p. 47; Broadcasting, September 22, 1941, p. 7; New York Times, September 18, 1941, p. 31:3; September 20, 1941, p. 11:1.

TABLE 13 (cont.).--SUMMARY OF STRIKES BY THE AFM OF REMOTE BANDS AGAINST THE MAJOR NATIONAL RADIO NETWORKS BETWEEN 1940-1943 IN WHICH THE DISPUTE WAS BETWEEN AN AFFILIATED STATION AND AN AFM LOCAL

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[l]AFM. Proceed., 1942, pp. 47-48; Broadcasting, September 22, 1941, p. 7; October 6, 1942, p. 6; New York Times, September 18, 1941, p. 31:4.

[m]AFM Proceed., 1942, p. 48; Broadcasting, October 13, 1941, p. 7; October 20, 1941, p. 10; New York Times, October 10, 1941; p. 27:4; October 11, 1941, p. 20:2; October 16, 1941, p. 23:8; October 18, 1941, p. 21:5.

[n]Same as Footnote m.

[o]AFM, Proceed., 1942, p. 49.

[p]AFM Proceed., 1942, p. 49; 1944, p. 53; Broadcasting, April 6, 1942, p. 6.

[q]AFM. Proceed., 1944, p. 53; Broadcasting, July 13, 1942, p. 12; July 20, 1942, p. 7; New York Times, July 15, 1942, p. 21:6; July 16, 1942, p. 18:1; July 18, 1942, p. 15:8; July 26, 1942, p. 30:2; July 30, 1942, p. 16:7.

[r]AFM. Proceed., 1944, p. 54; New York Times, July 29, 1942, p. 15:1; August 5, 1942, p. 21:4.

[s]New York Times, July 29, 1942, p. 15:1; August 5, 1942, p. 21:4.

[t]Broadcasting, September 14, 1942, p. 9; New York Times, September 10, 1942, p. 48:1.

[u]AFM, Proceed., 1944, p. 54; Broadcasting, January 25, 1943, p. 8; February 1, 1943, p. 14; New York Times, January 22, 1943, p. 25:2.

[v]Same as Footnote u.

such a strike in the immediate foreground, MBS stopped feeding all programs containing live music to WSIX just a few hours before the strike was to become effective. This MBS action ended both the strike of remote bands and the proposed strike of all musicians on programs being fed to the affiliate involved. WSIX was without MBS service with respect to programs containing live music until September 18, 1942, when it came to terms with the AFM local involved.

Nearly the same circumstances occurred again in a local dispute involving another MBS affiliate, WARM in Scranton, Pennsylvania (See No. 16 in Table 13).[17] However, in this instance, the network did not have to drop its service to the station. WARM agreed not to carry any MBS programs utilizing remote bands. MBS remote bands were out from July 27 to August 4, 1942, as a direct result of this dispute. It was not until September 18 of the same year that an agreement was reached and the station could resume carrying the remote band programs.

Another MBS affiliate, WSAY in Rochester, N.Y., got involved in a dispute with the Rochester local of the AFM over the station's refusal to employ staff musicians.[18] The local requested the aid of the national president's office.

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[17]For accounts, see: AFM. Proceed., 1944, p. 53; New York Times, July 29, 1942, p. 15:1; August 5, 1942, p. 21:4.

[18]For Petrillo's account, see: AFM. Proceed., 1944, pp. 54-55.

For other accounts, see: Broadcasting, July 19, 1943, p. 16; September 20, 1943, p. 51; New York Times, July 2, 1943, p. 10:4; July 16, 1943, p. 20:2; September 12, 1943, p. 19:6; NAB, Sp, AFM, Bul., No. 20, August 13, 1943, pp. 1-4.

In this situation, Petrillo did not bother to call a strike of remote bands. Instead, a strike of all musicians on programs being fed to WSAY was threatened immediately. This was sufficient for MBS to drop its affiliate from network service with respect to programs containing live music on July 15, 1943. WSAY sought injunctive relief and damages in the New York Courts, but was unsuccessful. Mutual service was not resumed until late October when WSAY hired a number of musicians, which was satisfactory to the AFM local involved.

In late 1945, still another refinement was made in the AFM's general policy of attempting to utilize the networks to strengthen its locals' position in bargaining with affiliated stations. In connection with local disputes involving five affiliates of NBC and CBS, strikes were called which affected one CBS and two NBC commercial programs.[19] The entire affair has been summarized in Table 14. Regarding these strikes, Petrillo told the next AFM convention the following:

> This is the first time in the history of the Federation that we stopped musicians from playing commercial broadcasts but it was the only way the stations....could be handled, as....[the] stations ....refused to consider any type of agreement until this action was taken.[20]

Shortly after the strike action was taken against the networks the five affiliated stations involved came to terms.

Effectiveness of the Procedure.--By mid-1941, after a number of strikes involving remote bands, the disputes

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[19]For Petrillo's account, see: AFM, Proceed., 1946, pp. 55-57.

[20]AFM, Proceed., 1946, p. 57.

TABLE 14.--SUMMARY OF THE AFM STRIKES AGAINST NBC AND CBS INVOLVING THE MUSICIANS ON THREE NETWORK COMMERCIAL PROGRAMS WHICH WERE ASSOCIATED WITH DISPUTES BETWEEN AFM LOCALS AND NETWORK AFFILIATES

Station Involved in Dispute	Location	Network Affiliation	Nature of Dispute With AFM Local	Network Program Struck	Date of Program	Date Dispute Settled	Source
1. WSMB	New Orleans, La.	NBC	Unable to renew contract, disagreement over wages	"Fitch Band Wagon"[a] and "Carnation Contented Hour"[b]	Sept. 30, 1945, and Oct. 1, 1945, respectively	Oct. 2, 1945	d
2. WAPO	Chattanooga, Tenn.	NBC	Station refusal to revew contract and employ staff musicians	"Fitch Band Wagon"[a] and "Carnation Contented Hour"[b]	Sept. 30, 1945, and Oct. 1, 1945 respectively	Shortly after strike	e
3. WRBL	Columbus, Ga.	CBS	Station refusal to enter agreement	"Prudential Family Hour"[c]	Oct. 7, 1945	Shortly after strike	f
4. WGPC	Albany, Ga.	CBS	Station refusal to enter agreement	"Prudential Family Hour"[c]	Oct. 7, 1945	Shortly after strike	g
5. WDOD	Chattonooga, Tenn.	CBS	Station refusal to renew contract and employ staff musicians	"Prudential Family Hour"[c]	Oct. 7, 1945	Oct. 15, 1945	h

TABLE 14 (cont.).--SUMMARY OF THE AFM STRIKES AGAINST NBC AND CBS INVOLVING THE MUSICIANS ON THREE NETWORK COMMERCIAL PROGRAMS WHICH WERE ASSOCIATED WITH DISPUTES BETWEEN AFM LOCALS AND NETWORK AFFILIATES

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[a]The "Fitch Band Wagon" featured the Artie Shaw Band which was substituted by a vocal chorus on the occasion of the strike.

[b]The "Carnation Contented Hour" featured the Percy Faith Orchestra. On the occasion of the strike, the program was canceled.

[c]On the occasion of the strike, the "Prudential Family Hour" was canceled. It is not known what musical group was involved.

[d]AFM, Proceed., 1946, p. 57; Broadcasting, October 8, 1945, pp. 17, 85; New York Times, October 1, 1945, p. 9:8; October 2, 1945, p. 13:5.

[e]AFM, Proceed., 1946, p. 55: Broadcasting, October 8, 1945, pp. 17,85; New York Times, October 1, 1945, p. 9:8; October 2, 1945, p. 13:5.

[f]AFM, Proceed., 1946, p. 56; Broadcasting, October 8, 1945, pp. 17:85; New York Times, October 6, 1945, p. 3:3.

[g]AFM. Proceed., 1946, p. 56; New York Times, October 8, 1945, p. 30:2.

[h]AFM, Proceed., 1946, p. 56; Broadcasting, October 8, 1945, pp. 17, 85; October 15, 1945, p. 20; New York Times, October 6, 1945, p. 3:3.

between AFM locals and national network affiliates began to be settled soon after the networks were notified and before the strike deadline. At the end of the first year that the remote band strike technique had been utilized, Petrillo stated:

> I believe the chains are beginning to realize that when I say a strike will be called, it will be called. But it took a half a dozen episodes like the ones herein before detailed [refers to remote band strikes], to convince them.[21]

There is every reason to believe that when Petrillo notified a network of a local dispute that it was accompanied by a strike threat. His above statement tends to indicate that. Also, in a report, Petrillo--in referring to some of these local disputes--stated:

> I immediately took the bull by the horns and advised the chains that unless these grievances were adjusted with the locals involved, I would pull the chain programs.[22]

The known disputes between affiliates and AFM locals which were settled soon after the networks were notified to their existence have been summarized in Table 15.

AFM Objectives.--One of the major AFM objectives in their plan of action was to get the networks involved in the local disputes. The Federation wanted the networks to put pressure on their affiliates to come to terms with the AFM's local musicians' unions. In many of the disputes, the locals were trying to protect musicians' employment at the affiliated stations. The affiliates did not rely on live music to the

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[21] Ibid., 1941, p. 40.

[22] Ibid., 1946, pp. 54-44.

TABLE 15.--SUMMARY OF LOCAL DISPUTES BETWEEN AFM LOCALS AND AFFILIATED STATIONS OF THE NATIONAL RADIO NETWORKS WHICH WERE SETTLED THROUGH ASSISTANCE OF THE NATIONAL PRESIDENT'S OFFICE BY SEEKING TO INVOLVE THE AFFILIATE'S NETWORK IN THE DISPUTE

Station Involved in Dispute	Location	Network Affiliation	Nature of Dispute With AFM Local	Date of Dispute	Network Involvement[a]	Settlement[b]	Source
1. KUTA	Salt Lake City, Utah	NBC	Unable to reach agreement	Mid-1941	AFM requested NBC aid in settling dispute, strike threatened against NBC	A	c
2. WCAE	Chicago, Ill.	MBS	Unable to reach agreement	Aug., 1941	AFM threatened a strike against MBS	A	d
3. WACO	Baltimore, Md.	CBS	WACO refusal to employ staff musicians	Aug.-Sept., 1942	AFM threatened a strike against CBS	S	e
4. WNAB	Bridgeport, Conn.	NBC-Blue	Disagreement over budget to be spent on staff musicians	March, 1943	NBC-Blue participated in local negotiations	A	f
5. WLLH	Lowell, Mass.	MBS	WLLH refusal to employ staff musicians	Early, 1943	MBS participated in local negotiations	S	g
6. WLAW	Lawrence, Mass.	CBS	WLAW refusal to employ staff musicians	Early, 1943	CBS participated in local negotiations	C	g
7. KFBI	Wichita, Kan.	NBC-Blue MBS	Disagreement over closed shop provisions of contract	July, 1943	AFM requested NBC-Blue and MBS aid in settling dispute	A	f

TABLE 15 (cont.).--SUMMARY OF LOCAL DISPUTES BETWEEN AFM LOCALS AND AFFILIATED STATIONS OF THE NATIONAL RADIO NETWORKS WHICH WERE SETTLED THROUGH ASSISTANCE OF THE NATIONAL PRESIDENT'S OFFICE BY SEEKING TO INVOLVE THE AFFILIATE'S NETWORK IN THE DISPUTE

Station Involved in Dispute	Location	Network Affiliation	Nature of Dispute With AFM Local	Date of Dispute	Network Involvement[a]	Settlement[b]	Source
8. WDOD	Chattanooga, Tenn.	CBS	Disagreement over wages	Jan., 1944	CBS participated in negotiations	C	f
9. WFEA	Manchester, N.H.	NBC	WFEA refusal to renew contract	Jan., 1944	AFM requested NBC aid in settling dispute	A	f
10. WNAB	Bridgeport, Conn.	ABC	WNAB refusal to renew contract	Apr.-May, 1944	AFM requested ABC aid in settling dispute; ABC had conference with AFM	A	g
11. WSAV	Savannah, Ga.	NBC	WSAV refusal to renew contract	July, 1944	NBC had conference with WSAV	S	g
12. WIP	Philadelphia, Pa.	MBS	WIP refusal to enter contract negotiations	Sept., 1944-Feb., 1945	Unknown	A	g
13. WIP	Philadelphia, Pa.	MBS	WIP refusal to live up to terms of contract	Mid-1945	MBS had conference with WIP	A	g
14. WOW	Omaha, Nebr.	NBC	WOW refusal to rehire staff musicians after summer vacation	Fall, 1944-Spring, 1945	Unknown	S	g

TABLE 15 (cont.).--SUMMARY OF LOCAL DISPUTES BETWEEN AFM LOCALS AND AFFILIATED STATIONS OF THE NATIONAL RADIO NETWORKS WHICH WERE SETTLED THROUGH ASSISTANCE OF THE NATIONAL PRESIDENT'S OFFICE BY SEEKING TO INVOLVE THE AFFILIATE'S NETWORK IN THE DISPUTE

Station Involved in Dispute	Location	Network Affiliation	Nature of Dispute With AFM Local	Date of Dispute	Network Involvement[a]	Settlement	Source
15. WOAI	San Antonio, Texas	NBC	WOAI operated a non-union shop	1945	Unknown	S	g
16. WGAR	Cleveland, Ohio	CBS	Disagreement over number of musicians to be employed	May, 1945	AFM requested CBS aid in settling dispute	S	g
17. WSAV	Savannah, Ga.	NBC	Breakdown in contract negotiations	Aug.-Oct., 1945	NBC had a conference with WSAV	A	g
18. KSD	St. Louis, Mo.	NBC	Disagreement over terms of contract	Fall, 1945	NBC had a conference with KSD	S	g
19. KMOX	St. Louis	CBS key	Unable to reach an Agreement	Late, 1945	Settlement of dispute referred to main offices of CBS	S	g
20. WKBW	Buffalo, N.Y.	CBS	Disagreement over wages and working conditions	Dec., 1945	AFM requested CBS aid in settling dispute and asked CBS to confer with WKBW; CBS participated in negotiations	A	g

TABLE 15 (cont.).--SUMMARY OF LOCAL DISPUTES BETWEEN AFM LOCALS AND AFFILIATED STATIONS OF THE NATIONAL RADIO NETWORKS WHICH WERE SETTLED THROUGH ASSISTANCE OF THE NATIONAL PRESIDENT'S OFFICE BY SEEKING TO INVOLVE THE AFFILIATE'S NETWORK IN THE DISPUTE

Station Involved in Dispute	Location	Network Affiliation	Nature of Dispute With AFM Local	Date of Dispute	Network Involvement[a]	Settlement[b]	Source
21. WBEN	Buffalo, N.Y.	NBC	Disagreement over wages and working conditions	Dec., 1945	AFM requested CBS aid in settling dispute and asked NBC to confer with WKBW; NBC participated in negotiations	A	g
22. WGR	Buffalo, N.Y.	ABC	Disagreement over wages and working conditions	Dec., 1945	AFM requested aid in settling dispute and asked ABC to confer with WGR; ABC participated in negotiations	A	g
23. WHAM	Rochester, N.Y.	NBC	Disagreement over wages and working conditions	Dec., 1945	Unknown	A	g
24. WHEC	Rochester, N.Y.	CBS	Disagreement over wages and working conditions	Dec., 1945	Unknown	A	g
25. WCAU	Philadelphia, Pa.	CBS	Disagreement over wages and working conditions	Dec., 1945-Feb., 1946	AFM requested CBS aid in settling dispute	A	f

TABLE 15 (cont.).--SUMMARY OF LOCAL DISPUTES BETWEEN AFM LOCALS AND AFFILIATED STATIONS OF THE NATIONAL RADIO NETWORKS WHICH WERE SETTLED THROUGH ASSISTANCE OF THE NATIONAL PRESIDENT'S OFFICE BY SEEKING TO INVOLVE THE AFFILIATE'S NETWORK IN THE DISPUTE

Station Involved in Dispute	Location	Network Affiliation	Nature of Dispute With AFM Local	Date of Dispute	Network Involvement[a]	Settlement[b]	Source
26. KYW	Philadelphia, Pa.	NBC	Disagreement over wages and working conditions	Dec., 1945-Feb., 1946	AFM requested NBC aid in settling dispute	A	g
27. WFIL	Philadelphia, Pa.	ABC	Disagreement over wages and working conditions	Dec., 1945 Feb., 1946	AFM requested ABC aid in settling dispute	A	g
28. WSIX	Nashville, Tenn.	ABC	WSIX was employing non-union musicians	Jan., 1946	Unknown	A	g
29. WEBR	Buffalo, N.Y.	MBS	Disagreement over working conditions and the number of musicians to be employed	Mar., 1946	MBS had a conference with WEBR	A	g

TABLE 15 (cont.).--SUMMARY OF LOCAL DISPUTES BETWEEN AFM LOCALS AND AFFILIATED STATIONS OF THE NATIONAL RADIO NETWORKS WHICH WERE SETTLED THROUGH ASSISTANCE OF THE NATIONAL PRESIDENT'S OFFICE BY SEEKING TO INVOLVE THE AFFILIATE'S NETWORK IN THE DISPUTE

Note.--In addition to the disputes summarized in Table 14, there were a number of other of which little is known except that they were "local radio controversies adjusted through assistance of the president's office." If these disputes followed the established pattern, pressure was put on the affiliate's network to become involved. The stations involved in these disputes occurring between June, 1941 and May, 1942 were as follows:

STATION	LOCATION	AFFILIATION
KNX	Los Angeles, Calif.	CBS Key
KRNT	Des Moines, Ia.	CBS
KSO	Des Moines, Ia.	NBC, MBS
WHBC	Canton, Ohio	MBS
WLLH	Lowell, Mass.	Yankee
WTRY	Troy, N.Y.	NBC-Blue
WAGA	Atlanta, Ga.	NBC
WSB	Atlanta, Ga.	NBC
WAPO	Chattanooga, Tenn.	NBC-Red & Blue
KXOK	St. Louis, Mo.	NBC-Blue
KWK	St. Louis, Mo.	MBS, NBC
KSD	St. Louis, Mo.	NBC-Red
KMOX	St. Louis, Mo.	CBS
WHAS	Louisville, Ky.	CBS
WFEA	Manchester, N.H.	NBC, MBS
KYW	Philadelphia, Pa.	NBC
WMMN	Fairmount, W. Va.	CBS
WCBM	Baltimore, Md.	NBC-Red
WCAO	Baltimore, Md.	CBS
WFBR	Baltimore, Md.	MBS
WREC	Memphis, Tenn.	MBS

Source: AFM. Proceed., 1942, pp. 48-49.

[a]The network, in each of the cases listed, was first notified by the national president's office of the AFM that a local dispute (one in which the network was not directly involved) did exist between an affiliated station and an AFM local. The "involvement" listed represents either the known action sought or threatened by the national president's office with respect to the network involved and/or the known action taken by the network involved in the local dispute.

[b]"Settlement" refers to the settlement that was achieved in the various disputes. A, S, and C represent a

TABLE 15 (cont.).--SUMMARY OF LOCAL DISPUTES BETWEEN AFM LOCALS AND AFFILIATED STATIONS OF THE NATIONAL RADIO NETWORKS WHICH WERE SETTLED THROUGH ASSISTANCE OF THE NATIONAL PRESIDENT'S OFFICE BY SEEKING TO INVOLVE THE AFFILIATE'S NETWORK IN THE DISPUTE

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code for the various general types of settlements as follows:
A---Indicates that an agreement of some kind was reached;
S---Indicates that an agreement satisfactory to the AFM local involved was reached. In other words, the affiliated station involved yielded to all of the demands of the AFM local involved.
C---Indicates a compromise settlement was reached. In other words, the AFM local involved had to give in on some of its demands.

[c] AFM. Proceed., 1941, p. 40.

[d] Broadcasting, August 24, 1942, p. 12.

[e] AFM. Proceed., 1944, p. 54; NAB. Sp. AFM Bul., No. 6. September 11, 1942, p. 4.

[f] AFM. Proceed., 1944, pp. 54-55.

[g] AFM. Proceed., 1946, pp. 54-63.

extent that the networks did. If the local would strike the affiliate, the time could simply be filled with recorded music. However, the AFM's power over the networks was much greater because they relied much more heavily on live music and hence live musicians.[23] Network policies dictated that they should not use recorded music also. This would make a musicians' strike against a network a great deal more serious and disruptive to programming in comparison to one of its affiliates. Also, when the network programming was disrupted, all affiliated stations' programming would be disrupted. Particularly with respect to network commercial programs and the huge sums of money involved, a strike could be extremely costly. In these respects, the networks would tend to want to avoid strikes of any kind. This was the weakness of the networks that the AFM was exploiting. In order to avoid threatened strikes, the Union hoped that the network would intervene in some fashion and use its influence to bring about the settlement of the disputes that might exist between AFM locals and affiliated stations. According to Table 15, this technique was rather successful.

There was one very important aspect of the remote band strike technique that was highly advantageous to the Union. When a remote band went on strike against the network,

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[23] In testimony to a Congressional Committee, an NBC official estimated that in 1947 that more than 70 per cent of all of his network's programs employed live musicians in some capacity or other, see: U.S. House of Representatives, Committee on Education and Labor, Hearings: Restrictive Union Practices of the American Federation of Musicians, 80th Cong., 2nd Sess., 1948, p. 259.

the musicians involved did not lose their wages since they were paid by the hotel or night club. The strike did not affect their performance at the particular night spot except that it could not be broadcast. Under these circumstances, the AFM was in a position where it could call an effective strike without any economic hardship on any of its members.

Actual Network Involvement.--The actual involvement of the networks in these disputes was open to some question and was difficult to determine conclusively. An NBC official, when asked by a Congressional investigating committee, denied any involvement or participation by his network in any of the local labor negotiations of affiliated stations.[24] He was emphatic that he could only speak for his own network. However, the records of the Union tend to refute the testimony of the NBC official regarding a number of specific disputes. For example, the following excerpts from Union records admit involvement of NBC in more than a passive way:

> WFEA Dispute (No. 9, Table 15).--"The National Broadcasting Company which feeds programs was informed of the situation. We requested that they give their assistance in settling the matter, which was finally brought about."[25]
>
> WSAV Dispute (No, 11, Table 15),--NBC "was notified of the difficulties and immediately contacted the station manager, following which the local was successful in obtaining a new agreement at greatly improved terms and conditions."[26]
>
> WSAV Dispute (No. 17, Table 15).--"Upon advising the National Broadcasting Company of the situation, they

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[24]Testimony of Frank E. Mullen, NBC executive vice-president, see: Ibid., pp. 303-304.

[25]AFM. Proceed., 1944, p. 55.

[26]Ibid., 1946, p. 57.

in turn contacted the management of this station and as a result of their efforts, a new agreement was made on about October 1, 1945."[27]

KSD Dispute (No 18, Table 15).--NBC "was notified of this situation and was successful in having the Station make an agreement satisfactory to the Local on October 26, 1945."[28]

The same kind of documentation can be made from Union records for the other major radio networks.[29] With respect to MBS, on two occasions, stations (WSIX and WSAY) were dropped from network service with respect to programs containing live music for periods lasting several months. On one other occasion, an MBS affiliate (WARM) "voluntarily" dropped itself from network service regarding remote band programs. All of which does suggest that the networks probably did play much more than just a passive role in some of the local labor disputes between their affiliates and AFM local musicians' unions.

The Strikes as Secondary Boycotts.--J. Harold Ryan, when NAB President, called these strikes and pressures on the networks designed to help settle local disputes "secondary boy-

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[27] Ibid.

[28] Ibid., p. 54.

[29] The following are three examples contained in Union records which suggested overt network involvement in local disputes involving CBS and MBS affiliates.

In the WDOD dispute (No. 8, Table 15), the following was contained: "Mr. Winger, manager of the station, visited this office on January 27th accompanied by Messrs. White and Ackerberg, both vice-presidents of the Columbia network, at which time the situation was discussed." AFM. Proceed., 1944, p. 55.

In the WEBR dispute (No. 29, Table 15), the Union record indicated that MBS was notified and was successful in having the affiliate resume negotiations which resulted in

cotts."[30] None of these local disputes involving independently owned affiliated station directly involved the networks. The secondary boycott has been defined as a "union tactic whereby a dispute with Employer A is used as a justification for putting economic pressure on Employer B."[31] In the case of the network strikes, Employer A would be one of the affiliates of a national network or the primary employer with which an AFM local had the basic dispute. Employer B would be one of the networks and was the neutral or secondary employer. Neither the local involved nor the Federation had any basic dispute with the network in the strikes outlined herein. In terms of the above definition, the network strikes rather clearly constituted "secondary boycotts."

Effect of Network Strikes on Programming.--It was possible to document 19 instances when the AFM was successful in removing one type of program--the so-called "remote band" program--from network schedules for periods ranging from one to thirty days. It should be remembered that when a program was removed from the schedule of a network, the effect was multiplied by the number of affiliates who were scheduled to

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an agreement. AFM, Proceed., 1946, p. 63.

In the WLLH and WLAW disputes (Nos. 5 and 6, Table 15), the Union records indicated that it was through the joint efforts of both CBS and MSB that agreements were reached with the two stations. AFM. Proceed., 1946, p. 61.

[30] U.S. House of Representatives, Committee on Interstate and Foreign Commerce, Hearings: Interference with Broadcasting of Noncommercial Educational Programs, 79th Cong., 1st Sess., 1945, p. 70.

[31] Charles H. Tower, "Secondary Boycotts: An Outline," Labor Law Journal, 5 (March, 1954), p. 185.

carry the program affected. It was also rather clear that the deletion of this type of program in the instances outlined was being forced on the networks by the Federation and, as such, did not represent a voluntary choice by either the networks or their affiliates. The next most serious interference with programming associated with the network strikes was the "forced" dropping of the two stations from Mutual network service and the third "by choice" with respect to certain types of programs. In the former cases, the two MBS affiliates could not carry any programming containing live music which would represent a significant portion of the network schedule. In the latter case, the station "voluntarily" decided not to carry the Mutual remote band programs. It has already been indicated that this type of program--the remote band program--"almost entirely" filled the late evening schedules of the major networks. It was disclosed to a Congressional committee that one of the stations involved could not endure with the network service affected, so it had to "give into union demands."[32]

Lastly, the strikes of studio musicians probably did not have as much noticeable effect on programming as did the other actions indicated. The less extensive use of this tactic represents the reason why these strikes did not. However, they potentially could. Nevertheless, the same question

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[32]Testimony of J. Harold Ryan, when NAB president, in: U.S. House of Representatives, Committee on Interstate and Foreign Commerce, Hearings: Interference with Broadcasting of Non-commercial Educational Programs, 79th Cong., 1st Sess., 1945, pp. 70-71.

remained in the background. The AFM was in a position whereby restrictions could be placed on what was to be broadcast.

Public Reaction.--There was a little evidence which suggested that the public did not approve of such action on the part of the AFM which tended to have restrictive effects on certain areas of radio programming. Two letters to the New York Times from readers tended to indicate this. In one letter, the reader complained about the number of programs that the AFM had taken off the air.[33] In the order, protests were registered concerning the control that the reader felt the AFM and Petrillo had over radio programming.[34] Also, an editorial in the Times decried the situation as one in which, according to the writer, the AFM and Petrillo were deciding what kind of music the American people shall hear on the radio.[35] The public criticism of the AFM's network strikes did not appear to be as widespread as that which was aroused by certain other policies of the Federation yet to be explored.

Besides the newspaper accounts of the actions of the AFM, two instances were found where broadcasters informed the public through the use of their facilities about the network strikes. In 1941, WGRC (See No. 8, Table 13) made the following announcement four times each evening after 10 PM during a strike of remote bands:

> "You are not hearing your usual parade of Mutual dance bands tonight because of the American Federa-

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[33] New York Times, September 12, 1942, p. 12:7.

[34] Ibid., September 21, 1942, p. 14:6.

[35] Ibid., July 3, 1945, p. 12:1.

> ation of Musicians. This organization, headed by James C. Petrillo, has canceled all remote dance band programs over the entire Mutual Broadcasting System of 176 stations simply because WGRC refused to bow to his union's demand that we add six additional, and unnecessary, musicians to our present staff.
>
> "WGRC declines to add an additional $10,000 in such annual costs on the terms demanded by the union and under threats. We have always used union musicians, and have always been willing to negotiate union requests in a normal manner. WGRC engineers are members of the Electrical Workers' Union. So we have no quarrel with unions as such. But we decline to add unnecessary musicians on their own terms simply because a union demands it or 'else'.
>
> "We believe the American radio industry must sooner or later face the attempted dictatorship of network and local station broadcasting by Petrillo and his associates, and WGRC is ready and willing to be the showdown and right now."[36]

Then in 1945, CBS read a statement on the air occasioned by the strike of musicians on the "Prudential Family Hour" (See Table 14) expressing regret that "as a result of the action taken by the AFM," the program had to be canceled.[37] To what extent other broadcasters used this technique is not known. No other instances could be documented. One other function of the WGRC statement is that it gave some indication of the reaction of the broadcasting industry to this tactic of the AFM.

B. The Short-lived Ban on Broadcasts Involving Military Musicians

AFM Stops Military Band from Broadcasting.--In point of time, the next area of activity that the AFM became involved

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[36] AFM. Proceed., 1942, p. 47.

[37] Broadcasting, October 15, 1945, p. 20.

in after instituting the network strike policy was in connection with military musicians. As indicated previously, the Federation had always been concerned with competition from military musicians. On or about December 15, 1940, the AFM prevented the 104th Engineers Band from Fort Dix, New Jersey from participating in an MBS program.[38] The program was one of a series being presented by Mutual designed to create interest in national defense. Petrillo indicated that the AFM was not opposed to the program series, but that the appearance of the military band pointed up an existing problem that should be cleared up. He was referring to the delimitation of the respective jurisdictions of the performing musicians of both the AFM and the military services in such a way that military musicians did not create "unfair competition" for professional musicians. Also, Petrillo pointed out that such competition was unlawful under existing legislation, anyway.

AFM General Military Ban Announced.--The following day, the ban on the broadcast performance of the Fort Dix band was extended to encompass the broadcasting of all music from military posts.[39] The alleged reason for the ban was to enable the AFM and the War Department to have a conference and work out a formula to limit the radio activities of military musicians so that "destructive competition" could be eliminated. At such time as an agreement could be worked out, the Federation said that the ban would be removed.

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[38]For an account, see: New York Times, December 15, 1940, p. 12:3.

[39]For an account, see: Ibid., December 16, 1940, p. 16:3.

Military Ban Removed.--The day after the ban was instituted, it was removed. Apparently, not only had an agreement been reached with the War Department, but one with the networks also.[40] However, the War Department refused to make any comments on its meeting with AFM officials. With respect to the networks, it was agreed that as long as they did not dispense with the services of any of their staff musicians as a result of music originating from military camps, military musicians could be utilized. A further proviso agreed upon was that programs employing professional musicians could not be substituted by programs involving military musicians.

AFM Policy Regarding Military Musicians.--A few months later, the AFM spelled out the Federation's policy with respect to military musicians in a letter sent to all locals:

> The Federation will not authorize military bands to play over radio except when the following conditions are met:
> 1. such engagement will not endanger the employment of already employed musicians.
> 2. such engagment will not be in connection with a commercially sponsored program
> 3. such engagement will not be in competition with professional musicians. (This means for engagements that normally professional bands are employed)
>
> The military is not expected to clear engagements through the AFM. It seems that the individual stations and networks could clear through the Union, voluntarily, to avoid trouble and misunderstanding.[41]

The above statement of policy concerning military musicians seems fairly consistent with the public policy regarding

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[40] For an account, see: Ibid., December 17, 1940, p. 27:7.

[41] AFM Proceed., 1941, p. 48.

the same. In general, the federal statutes prohibit military musicians from going into to competition with civilian musicians with respect to their customary employment.[42] Naval policy with respect to the broadcasting of Navy and Marine Corps bands was quite similar to the announced policy also.[43] Neither the policy of the Army or the Navy permitted commanding officers to clear the radio performances of military bands with the Federation or its locals.[44]

A short time after Pearl Harbor, one of the general counsels of the AFM was commissioned to make a study of the general situation and report the results to the International Executive Board.[45] In the report, it was indicated that although there had been a great influx of musicians into the

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[42] 35 Stat. 110 (1908); 39 Stat. 188 (1916); 39 Stat. 612 (1916).

[43] The naval policy with respect to the broadcasting of military music as announced in 1945 was as follows:

> Radio broadcasting of regular band concerts performed at routine times on naval stations when the privilege of broadcasting is made available to all responsible broadcasters at no cost and under agreement that the broadcast will not be used in connection with any advertising /is/ not contrary to law in any case where their performance is given without remuneration.

Also, in the naval policy, it was stipulated that no group will be permitted to play if their performance, other than at official functions, will conflict with the customary and regular employment of local musicians. Source: U.S. House of Representatives, Committee on Interstate and Foreign Commerce, Hearings: Interference with Broadcasting of Noncommercial Educational Programs, 79th Cong., 1st Sess., 1945, p. 33.

[44] For the Army policy in this regard, see: Ibid., p. 47. Apparently, prior to 1945, some naval commanding officers had cleared performances of naval bands with the AFM. However, in 1945, the practice was no longer permitted, see: Ibid., p. 122.

[45] AFM. Proceed., 1942, p. 277.

military services and that many new military music groups had been formed since the beginning of the war, the conclusion was:

> So far the Federation members have been protected from this menace far better than we anticipated. But the subject is one that has to be handled with care, lest in this time of war, the Federation will be subject, however unjustly, to the criticism of a sensitive public.[46]

Effects of the AFM's Military Music Policy on Programming.--J. Harold Ryan, when NAB president, told a Congressional committee in 1945 that the AFM had some kind of broadcast prohibition:

> ....applicable to the service bands, and this includes, of course, the bands of the Army, Navy, Marines, and Coast Guard. In the case of service bands, some locals have granted occasional permission for their appearance on sustaining programs. Such permission, however, is at the pleasure of the union. In other cases, however, and in the case of commercial programs, such permission is either denied or granted only if the broadcaster will pay at the full union scale for the same number of musicians as are included in the service band.[47]

Ryan's testimony was unsupported by any specific instances where the AFM had interfered with the broadcast performance of any military bands. There was no evidence found which would support the position that the AFM had any type of wholesale or far-reaching prohibitions against the appearances of military instrumental music groups on broadcasting during the

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[46] Ibid.

[47] U.S. House of Representatives, Committee on Interstate and Foreign Commerce, Hearings: Interference with Broadcasting of Noncommercial Educational Programs, 79th Cong., 1st Sess., 1945, p. 122.

forties. The AFM had some encounters with military bands during the decade which brought adverse public criticism, but the known incidents of this nature were not associated with broadcasting.[48]

With regard to Ryan's testimony, the appearance of military musicians on regular commercial radio programs would tend to raise some questions of legality when the existing federal laws are considered. There were restrictions on the use of military musicians in broadcasting since the broadcaster can not use them in every way he saw fit. However, these restrictions were not placed on the broadcaster primarily by the AFM. It was done by Congress through legislation. No evidence of consequence was found which would indicate that the AFM, in any extensive manner, had extended the scope of

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[48]One such incident was the subject of some testimony to a Congressional committee in 1942. It involved the use of a servicemen's band in connection with various patriotic functions sponsored by some of West Palm Beach, Florida's civic and service organizations. A few of the functions had involved the local radio station. After the band had been used several times, it allegedly had been "mysteriously shipped out." The sudden debarkation was supposedly to have had some connection with action taken by the AFM. See: U.S. Senate, Committee on Interstate Commerce, Hearings: Use of Mechanical Reproduction of Music, 77th Cong., 2nd Sess., 1942, pp. 106-109.

Another incident occurred in New York City in connection with the opening of the Times Square Servicemen's Center. The AFM allegedly prevented a servicemen's band from playing at the opening ceremonies. See: New York Times, July 22, 1942, pp. 1:5, 15:2. (It is interesting to note that this incident made the front page of the Times. This might be some indication of the sensitivity of the public in this area.)

Representative Dondero of Michigan related one incident of this nature to hisfellow Congressmen. It involved the prevention of a military band from performing at the dedication of a gold star plaque in a small Michigan town. See: 92 Cong. Rec. 1544-45 (1946).

In the latter part of the forties, no such incidents of this kind were found in the literature reviewed.

the federal statutes by virtue of its own policies with respect to the broadcast performances of military musicians. In 1945, a naval officer told the same committee which heard Ryan's testimony that the United States Naval Band was broadcasting four times a week on programs carried by NBC, CBS, MBS, and a local New York City radio station.[49] Further, he added that in the twenty years that the U.S. Naval Band had been broadcasting, there had never been one protest registered by the AFM. It appears, then, that any restrictions that the AFM may have enforced during the forties were those which were placed on the performances of military musicians by federal law.

C. The Interlochen Dispute and Amateur and School Musicians

AFM Action Against Amateurs.--In keeping with the objective of protecting professional employment opportunities, the AFM had always been opposed to the performances of amateur and school musicians, including ones on radio, which offered competition to professional musicians. Prior to the early forties, the Federation had been able to enforce this general policy without arousing much attention.[50] However, the AFM decided to take some action against some school musicians in

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[49]Testimony of Capt. William F. Loventhal, United States Navy (Retired), Officer in Charge, United State Naval Band, see: U.S. House of Representatives, Committee on Interstate and Foreign Commerce, Hearings: Interference with Broadcasting of Noncommercial Educational Programs, 79th Cong., 1st Sess., 1945, pp. 44-45.

[50]Robert D. Leiter, The Musicians and Petrillo (New York: Bookman Associates, Inc., 1953), p. 150.

the early forties which attracted nation-wide attention and concern. That action involved the forced cancellation of a network series of broadcasts featuring the student symphony orchestra of the National Music Camp of Interlochen, Michigan.

Interlochen Dispute.--The National Music Camp was founded by Dr. Joseph Maddy, a music educator, in 1928.[51] Dr. Maddy described the camp in the following way;

> The purpose of this camp has been to provide appropriate advanced training for the most gifted and highly skilled high-school musicians of the entire Nation.
>
> The faculty of the National Music Camp included one or more artists performers of each instrument, drawn from the major symphony orchestras of the Nation.
>
> While all branches of music are taught at Interlochen, the chief interest centers around the camp's symphony orchestras, bands, and choral organizations, for the reason that there is no other place on earth where young musicians of high-school age actually master and perform in public a complete symphonic program of musical masterpieces each week of the school term.[52]

Each year, the camp had been attended by talented boys and girls from all over the United States and even some foreign countries for a summer of musical activities and training in the woods of Michigan.[53]

As a cultural and educational contribution, the National Broadcasting Company began carrying a series of radio concerts

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[51]U.S. House of Representatives, Committee on Education and Labor, Hearings: Restrictive Union Practices of the American Federation of Musicians, 80th Cong., 2nd Sess., 1948, p. 244.

[52]Ibid.

[53]For an article on the activities of the camp, see: William F. McDermott, "Art Goes Camping," Rotarian, 64 (June, 1944), pp. 28-30

in the summer of 1930 originating from Interlochen featuring the student symphony orchestra.[54] Except for the first year, this annual summer series had been a sustaining feature of NBC and had been presented without any kind of restriction imposed by the Federation.[55] In 1941, Petrillo demanded on behalf of the AFM that the Interlochen series be discontinued.[56] NBC had gotten Petrillo to drop his demand with the argument that all arrangements had been made and that a great deal of inconvenience would result from any change. Petrillo had agreed on the condition that the matter would be reopened for discussion before the next season's series was scheduled.

Apparently, the network ignored this agreement and went ahead and scheduled the series for the summer of 1942 without consulting with the AFM. On July 10, 1942, Petrillo notified NBC that it would not be permitted to carry the Interlochen series for the 1942 summer season.[57] This announcement came just days before the first program was to go on the air. NBC acceded to the Union's demands and replaced the series with one of its studio orchestras.

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[54]U.S. Senate, Committee on Interstate Commerce, Hearings; Use of Mechanical Reproduction of Music, 77th Cong., 2nd Sess., 1942, p. 103.

[55]The concerts during the first year were sponsored by Majestic Radio and a standby orchestra had been employed. See: New York Times, July 12, 1942, p. 28:2.

[56]For an account of the 1941 demands of the AFM, see: Leiter, op. cit., pp. 150-51

[57]U.S. House of Representatives, Committee on Education and Labor, Hearings; Restrictive Union Practices of the American Federation of Musicians, 80th Cong., 2nd Session., 1948, p. 246.

AFM Justification of the Interlochen Action.--Petrillo justified the actions of his Union on two bases.[58] First, he maintained that the more radio time that was devoted to "free music," as in the case of the Interlochen concerts, the less time that there would be left for the employment of professionals. Second, he contended that the school was operated on a commercial basis since it charged tuition. Also, he implied that the radio concerts were used as advertising to attract pupils to the camp.

When the evidence is examined, the charges of Petrillo that the National Music Camp was a commercial enterprise do not stand up. First of all, Dr. Maddy, the founder and president of the camp, was a professor of music at the University of Michigan.[59] In addition, the camp was affiliated with the University of Michigan and courses were offered for college credit. Maddy told a Congressional committee that Interlochen had been getting an annual appropriation from the Michigan Legislature since 1939 and that all camp property would revert to the state of Michigan should anything happen to the National Music Camp as an organization.[60] Further, he gave the committee some documents relating to the finances of the camp which

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[58]The justifications were contained in a letter from Petrillo to the FCC, dated July 30, 1942. For excerpts of the letter, see: Ibid.

[59]Leiter, op. cit., p. 151.

[60]U.S. House of Representatives, Committee on Interstate and Foreign Commerce, Hearings: Interference with Broadcasting of Noncommercial Educational Programs, 79th Cong., 1st Sess., 1945, p. 55.

indicate that it was in debt in 1945 and had been in that condition since its founding. If it were a commercial enterprise, it was not making any profit. Lastly, the U.S. Attorney General and the Michigan Attorney General had granted the National Music Camp tax exemption as a nonprofit educational institution.[61]

Public Reaction.--A wave of public indignation swept the country after the Interlochen ban was announced. Almost immediately, the National Bureau for the Advancement of Music came out in opposition to the ban.[62] The United Youth for Victory, a national youth organization, charged the action was an "attack on all youth."[63] In New York City, a group of boys and girls picketed the hotel in which Petrillo lived and demanded the resumption of the Interlochen radio concerts.[64] Senator Vandenberg of Michigan denounced Petrillo and the AFM on the floor of the Senate for their part in the cancellation of the Interlochen series.[65] Within ten days after the ban had been called, the FCC announced that it had received numerous protests concerning it.[66] The "dean of American conductors and composers," Walter J. Damrosch, publicly stated in a letter

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[61]Leiter, op. cit., p. 151.

[62]New York Times, July 13, 1942, p. 17:4.

[63]Ibid., July 14, 1942, p. 26:6.

[64]Ibid., July 18, 1942, p. 15:8.

[65]88 Cong. Rec., 6284 (1942).

[66]New York Times, July 20, 1942, p. 13:1.

to Vice-President Wallace that he was unalterably opposed to the action of the AFM concerning Interlochen.[67] The students at the National Music Camp both publicly and privately appealed to Petrillo to lift the ban so that at least one concert could be broadcast before the summer was over and the school was closed.[68] At the Oberlin College Conservatory of Music in Ohio, about forty members of the faculty went on record as opposing the Union's ban on the camp's broadcasts and appealed to the country's leading music schools to actively fight it.[69] In January, 1943, the Senate Committee on Interstate Commerce sponsored an investigation headed by Senator D. Worth Clark (Democrat of Idaho) which looked into the Interlochen situation.[70] Needless to say, public reaction to this move by the AFM was very strong. Even in the face of this tremendous public opposition, the Union did not relent and the National Music Camp remained off the air.

Despite all of the controversy generated, the whole affair managed to quiet down and little notice of it was taken by the press throughout most of 1943. However, Petrillo

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[67] Ibid., July 22, 1942, p. 15:3.

[68] Ibid., July 23, 1942, p. 15:2.

[69] Ibid., September 18, 1942, p. 24:3.

[70] According to Dr. Maddy, president of the National Music Camp, he testified before the Clark investigation on January 13, 1943. See: U.S. House of Representatives, Committee on Interstate and Foreign Commerce, Hearings: Interference with Broadcasting of Noncommercial Educational Programs, 79th Cong., 1st Sess., 1945, p. 20.

These hearings were never published nor reported on. See Footnote 32 of Chapter I.

made a statement in the January, 1944, issue of the AFM's official publication, the International Musician, which fanned the coals and caused the Interlochen dispute to burst into flames again. In reviewing some of the activities of his organization, Petrillo wrote:

> "However, when all the shooting was over and we came to the sumer of 1943, there was no Interlochen high school student orchestra on the air. Nor was there any other school band or orchestra on the networks and there never will be without the permission of the American Federation of Musicians."[71]

This boast of Petrillo provoked Dr. Maddy and he immediately called it to the attention of the United States Senate.[72] The most immediate effect of Maddy's action was that Senator Vandenberg introduced a bill designed "to prohibit interference with the broadcasting of noncommercial, cultural, educational programs."[73] According to the Senator, "the chief and important objective ....[of the measure was] to release music of American school children from the domination of James Caesar Petrillo."[74] Petrillo's statement marked the revival of interest in the press and a rekindling of public opposition.

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[71]Cited in: U.S. House of Representatives, Committee on Education and Labor, Hearings: Restrictive Union Practices of the American Federation of Musicians, 80th Cong., 2nd Sess., 1948, p. 247.

[72]According to Dr. Maddy, he informed the subcommittee of the Senate Committee on Interstate Commerce on March 20, 1944. See: Ibid.

[73]90 Cong. Rec. 5074 (1944). The bill was introduced on May 29th.

[74]90 Cong. Rec. 5075 (1944).

The music students of two high schools adopted resolutions condemning the AFM and demanding that Congress do something about it.[75] According to Maddy, during 1945, "the Members of Congress were deluged with letters, telegrams, and petitions demanding action to free American boys and girls from Petrillo's domination."[76] Newsweek reported that the "press and public were indignant."[77] A Collier's editorial termed the Interlochen affair as one of Petrillo's "smelliest acts of dictatorship."[78] Petrillo was being called "Caesar" and hailed as a "dictator."[79] Petrillo v. the Boys and Girls"[80] and "Petrillo v. the People"[81] are examples of the captions being placed over articles appearing in the popular periodicals relating to the Interlochen affair. This public indigantion continued until Congress did take some action to restrain the Federation.[82]

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[75]U.S. House of Representatives, Committee on Interstate and Foreign Commerce, Hearings: Interference with Broadcasting of Non-commercial Educational Programs, 79th Cong., 1st Sess., 1945, pp. 19, 61

[76]U.S. House of Representatives, Committee on Education and Labor, Hearings: Restrictive Union Practices of the American Federation of Musicians, 80th Cong., 2nd Sess., 1948, p. 247.

[77]Newsweek, February 19 , 1945, p. 76.

[78]"Petrillo vs. the People," Collier's, 117 (February 16, 1945), p. 90.

[79]Any precusory review of the popular literature of the times will reveal a number of such examples concerning Petrillo, the AFM, and the Interlochen affair.

[80]Time, February 19, 1945, p. 19.

[81]"Petrillo vs. the People," Collier's 116 (February 16, 1946), p. 90.

[82]The action that Congress took to restrain the AFM wil

Apparently, Petrillo and the AFM had not learned the lesson from the earlier statement that had gotten them in trouble. Instead of leaving the Interlochen affair alone, the National Music Camp was placed on the Union's unfair list in January, 1945.[83] This meant that no AFM member could associate himself with the camp in any fashion whatsoever without the danger of being expelled from the Federation. If a member were expelled, this would cut down severely on his employment opportunities. Since the camp generally used artist performers as teachers, the pool of available teaching talent would be restricted considerably. Also, placing the camp on the unfair list ended any hope of ever restoring nation-wide broadcast coverage of the summer Interlochen concerts. Any network or radio station with a contractual arrangement with the AFM would run the risk of a prolonged musicians' strike if such a thing were attempted with the camp on the Union's unfair list. This did not stop Dr. Maddy, who was a member of the AFM, from continuing his activities at Interlochen and from continuing his efforts to get the situation remedied. Subsequently, Dr. Maddy was expelled from the Federation in early 1948.[84] These further actions of the

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be handled in detail in Chapter IV.

[83]U.S. House of Representatives, Committee on Interstate and Foreign Commerce, Hearings: Interference with Broadcasting of Noncommercial Educational Programs, 79th Cong., 1st Sess., 1945, p. 19.

[84]U.S. House of Representatives, Committee on Education and Labor, Hearings: Restrictive Union Practices of the American Federation of Musicians, 80th Cong., 2nd Sess, 1948, pp. 241-42.

Federation, it goes without saying, further incensed an already disgruntled and sensitive public.

Other Restrictions on School and Amateur Musicians.--Very few other specific instances of the forced cancellation of broadcasts utilizing amateur and school musicians or situations involving the required payment of standby musicians or fees as a prerequisite for such broadcasts were found, i.e., when the action was initiated by the national organization. The AFM forced the cancellation of the CBS series concerts of the Cincinnati Conservatory of Music Orchestra in the fall of 1942.[85] On October 1 of that year, the Conservatory would have begun its ninth season on the air. This was the only instance that was found which could be definitely linked to action initiated by the Federation. However, an article in Life alleged that during the winter of 1941-42, Petrillo had "successfully stopped broadcasts by children in Chicago, Cleveland, Washington, Milwaukee, St. Louis, and San Francisco."[86] No specifics were included.

A number of instances involving the actions of locals can be documented, but these cases could not be linked conclusively to the National. In Rochester, New York, in the fall of 1942, an AFM local would not permit further broadcasts of the Eastman School of Music Orchestra over a local radio

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[85]For accounts, see: New York Times, September 10, 1942, p. 48:1; NAB, Sp. AFM Bul., No. 6, September 11, 1944, p. 4.

[86]Robert Coughlan, "Petrillo: Little Caesar of Symphony and Swing Wages War on Juke Boxes, Musical Children, Army Bands," Life, 13 (August 3, 1942), p. 68.

station.[87] The Chicago Sunday Evening Club, a nondenominational religious organization, was required to pay standby fees to the Chicago local because two nonunion organists were used for the broadcasts of its meetings.[88]

According to the Congressional testimony of the director of radio for the Chicago Public Schools, no instrumental music performed by school musicians had been utilized on the school system's owned and operated FM station from 1945 to 1947.[89] Supposedly, the reason why the school instrumental musicians were not used was because it was economically impossible for the school system to make the payment of the required standby fees before such broadcasts would be permitted by the Chicago local. On a couple of occasions, NBC was supposed to have paid the necessary standby fees for the Chicago school system. The director of radio indicated that no instrumental musicians of any kind were used so as to avoid any difficulty with the Chicago local. When asked specifically if the school station would have to pay standby fees if instrumental music were used, the reply was: "I presume so." It was rather clear from his testimony that it was an assumption on the part of the Chicago schools' director of radio and not the result of any specific encounters with the local on occasions when school

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[87] New York Times, September 15, 1942, p. 25:3.

[88] U.S. House of Representatives, Committee on Education and Labor, Hearings: Investigation of James C. Petrillo, the American Federation of Musicians, et al., 80th Cong., 1st Sess., 1947, pp. 217-18.

[89] For an account, see: Ibid., pp. 264-67.

instrumentalists had been used. When encountered with the above situation, Petrillo indicated that he was not fully aware of it.[90] He added that he could not see why the local should have any objections since the FM station was owned by the taxpayers.

According to one Congressman, a situation similar to the onein Chicago existed with respect to the Los Angeles County School System.[91] In Pittsburgh, a nonprofit educational children's program was required to pay an extra fee for a union staff musician because the program was recorded.[92] Because it was felt that this extra fee was unfair, the program had been taken off the air. When a Congressman and former music teacher had tried to get some broadcasts on the air of a band composed of Pennsylvania high school students in 1943, the station allegedly had told him that this was not possible because the AFM did not allow such broadcasts.[93] Another interesting incident involving restrictions on amateur musicians concerned the visiting mayor of Mexico City when he was

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[90] Ibid., p. 269.

[91] Comments of Representative Richard M. Nixon, see: Ibid., p. 267.

[92] For an account, see: U.S. House of Representatives, Committee on Interstate and Foreign Commerce, Hearings: Interference with Broadcasting of Noncommercial Educational Programs, 79th Cong., 1st Sess., 1945, p. 57.

[93] Comments of Representative Carroll D. Kearns, see: U.S. House of Representatives, Committee on Education and Labor, Hearings: Investigation of James C. Petrillo, the American Federation of Musicians, et al., 80th Cong., 1st Sess., 1947, pp. 239-40.

interviewed on a Philadelphia radio station.[94] Because the mayor played the piano during the course of the interview, a standby fee was reported to have been required. It must be remembered that, with the exception of the Cincinnati incident, these examples of interference with amateur and school music broadcasts could not be traced conclusively to action initiated by the national organization. As near as can be determined, they represent isolated instances of actions taken by AFM locals with the National taking no active part in them.

AFM Ban on Amateur Broadcasts?.--Was there an announced ban on amateur broadcasts being enforced by the AFM? There were many who were convinced that there was. In 1945, Dr. Maddy testified to the House Committee on Interstate and Foreign Commerce that except for a few isolated instances, since Petrillo had become the national president of the AFM, all school music broadcasts had been stopped.[95] In testimony to the same committee, J. Harold Ryan, then NAB president, corroborated Dr. Maddy's position. He stated: "One of the most important steps taken by the musicians' union, particularly from the public view point, is the banning of school orchestras from the air."[96] In 1947, a New York Times article referred to a broadcast ban of amateur musicians that was

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[94]For an account, see: Ibid., p. 260.

[95]U.S. House of Representatives, Committee on Interstate and Foreign Commerce, Hearings: Interference with Broadcasting of Noncommercial Educational Programs, 79th Cong., 1st Sess., 1945, p. 57.

[96]Ibid., p. 82.

being imposed by the AFM.[97] Leiter, in his study of the Union, implied that there was some kind of a ban against the appearance of amateur and school musicians on radio.[98] The belief seems to have been quite wide-spread that the AFM had imposed some kind of an absolute ban on the appearance of such musicians on the air.

Announced AFM Policy Regarding Amateurs.--However, from the official records of the AFM, any such absolute ban was not apparent. There were a couple of resolutions passed by conventions of the AFM in the early forties which might reflect a national policy. They were as follows:

> Whereas, many localities in the United States maintain excellent high school and college bands, supported by taxes levied upon property owners, and composed entirely of amateur musicians of school age, and
>
> Whereas, Ambitious civic organizations often prevail upon school authorities to permit school bands to appear in commercial public engagements, and,
>
> Whereas, The practice is usually in direct competition to legitimate, professional bands and is reflected in financial loss to professional musicians, and
>
> Whereas, We have no objection to the use of school bands for strictly legitimate school functions, now, and therefore,
>
> Be It Resolved, That the American Federation of Musicians, in its convention assembled, does hereby stand opposed to the use of school bands for such engagements which savors of commercialism or professionalism, and
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> Be It Further Resolved, That the Executive Board of the American Federation of Musicians endeavor to prepare appropriate legislation aimed at curbing this unfair practice, and

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[97] New York Times, July 24, 1947, p. 12:1.

[98] Leiter, op. cit., pp. 152-53.

> Be It Further Resolved, That the American Federation of Musicians urge all locals, in their respective states, to introduce and sponsor the enactment of such legislation in their respective states.[99]
>
> BE IT RESOLVED, That it is mandatory upon all locals to place local school bands on the Local Unfair List wherever and whenever, after due negotiation, such Locals are unable to prevent unfair competition by such school bands.[100]

It is difficult to interpret these resolutions as instituting some kind of an absolute ban on the appearance of amateur and school musicians on radio.

Petrillo's statement in 1944 which got the Union in difficulty suggested no absolute ban either.[101] The only ban suggested by his statement was one which might affect the networks only. There was some support of this position. When the CBS series featuring the Cincinnati Conservatory of Music Orchestra was cancelled, the Cincinnati AFM local stated--according to the New York Times--that it was "the national policy of the American Federation of Musicians to permit only union musicians to broadcast."[102] A network was involved in this case and, in this respect, it was similar to the Interlochen situation. The other known instances of restrictions on school and amateur broadcasts did not involve networks. Regarding these other instances, there was no evidence found which suggested that they reflected a formal national policy

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[99] AFM. Proceed., 1941, pp. 314-15.

[100] Ibid., 1942, p. 312.

[101] See quote in text at Footnote 71 of this chapter.

[102] New York Times, September 10, 1942, p. 48:1.

other than the consistent one of protecting employment from what was referred to as "unfair competition." This does not necessarily mean that some kind of absolute ban had been imposed. Petrillo, himself, stated on several occasions during the forties that the determining factor as to whether the AFM would permit amateur and school musical groups to be presented on radio was whether they would compete with professionals.[103]

Effect of Union Policy Regarding Amateurs on Radio Programming.--When the FCC surveyed the use of music and recordings in radio programming in 1942, the Commission also asked the stations to advise it if "in the past three years there had been any ....instances involving their particular stations where amateur musicians have been kept off the air, or permitted to broadcast only if professional 'standbys' were specifically employed for the occasion."[104] The replies revealed that there were 31 instances where amateur musicians had been kept off the air either because the broadcasts were not permitted or the station involved refused to submit to the standby demands. In addition, there were 36 reported instances where standby demands were met in order to secure permission for the broadcasts. Of the 796 stations replying, 723 reported no such incidents. Chairman Fly warned that:

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[103]For one occasion, see: U.S. House of Representatives, Committee on Education and Labor, Hearings: Investigation of James C. Petrillo, the American Federation of Musicians, et al., 80th Cong., 2nd Sess., 1947, p. 272.

[104]For the results of this aspect of the FCC survey, see: U.S. Senate, Committee on Interstate Commerce, Hearings: Use of Mechanical Reproduction of Music, 77th Cong., 2nd Sess., 1942, p. 15.

> ....this does not necessarily indicate that these stations are free from problems of this character. It may well be that they know that the local union would not permit theuse of amateurs and have, therefore, avoided making an issue of this point.[105]

A statement of a California broadcaster in 1945 tended to support the contentions of Fly.[106] He stated that, in his experience, situations were avoided which might result in the payment of standby fees. Specifically mentioned were amateur music programs. It was evident, however, even with Fly's qualifications, that the Commission was unable to document very much direct interference by either the AFM or its locals with amateur music programs.

For the year 1946, Petrillo made a survey of AFM locals regarding amateur music broadcasts.[107] Replies were received from 454 locals out of a total of nearly 700. In these 454 locals, 3,234 amateur broadcasts were permitted without any interference on the part of the locals involved. This certainly does not suggest any kind of universal ban against amateur instrumental performances on radio.

The official Union records examined and the statements of AFM officials reviewed[108] did not reveal any universal

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[105] Ibid.

[106] U.S. House of Representatives, Committee on Education and Labor, Hearings: Investigation of James C. Petrillo, the American Federation of Musicians, et al., 80th Cong., 1st Sess., 1947, p. 548.

[107] Petrillo revealed the results of this survey in his testimony, see: Ibid., pp. 240-41.

[108] The AFM official records examined for this study were those contained in: AFM, Proceed., 1939-1951. This source contained primarily the official accounts of the annual convention proceedings, the texts of the annual reports

or absolute ban on the broadcast performance of amateur musicians. As will be demonstrated throughout this chapter, when the AFM instituted what can be termed a "ban," there was always some kind of an official statement outlining "what" was being "banned." No such statement was found or even referred to by those who thought some kind of ban on amateurs existed. It is difficult to assess the direct impact of Union policy regarding amateur musicians on broadcast programming. Only two instances of direct interference by the National could be documented. It would be difficult to generalize any logical or consistent pattern on the basis of only two cases, in the absence of a clear, announced policy. All of the other instances documented involved action of local origin and not action originating at the national level. It appears, then, the only logical or consistent pattern implicit in the actions of both local and national origin was devotion to the long-standing policy of protecting professional employment from what was considered "unfair competition" of nonprofessional musicians.

The indirect impact of Union policy is almost impossible to assess. It does appear, however, that many broadcasters thought that there was some kind of ban or severe

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of the officers of the Federation, and minutes of International Executive Board Meetings. Also, a number of pamphlets published by the Union were examined.

Primarily, the statements of the AFM officials reviewed, in addition to the above source, were those contained in the press (newspapers and periodicals, including popular, trade, and labor publications) and testimony before Congressional committees.

restrictions existing with regard to amateur music broadcasts. Broadcasters might have reasoned that since the Union did institute a number of bans affecting other things, there must be some kind of ban against amateurs. On this basis, it was possible that any ban affecting amateur music broadcasts was more industry-imposed than AFM-imposed. If this were the case, given the personality of Petrillo, he would have been the last person to tell broadcasters that no such ban existed. In conclusion, it is felt that the direct effects on broadcast programming of AFM policy and action with respect to amateur musicians was in no measure commensurate with the ill-will and public reaction generated by them. In a few instances, Petrillo, the AFM, or its locals had tried to tamper with one of the American people's "sacred cows"--little school children. In this realm, the attempt is as fully serious as the deed.

D. The Recording Ban of 1942[109]

The AFM Moves Against Recordings.--Almost concurrent with the Interlochen affair was the AFM move against "mechanized music." In June, 1942, Petrillo notified the recording and transcription companies that the AFM would no longer permit its members to make recording and transcriptions after August 1.

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[109] For more detailed accounts of the recording ban of 1942, see: Vern Countryman, "The Organized Musicians: II," University of Chicago Law Review, 16 (Winter, 1949), pp. 203-297. Leiter, op. cit., pp. 132-40; Anders S. Lunde, "The American Federation of Musicians and the Radio and Recording Companies: A Report on a Controversy" (Unpublished Master's thesis, Faculty of Political Science, Columbia University, 1947), pp. 53-81.

Although the order was not phrased in the terms of a strike, the implication was that the Federation was going on strike against the recording and transcription companies. The country was at war, which made any kind of work stoppage an extremely serious matter in the thinking of patriotic Americans. Public and press reaction and revulsion was immediate. Various agencies of the federal government became involved in attempts to stop the ban. All kinds of dire results of the recording ban were being predicted. In the face of this opposition, the Union proceeded with its plans and the ban became effective. For the companies who came to terms first, the ban lasted approximately 14 months. For those who most adamantly resisted the demands of the Union, recording and transcription production was not resumed for nearly 27 months.

In the end, all companies, in effect, agreed to the terms laid down by the AFM. The final settlement established the Recording and Transcription Fund which was to be administered solely by the Union.[110] Contributions to the fund were to come from a royalty paid by the manufacturer on all recordings and transcriptions manufactured. According to the Federation, the purpose of the fund was to "protect the skill and talent of the worker /musician/ by providing him with employment opportunities in which his skill and talent can be preserved."[111] Only musicians who played their instruments

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[110]For texts of the agreements reached, see: Broadcasting, October 25, 1943, pp. 58-59; November 20, 1944, p. 20.

[111]Joseph A. Padway, "Are Royalties Wrong," American Federationist, 52 (April, 1945), p. 35. For a time during the forties, Padway was a counsel for the AFM.

at free public performances were to receive any payments from the fund.[112] Throughout the duration of the recording ban, the Union contended that such action was necessary and justified on the grounds that the commercial use of "mechanized" or "canned" music was making tremendous inroads into the employment possibilities and opportunities of professional musicians.[113] In other words, this was but one manifestation of the musicians' continuing battle with the "machine."

Federal Government Involvement.--Almost immediately, the federal government became interested and involved in the AFM's actions regarding recordings and transcriptions. In July, 1942, Elmer Davis, who was OWI director, appealed to Petrillo to revoke the recording ban on "behalf of the War Department, the Navy Department, the Marine Corps, the Coast Guard, the Treasury Department, the Office of Civilian Defense, and the Office of War Information."[114] To reject such a plea in time of war would be "unthinkable." Nevertheless, Petrillo did.

Justice Department Action.--Also, in July, the Department of Justice set to work in an attempt to stop the Federation from carrying out its ban order. An injunction was sought from the United States District Court in Chicago

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[112] AFM. Proceed., 1947, p. 99.

[113] For expression of this position of the Union, see: "Plight of the Professional Musician," American Federationist, 49 (October, 1942), p. 8.

[114] U.S. Senate, Committee on Interstate Commerce, Hearings: Use of Mechanical Reproduction of Music, 77th Cong., 2nd Sess., 1942, p. 3.

to restrain the Union from such action.[115] The bill of complaint filed by the Antitrust Division of the Department of Justice charged the AFM and its officers with "wrongful and unlawful combination and conspiracy in restraint of ....interstate trade and commerce in phonograph records and transcriptions and radio broadcasting."[116] This allegedly constituted a violation of Section 1 of the Sherman Antitrust Act of 1890.[117] However, the district court judge ruled that a labor dispute was involved and hence, no injunction --under the law--could be issued.[118] Upon appeal, the U.S. Supreme Court affirmed the decision of the lower court.[119] In the last analysis, the efforts of the Department of Justice failed to end the recording ban.

Senate Hearings.--The United States Senate became riled at the actions of Petrillo and his Union. Senator D. Worth Clark of Idaho introduced a resolution in late August calling for an investigation of the AFM and the recording ban.[120] The resolution was subsequently passed in late September[121]

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[115] Ibid., p. 57.

[116] Ibid., p. 102

[117] Ibid., p. 100.

[118] U.S. v. American Federation of Musicians, 47 F. Supp. 304 (1942). The decision was handed down on October 14.

[119] U.S. v. American Federation of Musicians, 318 U.S. 741 (1943). The decision was handed down on February 15.

[120] 88 Cong. Rec. 6974 (1942). The resolution was introduced on August 27.

[121] 88 Cong. Rec. 7402 (1942). The resolution was passed on September 24.

after three days of preliminary hearings.[122] The emphasis of these hearings was the possible effect of the recording ban on radio broadcasting.

Elmer Davis told the committee that music was a recreational activity, and, hence, the supply of music could have a potential effect on the morale of a country at war. From this standpoint, he said that a continuous supply of "freshly recorded music" was needed and that was what the recording ban proposed to stop. Also, he emphasized that many small radio stations were dependent on recorded music to secure and hold their audiences. His contention was that with the halt in the production of recorded music, many small radio stations "would be unable to keep going." Further, he contended that this would interfere seriously with the ability of the OWI in performing its function of informing the American people about the war effort because of the possible disruption that could be caused to the country's network of radio communication.[123]

FCC Chairman Fly's testimony supported the contentions of Davis. Fly predicted that possibly a third to a half of all radio stations would eventually go out of business if there were a prolonged diminution in the supply of recorded

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[122] U.S. Senate, Committee on Interstate Commerce, Hearings: Use of Mechanical Reproduction of Music, 77th Cong., 2nd Sess., 1942.

[123] For the testimony referred to in the above paragraph, see: Ibid., pp. 4-5.

music.[124] "Within a year," Fly suggested, the recording ban would have"a very substantial effect" on the number of radio stations operating.[125] It was also brought out in the testimony of Thurman W. Arnold, who was then U.S. Attorney General, that the Department of Justice was basing a significant part of its case on the potential damage of the recording ban to the country's radio stations.[126]

More Hearings.--In January, 1943, the Clark committee held hearings on the resolution that was passed. Authorization for continuing the investigation also was granted by the next Congress.[127] Since these hearings were not published and no report was filed, what is known about them had to be obtained from other sources.[128] About the most immediate and important result of the January hearings was that the committee was successful in getting Petrillo to formulate some demands to present to the recording and transcription companies.[129] Up to that time, no demands had been formally made of the companies involved. In February, 1943, the AFM presented its plan for royalties on each recording and transcription

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[124] Ibid., p. 27.

[125] Ibid.

[126] Ibid., pp. 61-62.

[127] 89 Cong. Rec. 570 (1943). The resolution was passed on February 4.

[128] See Footnote 32 of Chapter I.

[129] For the most complete source for the testimony involving the AFM, see: NAB. Sp. AFM Bul., No. 15, January 22, 1943, pp. 1-35.

manufactured, which provided the basis for the final settlement.[130]

NWLB Action.--The National War Labor Board, created to cope with wartime labor disputes which interfered with the war effort, became involved in extensive proceedings in the attempt to stop the recording ban.[131] Before the final decision in the matter was rendered, the AFM had already signed with a number of the recording companies in late 1943.[132] So when its final decision and directive was issued in June, 1944, which ordered the Union to go back to work,[133] the AFM ignored the order.[134] The Union was not about to go back to work for some of the companies when it had favorable agreements with a majority of them. At this juncture, the AFM's refusal to obey the NWLB directive was referred to the Office of Economic Stabilization in mid-August, 1944.[135]

Petrillo Defies the President.--This office finally referred the entire matter to President Roosevelt.[136] In a telegram, dispatched in early October, the President appealed

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[130] Broadcasting, February 15, 1943, pp. 9, 52.

[131] For summaries of the National War Labor Board (hereafter, may be referred to as the NWLB) proceedings, see: Broadcasting, March 13, 1944, pp. 9, 70-71; June 19, 1944, pp. 13,60

[132] Ibid., September 27, 1943, pp. 9, 64-65.

[133] For the text of the final decision, see: NAB. Sp. AFM Bul., No. 28, June 22, 1944, pp. 2-3.

[134] Broadcasting, July 10, 1944, p. 14.

[135] New York Times, August 19, 1944, p. 13:7.

[136] Broadcasting, August 28, 1944, p. 156.

to Petrillo to end the ban and comply with the directive of the NWLB.[137] In the face of tremendous public indignation, Petrillo notified President Roosevelt on October 10 that he--with regret--could not comply with the request.[138]

The Hold-Outs Give-In.--Finally, the remaining companies signed with the AFM on its terms in the latter part of November, 1944, and full production of recordings and transcriptions was once again resumed.[139] The Columbia Recording Corporation and RCA Victor, two of the companies who made the "last-ditch" efforts to resist the Union's demands, emphasized that they had to capitulate because of the "unwillingness" or "incapacity" of the government to enforce its orders.[140] They indicated that they had waited too long and now had no other choice but to sign because the unfair competitive condition had existed too long. It is interesting to note that the two major companies that held out the longest were associated with broadcasting interests.

Effect of the Recording Ban on Radio Programming.--On one occasion, Petrillo frankly admitted that one of the aims of the recording ban represented an attempt to get radio stations to limit the use of recorded music.[141] Also, the

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[137] New York Times, October 5, 1944, pp. 1:3, 14:3.

[138] Broadcasting, October 16, 1944 (supplement), p. 8; New York Times, October 11, 1944, pp. 1:2, 38:2.

[139] Broadcasting, November 20, 1944, pp. 15, 56; New York Times, November 12, 1944, p. 1:1.

[140] Broadcasting, November 20, 1944, p. 22.

[141] New York Times, July 2, 1943, p. 10:4.

National Association of Broadcasters led the fight against the AFM during the recording ban.[142] The latter, along with the fact that the two major companies who held out were associated with broadcasting interests, tended to indicate that broadcasters were rather concerned about the recording ban. However, the actual impact of the ban on radio programming was rather difficult to ascertain, particularly with respect to specific effects.[143] Some of the general effects can be deduced. It was apparent, though, that the dire effects predicted by Davis and Fly did not result. Radio stations did not go off the air in droves or even lose money. It was indicated previously that this whole period was a very prosperous one for the industry, in general.

Very early in the ban, the AFM had allowed its members to perform for commercially sponsored programs which were electrically transcribed on the condition that such transcriptions would be broken immediately after each had been used once.[144] In early September, 1942, the AFM decided to place all electrical transcriptions under the ban order.[145] Actual programming of the major networks would be little

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[142]Lunde emphasized this point, see: Lunde, op. cit., p. 68.
Also, the recording ban provided the impetus for publishing its special publication: NAB, Sp, AFM Bul.

[143]The literature was almost devoid of any mention of the specific effects of the recording ban on radio programming. In most cases, the comments were of a general nature.

[144]New York Times, August 7, 1942, p. 11:6.

[145]Broadcasting, September 7, 1942, p. 7.

affected by the recording ban since it was their policy not to use recordings and transcriptions. However, there would be some effect on the distribution of the network programs in two respects. Due to time zone differentials, some programs were transcribed at broadcast time and then later rebroadcast at more appropriate times.[146] Also, some network programs were transcribed and distributed to nonaffiliates thus increasing the supplemental coverage of such programs.[147] Both of these practices would be affected by the recording ban.

The most serious effect of the recording ban would be in the area of non-network programming. Under the ban, no new music was being recorded. The FCC survey in 1942 of the use of recorded music revealed that non-network stations depended rather heavily on recorded and transcribed music.[148] The ban would severely curtail the supply of music that had been recently written or arranged. This was particularly important with respect to the so-called "popular" music. The popularity of a piece of this kind of music generally lasted only a matter of weeks and then it was replaced by another one. The ban would mean that many broadcasters would not be able to get all of the newly written and recorded popular music that they might want. However, there was a large

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[146]The forced cancellation of transcribed rebroadcasts of network programs, due to time zone differentials, was reported by: New York Times, October 10, 1942, p. 7:1.

[147]Transcribed network programs of this kind were reportedly affected, see: Broadcasting, September 14, 1942, p. 54; New York Times, September 9, 1942, pp. 1:3, 17:1.

[148]For details, see Section C of Chapter II.

backlog of previously recorded music so that broadcasters would still be able to fill program schedules. It was a matter of the broadcaster not being able to program with the recorded music he wanted rather than not having any music at all. Business Week reported in early 1943 that some of the late night disc jockies were feeling the effects of the short supply of new popular music.[149] As a result, some had resorted to using recordings that were not covered by the ban such as vocals without instrumental accompaniment or recordings of instruments not recognized by the AFM, such as harmonicas and ocarinas. Also affected by the ban were commercials distributed by electrical transcriptions involving instrumental music.[150] These were the principal general effects of the recording ban on radio programming.

Public Reaction.--Probably, the most important effect of the recording ban was the public and press reaction and indignation generated against the AFM. Broadcasting, on a number of occasions, cited the criticism of the country's press regarding the actions of the Federation.[151] An article in Harper's Magazine reported in late 1942 that the press and and editorial position on the recording ban was "unfavorable

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[149] Business Week, January 23, 1943, p. 39.

[150] New York Times, September 9, 1942, p. 1:3.

[151] For some articles concerning the press criticism, see: Broadcasting, August 3, 1942, p. 12; August 10, 1942, pp. 9, 57; September 7, 1942, p. 7; February 22, 1943, p. 49; July 12, 1943, p. 26; October 16, 1945 (supplement), p. 4; November 20, 1944, p. 30.

from one end of the country to the other."[152] Between June, 1942--the time of the announcement of the recording ban--and November 1, 1942, the NAB reported that it had received 2,438 clippings of editorials from the nation's newspapers which opposed the AFM's ban on recordings.[153] These editorials came from 946 newspapers in 771 cities and from every state except North Dakota.[154]

In late August, 1942, Gallup polled the opinion of the American public regarding their attitude toward Petrillo and the recording ban.[155] Seventy-five per cent responded unfavorably to the question: "What is your opinion of Mr. Petrillo's rulings?" In the survey, 73 per cent of the voters were in favor of government action to stop Petrillo and the AFM. This same opinion was reflected in a number of letters to the New York Times.[156] The National Federation of Music Clubs and the General Federation of Women's Clubs passed

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[152]Bernard B. Smith, "What's Petrillo Up To?" Harper's Magazine, 186 (December, 1942), p. 90.

[153]NAB. Sp. AFM Bul., No. 13, November 13, 1942, p. 4.

[154]For reprints of a number of these editorials and ones appearing after the tabulation, see: NAB. Sp. AFM. Bul. No. 1, July 24, 1942; No. 2, July 31, 1942; No. 4, August 14, 1942; No. 6, September 11, 1942; No. 16, February 19, 1943; No. 18, March 26, 1943; No. 19, July 15, 1942; No. 20, August 13, 1943; No. 23, N.D. [Late 1943 or early 1944?]; No. 24, March 14, 1944; No. 29, November 24, 1944. All of the mentioned issues contain reprints of editorials in them in various places.

[155]For the text of the release of this survey by George Gallup, see: NAB. Sp. AFM Bul., No. 5, September 4, 1944, p. 4.

[156]For three such letters, see: New York Times, October 9, 1944, p. 22:7; October 19, 1944, p. 22:7; November 16, 1944, p. 22:7.

resolutions condemning the Federation and its recording ban.[157]

There was little doubt that the opinion of both the American public and the press was mobilized against Petrillo and the American Federation of Musicians. To be sure, the recording ban did have some effects on radio programming. However, in the fight between the Union and the broadcasting industry, the most important effect of the ban appears to have been on public opinion and not necessarily on programming. When Congress would finally decide to take some action against the AFM,[158] broadcasters would be able to draw on this public sentiment for support of their position.

E. The Television Problem

The TV Ban.--Although the AFM showed some active concern for television as early as 1939, the problem did not come to a head until early 1945. The following official directive to all AFM locals appeared in the February issue of the International Musician, the Union's official publication:

Re TELEVISION

By order of the International Executive Board, members of the American Federation of

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[157] For text of the resolution of the National Federation of Music Clubs, see: New York Times, September 1, 1942, p. 12:3.

For text of the resolution of the General Federation of Women's Clubs, see: NAB, Sp. AFM Bul., No. 13, November 13, 1942, p. 1.

[158] The action taken by Congress will be developed in detail in Chapter IV.

> Musicians are not permitted to play for television in any form until further notice.
>
> James C. Petrillo
> President, A. F. of M.[159]

After February and for about three years thereafter, the above directive put a stop to all TV programming which involved live musicians who were members of the AFM. This TV ban affected both levels of television broadcasting, i.e., the national networks and local TV stations.

Earlier Concern.--The AFM convention of 1939 unanimously adopted a resolution directing president Weber to make an investigation of the entire TV situation.[160] A committee composed of Weber, Petrillo and another Union official was created by the IEB to make the investigation.[161] The committee, in late 1939, recommended to the IEB that the National assume jurisdiction over television.[162] This recommendation was adopted.[163] This meant that locals could not negotiate or enter into agreements concerning TV employment without the express consent and/or approval of the National. Also, all locals would have to conform to all National policies and directives concerning any aspect of TV employment. The IEB, at about the same time, passed a ruling which prohibited radio staff musicians from being utilized on television broad-

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[159] AFM. Proceed., 1946, p. 88.

[160] Ibid., 1939, p. 408.

[161] Ibid., p. 413.

[162] Ibid., 1940, p. 50.

[163] Ibid.

casts.[164] In other words, any musicians employed for TV programs had to be specifically hired for such purposes and no musicians employed on a full-time basis for radio stations would be eligible for such employment.

Throughout the war years, no evidence was found which suggested any difficulties experienced between the AFM and the industry concerning musicians' TV employment. Most of the activity in the whole area of TV broadcasting was temporarily halted as a result of the war effort. However, in January, 1945, CBS announced that it was temporarily discontinuing the use of musicians on its network TV programs because of the Union policy which did not allow radio staff musicians to be utilized for such programming.[165] This decision only affected two CBS programs. It must be remembered that the dimensions of the then infant TV broadcasting industry were very small in 1945--only six TV stations were on the air. Then, in the following month, the AFM put a stop to all TV employment with regard to its member musicians. Since virtually all competent musicians were members of the AFM, this policy, in effect, totally curtailed the use of live music on television during the period affected.

Employment for Films Produced for TV.--Not only did the TV ban affect the employment of musicians for live television, but it also affected the employment of musicians in the production of sound films specifically designed for use

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[164] Ibid.

[165] Broadcasting, January 22, 1945, p. 58.

on TV.[166] Since TV broadcasting combined both aural and visual elements, the motion picture film was ideally suited to this new medium. With respect to the AFM, this could constitute another form of canned music that could be utilized in TV broadcasting. As a result, the TV ban included the prohibition of employment in the making of films for specific use on television. In the making of films, it is possible to re-record or "dub" on the sound track previously recorded music. In this manner, circumvention of the TV ban could have been accomplished. However, the AFM had foreseen this possibility in its 1939 investigation. At that time, the IEB had adopted a ruling which prohibited dubbing of music for television "under any circumstances."[167]

Theatre Films on TV.--The TV ban was not the only Union policy which affected TV programming. Hollywood had a large backlog of motion picture feature films produced specifically for theatre exhibition. These films could be used as a source of TV programming. In its 1944 contracts with the Hollywood motion picture producers, the Union was successful in obtaining several provisions relating to the dubbing of previously recorded music.[168] These provisions provided that music recorded for sound tracks could not be

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[166] U.S. House of Representatives, Committee on Education and Labor, Hearings: Restrictive Union Practices of the American Federation of Musicians, 80th Cong., 2nd Sess., 1948, p. 12.

[167] AFM. Proceed., 1939, p. 50.

[168] For text of the provision, see: Ibid., 1946, p. 78.

used for any purpose other than the film for which it was specifically recorded. Also, the producers agreed not to dispose of, lease, or sell any music recorded for sound tracts without the express permission of the AFM. This would tend to prohibit the re-use of this music in the production of films for TV. It did not appear that the 1944 contracts prohibited the actual use of theatre films on TV, only the music recorded for them. It would seem that the 1944 contracts strengthened already existing policies of the Federation which prevented the use of previously recorded music for films produced specifically for TV. Petrillo indicated that these provisions were the most important provisions of the 1944 agreements.[169]

1946 Film Agreements.--The Union must have realized that, if it were to successfully control the use of music on TV played by its members, some control over motion picture films produced specifically for theatre exhibition would have to be exerted. Probably with this in mind, the 1946 agreements with the Hollywood motion picture producers contained the following clause:

> (I) The producers agree that they will not, without the prior consent of the Federation, license, lease, lend, give, sell, utilize, or in any other way whatsoever authorize the use, in whole or in part, of the music sound track containing the recorded music made by members of the Federation performing on musical instruments or conducting heretofore made or which will be made prior to the expiration of this agreement, on or in connection with television, during the life of this agreement and there-

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[169]See president's annual report: Ibid., p. 70.

> after; except only after separate negotiations are entered upon and after a separate written agreement has been reached between the Federation and the producer with respect to the use of such music sound track or such scenes or shots, on or in connection with television, can such use be made and then only upon the terms and conditions agreed upon by the Federation and the producer in such separate agreement.[170]

Since nearly every Hollywood motion picture feature film depended rather heavily on music for its effectiveness, the above clause, in effect, prohibited the use of theatre films on television. Petrillo emphasized that the above restrictions on the use of sound tracks comprised three of the five most important features of the 1946 movie contracts.[171] This clause of the 1946 contracts made the AFM's control of music that could be used on television nearly complete. The only type of music that TV broadcasters had available after 1946 were disc recordings. This was one area in which it was not possible for the AFM to exert much control. As pointed out previously, once disc recordings have entered the stream of commerce, no restrictions could be placed on their use by the performing artists.

Union Justification of Its Policies.--If it is realized how the Union and its officers perceived the coming of television, the policies which were adopted should not be too surprising. The AFM perceived the coming of TV as a situation

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[170] Cited in: U.S. House of Representatives, Committee on Education and Labor, Hearings: Investigation of James C. Petrillo, the American Federation of Musicians, et. al., 80th Cong., 1st Sess., 1947, p. 485.

[171] See president's annual report: AFM. Proceed., 1947, pp. 68-69.

analogous to the introduction of the sound motion picture and the resultant theatre unemployment. Petrillo summed up the television situation, as viewed by the AFM, in one of his annual reports:

> The introduction and development of Television presents the same threat to employment of musicians as did the change from silent to sound movies.... The American Federation of Musicians is determined to avoid a repetition of that experience, until we find out exactly where we will stand we are not going to render services in the making of Television. That is, whether TV is going to destroy radio employment....
>
> Television is not going to grow at the expense of the musicians....
>
> Of course, the American Federation of Musicians cannot permit any moving pictures made with the services of our members for theatres, to be used for Television.
>
> We have been fooled so many times and misled by the employers so many times by their saying that every new invention would help us, that if we permit ourselves to fall in line again with that kind of talk, we deserve the consequences.[172]

There was evidence which suggested that the view expressed by Petrillo was shared by the 1944 convention. Two resolutions introduced, which were referred by the convention to the International Executive Board for consideration, showed definite concern for the TV situation. One resolution called for a study of the entire question of television, and it expressed a strong desire to avoid the recurrence of the sound motion picture loss of employment.[173] The other resolution expressed great concern for the use of canned music on TV.[174] This resolution went so far (as to

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[172] Ibid., 1946, pp. 91-92.

[173] Ibid., 1944, p. 175.

[174] Ibid., p. 178.

recommend) that the AFM should prohibit its members from "mimicing to records."[175]

Industry Reaction.--As might be expected, the broadcasting industry was very much opposed to the TV restrictions imposed by the AFM. A few days after the announcement of the TV ban in the International Musician, Broadcasting reported that TV station officials emphasized that the ban would cause the industry to drop a number of experimental programs and would seriously hamper efforts to gain experience in the production of programming involving music.[176] Also, it was reported that a number of programs would be affected, but no specific programs were mentioned.[177] Business Week also reported that radio interests charged that the TV ban would seriously interfere with thedevelopment of TV.[178]

J. Harold Ryan, when he was NAB president, testified to a Congressional committee in 1945 with regard to the TV restrictions as follows:

> The entire program of experimentation in certain aspects of the art is, therefore, being delayed with the resultant loss not only to broadcasters and members of the American Federation of Musicians, but to the citizens of our country who expect to find employment in this new field, and to the great number of our citi-

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[175]Mimicing to records refers to acting out what is contained on record and if voice is used in recording, moving the lips in synchronization with the record.

[176]Broadcasting, February 12, 1945, p. 16.

[177]Ibid.

[178]Business Week, May 11, 1946, p. 94.

> zens who will ultimately reap its benefits as the television audience.[179]

Two other industry spokesmen--Justin Miller, Ryan's successor in the NAB, and Frank Mullen, NBC executive vice-president--also emphasized that the Union policies with regard to TV could prevent it from realizing its full potentialities.[180] Both men, in addition, felt that television showed promise of providing a stimulus to the national economy and they implied that the Union policies would interfere with the full realization of this promise.

Effect on TV Programming.--The AFM's policies with regard to television affected what TV programming there was quite considerably. Nearly every kind of TV program uses music in some form or other, if only to introduce the program, as in the case of the musical theme. The Union policies prevented TV broadcasters from using music from all sources except one, processed disc recordings. For programs employing only a musical theme, the policies would not present very much difficulty. In the case of dramatic programs, the use of music is considered to be very important in creating moods and effects which producers often wish to convey. Much of the music used for such purposes is specifically written or arranged and performed for the specific dramatic program involved.

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[179]U.S. House of Representatives, Committee on Interstate and Foreign Commerce, Hearings: Interference with Broadcasting of Noncommercial Educational Programs, 79th Cong., 1st Sess., 1945, p. 86.

[180]See their testimony in: U.S. House of Representatives, Committee on Education and Labor, Hearings: Restrictive Union Practices of the American Federation of Musicians, 80th Cong., 2nd Sess., 1948, pp. 12, 263-64.

A number of the desired effects sought by producers would be almost impossible to create with only processed disc recordings available. The latter is generally considered a rather inflexible source of music for such purposes. TV programs featuring music were almost impossible under the AFM policies. Since both film and live instrumental musicians were unavaible to TV broadcasters, disc recording and unaccompanied vocal music provided the only sources available for such programs. Music presented in the disc recorded form would be rather unsatisfactory. Since there would be no musicians present in the case of recorded instrumental music, the visual elements of TV could not be fully utilized.

Some Examples of Specific Effects.--Some of the practical problems that the TV broadcaster faced under the AFM policies with regard to television were revealed in the comments of two network officials:

> Because of the union's ban, we [NBC] are forced to cut our television pickups from Madison Square Garden whenever musicians perform. Instances are numerous where a proposed television program has had to be rejected because music was so intertwined with the rest of the program that the two could not be separated. Telecasters have had to resort to the use of recorded music to serve as accompaniment for singers.[181]

> Two events that we [CBS] pick up by television in Madison Square Garden are the Rodeo, and the Ice Follies.
> Now in the Rodeo, and in the Ice Follies, there is incidental music from time to time.
> I think some of the horses are trained a little bit to sort of dance to a waltz tune, or

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[181]Testimony of Frank Mullen, NBC executive vice-president, see: Ibid., p. 264.

> something of that nature, and, of course, in ice-caping /sic/ they skate in time with music, and it adds a good deal to the desirability of the performance.
>
> Now, we cannot pick up any music at all from Madison Square Garden because the musicians that play that music for live performances are, of course, union musicians.
>
> So, what do we do?
>
> We turn down the sound entirely when the music comes on and then our technicians, at our television studio, put on a record and they try to synchronize the record with what the animal or the ice skater is doing.
>
> It is very unsatisfactory. It makes no sense at all. It is a less good service to the people, and yet that is the type of thing we have to do simply because we are not allowed to have any live music whatsoever on television.[182]

Confused State of Affairs: TV.--Near the end and after the war, television was in a rather confused state of affairs. T.A.M. Craven warned of coming chaos unless the allocations problem was not realistically dealt with.[183] Immediately after the war, CBS kept the industry in still further doubt about TV's future with the long-drawn out color proceedings. Broadcasting, in late 1945, reported that some "New York retail store executives raised some sharp objection to the profusion of professional discussion of telecasting's present and future plans, which they said was leaving the potential customer bewildered."[184]

The research department of an advertising agency in mid-1946 prepared a report concerning the state of affairs of

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[182] Testimony of Joseph Ream, CBS executive vice-president, see: Ibid., p. 295.

[183] Broadcasting, October 16, 1944 (supplement), p. 16.

[184] Ibid., December 17, 1945, p. 30.

television for its clients.[185] The report described television's overall picture as of June, 1946, as "confused, halting and uncertain."[186] The TV industry, as a whole, was described as not being on a sound operating basis in terms of "either economics or of artistic accomplishment."[187] Also, internal dissension, strife, and controversy was pointed out concerning the allocations and color problems. The report indicated that behind these controversies hung the threat of the obsolescence of both transmitting and receiving equipment which resulted in the restricted manufacture of both. Television, immediately after the war, posed a very vexing and confusing picture for nearly everyone concerned.

As indicated above, the Union saw the coming of TV as an analogous situation to the coming of sound motion pictures. Petrillo and Federation wanted some kind of assurance that TV could not cause the loss of all radio employment.[188] Also, the possible extensive use of film in television broadcasting posed the threat of severely curtailing the amount of potential employment there would be in the new broadcast medium. Petrillo, on a number of occasions, emphasized that before the AFM would permit its members to be

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[185] For an account, see: Ibid., August 12, 1946, p. 32.

[186] Ibid.

[187] Ibid.

[188] Petrillo emphasized this in his testimony, see: U.S. House of Representatives, Committee on Education and Labor, Hearings: Investigation of James C. Petrillo, the American Federation of Musicians, et al., 80th Cong., 1st Sess., 1947, p. 229.

employed in TV his Union must be able "to find out first where television's going."[189] With the confusion and uncertainty rampant as documented above, Petrillo and the AFM encountered considerable difficulty in finding any kind of an answer to the question that was vexing them. No one seemed to know where television was going with any certainty. In the face of such a situation, rather than commit itself to a course of action that it might later regret, the AFM appears to have attempted to avoid a positive decision with regard to the whole question of television. Instead, it took a negative approach and abandoned TV employment until such time as it felt there was a sufficient basis for making a decision which would allow its members to participate in the new broadcast medium.

After 1948.--As indicated in Chapter II (Section A), it was not until 1948 that the TV industry was on a sound enough footing for expansion and development to occur. It was during the period of uncertainty--1945-1948--that the AFM instituted and enforced its most severe restrictions on television. It seems doubtful that the AFM restrictions, in and by themselves, impeded the progress and development of TV very seriously. In all probability, the delay was due primarily to the other serious problems facing it which were generated, in a large part, by the allocations and color controversies. However, the AFM policies did contribute to the complexity of the situation. When the industry was in a

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[189] For one of these occasions, see: New York Times, March 30, 1947, VI, p. 14.

position where it could expand, the AFM and the industry came to terms and the restrictions on live television were removed.[190]

However, the restrictions on the use of film on TV remained for another two to three years. The AFM did make one important concession in 1948 in the use of film on TV. The use of kinescope film recordings on TV programs involving AFM musicians was allowed for repeat broadcasts only.[191] In the early days of national network television before the linking system of coaxial cable and microwave links was completed, kinescope film recordings were necessary to provide network service to the parts of the country not yet joined to the networks by cable or microwave. It should be noted that the AFM was not the only obstacle with regard to the use of film on TV. The Screen Actors Guild and other unions in the entertainment industry have policies which place limitations on the TV use of film.[192] It does not appear that the AFM restrictions regarding film on TV retarded the progress of any particular phase of television. The TV industry, in the beginning, seemed to have been initially intrigued by the possibilities of "live" television. As a result, the industry

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[190]The agreements removing the restrictions on the use of musicians for live television will be fully discussed in Chapter V.

[191] AFM. Proceed., 1948, p. 101.

[192]Broadcasting, August 20, 1941, p. 70.
For a summary of the various policies of a number of the unions in the entertainment industry with respect to the TV use of film involving employment of members of the respective unions in its production, see: U.S. House of Representatives, Committee on Education and Labor, Hearings: Musicians Performance Trust Funds, 84th Cong., 2nd Sess., 1956, pp. 77-79.

pushed forward in this sphere. The more extensive reliance on film did not come until the mid-1950's and later which was several years after agreements had been reached which removed the remaining problems with respect to the use of film on TV utilizing music performed by AFM members.[193]

Press and Public Reaction.--Little evidence of any strong reaction by either the press or the public with regard to the Union policies regarding TV was found.[194] During the period when the restrictions were instituted, television was still a relatively unknown quantity. All of them were instituted in 1946 or before. As of June of 1946, there were only six TV stations in operation which were providing service for fewer than 50,000 receivers.[195] This probably accounts for the relative indifference of the press and the public as compared to the violet reaction in the Interlochen affair. The most attention that the TV restrictions received in the press was when they were removed. By the time that television had expanded to the point where a very high proportion of the American public could see the effects of the AFM restrictions

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[193]For a brief summary of the agreements removing the restrictions on the use of film on TV which utilized AFM musicians in its production, see Footnote 111 of Chapter V.

[194]As a brief example of the lack of notoriety that accompanied the imposition of the TV ban, when FCC chairman Paul A. Porter was asked about it during a Congressional investigation about two or three weeks after it had been imposed, Porter had to admit that he was not even aware of the AFM restrictions that had been placed on television. See his testimony in: U.S. House of Representatives, Hearings: Interference with Broadcasting of Noncommercial Educational Programs, 79th Cong., 1st Sess., 1945, p. 17.

[195]See Chapter II, the text at Footnote 101 and Table 3.

on the programming they viewed, the restrictions had been removed. It would seem doubtful if a very high percentage of the public was even actually aware of the AFM's TV policies.

One Last Consideration.--Although the TV policies of the AFM were very restrictive by nature, there was very little programming before 1948 that they could affect. Also, TV's audience was very tiny when compared to AM radio during the pre-1948 period when the AFM policies affecting it were the most restrictive. Even by mid-1948, after the restrictions on live TV had been removed, there were still only about 500,000 TV receivers in use in comparison with 73,000,000 radio receivers.[196] When the preceeding is considered, the TV policies of the AFM lose some of their seriousness as far as their practical application and actual effect in restricting TV broadcast programming. In other words, there was very little programming on a very limited number of stations that could be affected by the AFM's restrictions. Secondly, there was a very tiny audience that could view the effects of these restrictions. Nevertheless, the principle still remained that it did represent an attempt to control broadcast programming. Under the terms of the federal regulatory policy, control is supposed to remain in the hands of the broadcast licensee.

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[196] See Chapter II, Table 3.

F. The FM Problem

After the war, as indicated in Chapter II (Section A), FM faced a number of difficulties and problems which tended to slow down its rate of development and expansion. The development of FM did not proceed at the pace that many of its enthusiastic supporters had envisaged and predicted. Certain policies of the American Federation of Musicians concerning the newer aural broadcast media tended to add greater complexity to the already complex and knotty problems that were facing FM.

AM-FM Duplication.--When FM had been established in the 50 megacycle ban before the war, the FCC's rules and regulations concerning FM had specified that an AM station operator who also operated an FM station could not completely duplicate his AM service over his FM facilities.[197] A minimum of two hours per day had to be devoted to programming that did not duplicate AM programming--one hour before 6:00 PM and one hour after. However, these regulations were suspended for the duration of the war due to manpower shortages.[198] Also, as a part of the prewar regulations, the Commission had indicated that consideration of whether an FM station was serving the public interest would be in part determined as to

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[197] 5 F.R. 2385 (1940). Regulation 3.261 (b).
Also, see: Broadcasting, May 6, 1946, p. 15.

[198] 8 F.R. 9463 (1943).
Also, see: Broadcasting, May 29, 1944, p. 22; June 26, 1944, p. 14.

how a licensee had made use of his FM facilities in order "to develop a distinct and separate service from that otherwise available in the service area."[199]

In early 1944, the major radio networks took advantage of the war-time suspension of the duplication regulations. Broadcasting reported that:

> NBC programs, both commercial and sustaining, will be made available to FM stations operated by present standard ban affiliates, with no additional sponsor cost until the audiences to both systems increase to the point where rate adjustments become desirable, according to a policy adopted by the network and disclosed to its Stations Planning and Advisory Committee last week. The plan was also discussed with Government Officials, both elective and appointive, in Washington.
>
> Regarded as a project which will give impetus to FM, the NBC policy is generally in accord with those enunciated informally by the other networks,....[200]

The argument that the industry was using to support its contension that such a policy of duplication would provide an impetus to FM growth was summed up by Justin Miller when he was NAB president:

> The reception of an FM broadcast requires the purchase of a new radio set. If the people could hear their favorite [AM] programs with increased fidelity and with freedom from the annoyance of man-made and natural static by means of FM broadcasts, this would be an enormous stimulus to the manufacture and purchase of sets.[201]

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[199] 5 F.R. 2385 (1940). Regulation 3.261 (c). Also, see: Broadcasting, May 29, 1944, p. 22.

[200] Broadcasting, January 17, 1944, p. 12.

[201] U.S. House of Representatives, Committee on Education and Labor, Hearings: Restrictive Union Practices of the American Federation of Musicians, 80th Cong., 2nd Sess., 1948, p. 13.

Apparently, the FCC endorsed the above network policies. In 1945, when the FM was relocated to the 100 megacycle band, the Commission dropped its earlier limitations on AM-FM duplication.[202]

Networks Encounter Difficulty with AFM Over Their New AM-FM Policies.--Soon after the networks announced the policy of allowing AM-FM duplication for their affiliates, they contacted the New York City AFM local and requested contract recognition of the new policy with regard to such use of AM staff musicians.[203] The local told the networks that it did not have jurisdiction over FM employment. The National had jurisdiction and contracts with regard to FM would require both National negotiation and approval. A meeting was held between Petrillo and network officials concerning the use of their AM staff musicians for simultaneous broadcasts over AM and FM. No formal contracts or agreements for FM were signed, but the network officials concluded from the negotiations that the AFM had given its approval to the utilization of staff musicians for simultaneous broadcasts. The networks immediately started feeding affiliated FM stations their respective AM programming services.

The AFM objects to Dual AM-FM Service.--Apparently, the networks provided dual service for several months. Then,

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[202] Broadcasting, May 5, 1945, p. 15. For the rules adopted in 1945, see: 10 F.R. 12006 (1945),

[203] For an account of these negotiations, see: U.S. House of Representatives, Committee on Education and Labor, Hearings: Restrictive Union Practices of the American Federation of Musicians, 80th Cong., 2nd Sess., 1948, pp. 271-72.

in late September, 1944, the networks received a telegram from Petrillo challenging their right to duplicate programming involving AFM musicians.[204] This was followed by an exchange of telegrams and wires between network officials and Petrillo.[205] The network officials contended that they had received permission during the earlier meeting to use musicians for simultaneous broadcasts. Petrillo denied that any such permission had been granted and charged that the networks were violating their contracts with the AFM. The networks asked for a meeting to discuss the problem. This offer was refused by Petrillo until such time as the networks stopped utilizing AFM musicians for dual AM-FM broadcasts. The networks refused to do this. As a result, no meeting was arranged and the networks continued to provide dual service. Finally, a year later in mid-October, 1945, a meeting was arranged between AFM officials and network representatives. However, no agreement was reached during this session. Petrillo and his associates indicated that the entire matter would be taken under advisement.

FM Ban.--The networks were notified of the AFM's decision a few days later. On October 22, 1945, the four major radio networks received the following wire from Petrillo:

> This is to advise you that after the meeting between your company and the American Federation

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[204]For an account of these negotiations, see: Ibid., pp. 273-76; AFM, Proceed., 1947, pp. 48-50.

[205]For this series of telegrams and wires reproduced verbatim, see: AFM, Proceed., 1947, pp. 48-50.

> of Musicians held in my office, the matter was further discussed and we came to the final decision that beginning Monday, October 29, 1945, wherever musicians play for FM broadcasting and AM broadcasting simultaneously, the same number of men must be employed for FM broadcasting as are employed for AM broadcasting, which means a double crew must be employed. Kindly govern yourself accordingly.[206]

The networks pleaded with Petrillo to reconsider the above decision, but it was of no avail.[207]

Industry Reaction.--Immediately, many charges were made that the AFM policy would have the effect of interfering seriously with the development of FM. FM pioneer, Walter Damm, said that:

> ....unless this matter is promptly cleared up it is my opinion that hundreds of present applicants will indefinitely defer going into FM and that FM as a whole will be drastically retarded.[208]

A CBS official contended that the AFM action would, in his opinion:

> ....seriously retard development of FM broadcasting. Unless listeners can receive by FM their favorite programs there will be little incentive for buying the new FM receivers and broadcasters cannot assume the impossible economic burdens which would result from the musicians' demands.[209]

"NAB officials express the belief that FM stations' programming would suffer because the [FM broadcasters]....[do] not command sufficient income to justify expenditure of large sums for

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[206] Ibid., 1946, p. 50.

[207] U.S. House of Representatives, Committee on Education and Labor, Hearings: Restrictive Union Practices of the American Federation of Musicians, 80th Cong., 2nd Sess., 1948, pp. 277-78.

[208] Broadcasting, October 29, 1945, p. 16.

[209] Ibid., p. 88.

musicians."[210] NBC announced, as did most broadcasters, that because of monetary considerations, it had no alternative but to discontinue "the dual AM-FM transmission of musical programs."[211] Easton Wooley, an NBC official, announced:

> We [NBC] regret exceedingly these restrictions impeding the progress of FM, the benefits of which we are anxious to make available to the public and broadcast stations serving the public.[212]

Other broadcasters contended that the AFM policy would "set FM back years."[213]

FCC Reaction.--Chairman Paul Porter of the FCC was of the personal opinion that the "Petrillo edict" (as he called it) would "very seriously" restrict the employment potentialities as well as the immediate development of FM.[214] Speaking in his official capacity, he knew of "nothing the FCC could do about it."[215] Regardless of the potential effect that the new policy might have on the development of FM, the AFM was in a position where it could restrict programming broadcast over this media. Very little could be done about it, either.

Further FM Restrictions.--In November of 1945, the AFM enlarged the scope of the so-called FM ban. The November issue of the International Musician contained the following direc-

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[210] Ibid., p. 87.

[211] Ibid., p. 88.

[212] Ibid.

[213] New York Times, October 24, 1945, p. 13:1.

[214] Broadcasting, November 19, 1945, p. 20.

[215] Ibid.

Notice to all Locals

All locals are forthwith advised that the American Federation of Musicians has not been able to consummate an agreement with the radio networks,.... covering the services of musicians for FM ....broadcasting.

Under the circumstances, the networks have been advised that they are not permitted to feed chain programs played by orchestras on AM stations....to FM stations.

Therefore, the locals are further advised that the above order, which applies to the network stations, is equally applicable to local broadcasting stations. This means that local musical programs, emanating from local AM stations, are not permitted to be duplicated on FM stations, regardless of whether the AM and FM stations are operated under the same ownership.

However, this is not to be construed as interfering with the rights of a local to make a separate contract for services for FM broadcasting exclusively.

Kindly govern yourselves accordingly.

James C. Petrillo
President, A. F. of M.[216]

On September 12, 1947, a newly formed network--the Continental Network--the first one devoted exclusively to FM broadcasting, began commercial operations with a program featuring the Rochester (N.Y.) Symphony Orchestra.[217] This provided the AFM with the occasion to place further restrictions on the use of musicians for FM broadcasting. On September 17th, the Continental Network was notified by the AFM that effective September 18th, Federation members would not be allowed to play for FM network programs.

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[216] AFM, Proceed., 1946, p. 88.

[217] For an account, see: Broadcasting, September 22, 1947, p. 13.

Effect of AFM Policies on FM Broadcast Programming.--In general, FM stations were restricted in their use of live music as a source of program material to only that which was originated and carried by a single individual station. Even if a particular FM station was affiliated with either an AM or FM radio network, it could not carry any network programs which involved live music performed by AFM members. Since most FM stations were operating at a loss, it would be an almost impossible economic burden for the average FM licensee to employ musicians for live musical broadcasts. For music, nearly all FM stations had to (or at least did) rely on recorded music. In 1947, Petrillo estimated that only six of the nation's 616 FM stations carried any live music at all.[218] Despite FM's unique transmission qualities which made it ideally suited for presenting live music, this kind of music was almost entirely absent from FM broadcasting. This situation was brought about primarily by the AFM's FM policies.

One brief example will serve to show the effect of the AFM's policies on the operation of an FM station which was affiliated with a national AM radio network. An official of an FM station affiliated with the Mutual Broadcasting System informed a Congressional committee about the extent to which the AFM's policies affected the station's network service:

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[218] U.S. House of Representatives, Committee on Education and Labor, Hearings: Investigation of James C. Petrillo, the American Federation of Musicians, et al., 80th Cong., 1st Sess., 1947, pp. 194-95.

> As of January 1948, the Mutual Broadcasting System program structure contains 74 programs with live music, which WBCA may not carry, and 49 programs without live music available to us.[219]

Union Justification of the Ban.--At the meeting prior to the calling of the ban, Petrillo wanted to know why musicians should not be paid extra for performances over both AM and FM.[220] The network officials had replied that the duplicated service was available to the affiliated stations without additional cost and was an attempt to aid the future development of FM. Further, they pointed out that there was no additional revenues being realized from broadcast advertisers and sponsors for the duplicated service. They argued that total listenership would not be increased since what FM listeners there would be would have been diverted from AM stations. On this basis, the network officials pointed out that additional payment to musicians for dual broadcasts would not be justified.

Petrillo and the AFM officials, in attendance at the meeting, apparently rejected the argument of the networks. At any rate, the FM ban was instituted a few days later. In his report to the convention of 1946, Petrillo stated the Union's position with respect to FM broadcasting.[221] The position of the Federation, according to Petrillo, centered

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[219] U.S. House of Representatives, Committee on Education and Labor, Hearings: Restrictive Union Practices of the American Federation of Musicians., 80th Cong., 2nd Sess., 1948, p. 97.

[220] For an account of this meeting, see: Ibid., p. 276.

[221] AFM, Proceed., 1946, p. 93.

around the following question: "How many jobs are musicians going to have to play for one price?" He pointed out that FM broadcasters employ separate announcers and engineers and asked why they should not hire separate musicians. Using musicians for both AM and FM broadcasts simultaneously, Petrillo contended constituted a "dual job for one scale." He felt that the radio industry could afford to pay the musicians for the development of FM. This was only fair he emphasized, since AFM members had given a lot of free time in the development of AM. On this basis, he felt the AFM was justified in the policies that it had adopted regarding FM.

A Myth Develops.--Throughout the duration of the 27 month long FM ban, a persistent notion developed in some quarters that the only thing holding FM back was the AFM policies. However, such an accusation does not tell the whole story. FM had other problems that were just as serious, if not more so, than the one which involved the AFM.[222] Despite these other problems, the myth developed that the AFM and Petrillo represented the principle force that was in the way of the rapid development and expansion of FM.[223] It almost seemed

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[222]See Chapter II, text at Footnote 42.

[223]For expression of this myth by an advertising executive, see: New York Times, February 3, 1948, p. 42:6.

During a 1948 investigation of the AFM, it found expression in the testimony of a number of the industry spokesmen, see the testimony of Justin Miller, NAB president; Everett L. Dillard, FM Association president; and Theodore Streibert, MBS vice-chairman of the board in: U.S. House of Representatives, Committee on Education and Labor, Hearings: Restrictive Union Practices of the American Federation of Musicians, 80th Cong., 2nd Sess., 1948, pp. 13, 129, 228.

Also, it found expression in a Congressional committee

that a number of persons felt that as soon as the AFM's FM ban was removed, FM's problems would be solved and its future would be assured. This point of view finally found the ultimate in recognition in 1948, when the following appeared in the FCC's Annual Report:

> Of importance to the development and public acceptance of FM broadcasting was the agreement in January 1948, between the standard broadcast networks and the musicians, under which AM musical programs may be duplicated over FM stations without extra cost or additional programming personnel. As a result, listeners found many of their favorite programs on FM for the first time.[224]

Newsweek said, on the occasion of the removal of the ban, that such action was the "green light" that FM needed to get it started.[225]

In general, broadcasters were very much stirred up about the FM ban. In late 1947, a group of top broadcast officials even met with Department of Justice lawyers to see if there was anything that could be done about the AFM's policies regarding FM.[226] The Justice Department declined to bring any action against the AFM.

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report, see: U.S. House of Representatives, Committee on Education and Labor, Report: Investigation of James C. Petrillo and the American Federation of Musicians, H.R. Rep. No. 1162, 80th Cong., 1st Sess., 1947, p. 11.

Even a New York Times' editorial argued that the only thing holding back FM was the AFM, see: New York Times, September 10, 1947, p. 26:1.

[224] U.S. FCC. Annual Report, 1948, p. 36.

[225] Newsweek, February 9, 1948, p. 46.

[226] For accounts, see: Broadcasting, August 25, 1947, p. 13; New York Times, August 29, 1947, p. 18:6.

However, not all people accepted the myth that the AFM was the principal deterrent in FM's development. Acting FCC Chairman Paul Walker told a group of FM broadcasters in mid-September, 1947 that he thought that duplication on FM and AM would be a "substantial aid" to the development of FM, but he did not feel that its whole future turned on that point.[227] He told the FM broadcasters that he thought FM should develop its own distinctive programming. About the same time, Jack Gould of the New York Times spoke out along the same lines. He said that "in all fairness it must be noted that Mr. Petrillo is but one link in an insidious chain of circumstances which have impeded FM's progress."[228] He indicated that it was very easy to use Petrillo and the AFM as a "whipping boy."

To blame all of FM's difficulties on Petrillo and the AFM clearly was unjustified. There was a great deal more to the general problem of FM than just the AFM policies. In all probability, for some, Petrillo and the AFM--as Gould suggested--provided a convenient scapegoat for FM's troubles and difficulties. By 1946 and 1947, there was little doubt that Petrillo and the AFM were rather unpopular with the public.[229] It would seem doubtful if very many would have objected to having one more "evil" attributed to Petrillo and his Union.

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[227] Broadcasting, September 15, 1947, p. 41.

[228] New York Times, August 31, 1947, p. 7:1.

[229] This public disapproval was more or less demonstrated by the passage of the Lea Act in mid-1946. This event will be discussed more fully in Chapter IV.

In 1948, at least one Congressman accused the industry of such tactics:

> I do not mind saying that I have been attending these meetings regularly and listening with great interest and care to the testimony advanced by the witnesses for the industry.
>
> I am fully satisfied that FM has been victimized by solid opposition of the industry rather than by anything the musicians union so far has done. I am of the opinion that, at least as far as the FM situation is concerned, the industry is using the union's actions as a deliberate smoke screen to obscure their own sins in this matter.[230]

Even after the ban was removed in 1948, FM still continued to be in trouble and it remained in that state for the remainder of the decade of the forties.

G. Ban on International or Foreign Musical Broadcasts in U.S.

AFM Announces International Music Ban.--Shortly after the FM ban had been put into effect, the AFM embarked on another policy affecting broadcast programming which evoked considerable unfavorable publicity for the Union. In a letter in early December, 1945, the AFM informed the networks that since the war was over, broadcasts originating from foreign countries would be no longer needed "to promote good will and good relationships."[231] The letter indicated that the AFM had been only too happy to cooperate in this matter during

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[230]Comments of Representative John Lesinski of Michigan, see: U.S. House of Representatives, Committee on Education and Labor, Hearings: Restrictive Union Practices of the American Federation of Musicians, 80th Cong., 2nd Sess., 1948, pp. 305-306.

[231]For text of the letter, see: AFM. Proceed., 1946, p. 47.

the war, but the war was over now. In conclusion, the letter stated: "Therefore, will you kindly discontinue the broadcasting of any musical programs emanating from foreign countries effective December 31, 1945."[232] It was to apply all programs, both live and recorded.

Since Canadian musicians were members of the AFM, musical programs originating from Canada were exempted. Religious musical programs and overseas musical programs of the U.S. armed forces were also exempted from the ban, according to Business Week.[233] In effect, then, this policy almost totally curtailed the broadcasting of musical programs originating outside the United States and Canada except for the exemptions noted above. The reason behind the ban on foreign music broadcasts was quite simple according to Petrillo.[234] He emphasized that its sole purpose was to prevent foreign musicians from competing with American musicians. Further, he stressed that the idea behind the ban was the same as the idea behind the tariff laws that have been passed by Congress on occasions.

International Repercussions of the Ban.--The press generally was unfavorable toward this latest ban by the AFM.[235]

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[232] Ibid.

[233] Business Week, January 5, 1946, p. 86.

[234] AFM, Proceed., 1946, pp. 88-89.

[235] For a summary of some of the press reaction and disapproval in different parts of the country, see: Broadcasting, December 31, 1945, p. 65.
Business Week also reported that the nation's press highly publicized the international music ban, see: Business

However, this reaction was not limited to this country, alone. The ban caused international repercussions, also. The U.S. State Department was caused some embarrassment as, at the time, it was sponsoring cultural exchange programs with other countries. The office of the State Department which was handling the exchanges--the Office of International and Cultural Affairs--feared that the AFM ban might interfere seriously with its efforts to distribute programs of information overseas.[236] It was speculated that some of the countries involved might, in retaliation, ban American broadcasts in their countries. Some State Department officials denounced the Union's foreign music ban as a "return to isolationism."[237] The New York Times felt that the ban represented a set-back to the United Nations with respect to its cultural exchange endeavors.[238] A Collier's editorial suggested the ban might interfere with the struggle for world peace.[239] An article in Nation charged that the AFM policy would interfere with the general cultural interchange between nations.[240]

Week, January 5, 1946, p. 84.

In all probability, with all the publicity that was reportedly in the press, public reaction was probably rather unfavorable and critical with regard to the AFM's action. However, no direct evidence of such public reaction was noted.

[236] Broadcasting, December 31, 1945, p. 18.

[237] Newsweek, January 7, 1946, p. 75.

[238] New York Times, December 25, 1945, p. 1:2.

[239] "Petrillo vs. the People," Collier's, 117 (February 16, 1946), p. 90.

[240] "Petrillo Would Bar Foreign Broadcasts," Nation, 162 (January 5, 1946), p. 3.

British Broadcasting Company officials protested the AFM action and asked the State Department to intervene. One BBC official was reported to have made the following comment when referring to the ban: "It's terrible."[241] A cultural mission musical program of the Cuban Department of Education, on tour in California at the time, was affected by the ban.[242] The Cuban Consul in Los Angeles threatened diplomatic intervention if the U.S. tour of the Cuban mission was beset with difficulty because of the AFM policy. On April 2, 1946, the Mexican Musicians' Union reciprocated the AFM's ban by placing restrictions on U.S. musicians who were performing in Mexico.[243] A number of U.S. musicians were traveling in Mexico at the time and were affected by the action of the Mexican Union. However, these restrictions were short-lived and were withdrawn on April 7th.[244] The only support for the AFM came from the British Musicians' Union. It backed the AFM's international music ban calling it "a sound, necessary and justifiable step."[245]

Effect of Foreign Ban on Broadcast Programming.--Broadcasting reported that the AFM ban would affect a few regu-

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[241] Newsweek, January 7, 1946, p. 75.

[242] For an account, see: New York Times, January 26, 1946, p. 7:2.

[243] For an account, see: Ibid., April 3, 1946, p. 10:6.

[244] Ibid., April 7, 1946, p. 40:4.

[245] Ibid., January 25, 1946, p. 15:1.

larly scheduled programs, particularly of network origin.[246] There was little evidence which suggested that a very large number of programs were affected by this policy. However, the situation did point up the fact that the AFM was in a position where it could institute policies which had the potential of having a restrictive effect on broadcast programming. One of the more important aspects of this action by the Union was that it created more highly unfavorable publicity for the AFM. The entire affair tended to anger an already angry public even more.

H. AFM Policy Toward Cooperative Programs

Cooperative Programs.--An MBS official described the so-called cooperative network program in the following way:

> Unlike the regular network commercial program, a cooperative program is not sponsored by a single national advertiser who pays for the facilities of all the local affiliated stations over which the network program is transmitted. The cooperative program is made available by the network to each of its affiliated stations which offer it for sponsorship to local advertisers. The local advertiser purchases the time directly from the local station.
>
> The network does not participate in the sale of the time to the local advertiser nor does it receive any share of the proceeds. The only income derived by the network from cooperative programs is the talent fee which the network charges to each station

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[246] Broadcasting, December 31, 1945, p. 18.

The New York Times reported that the most prominent and popular programs affected were NBC's "Atlantic Spotlight" and CBS's "Translantic Call," both BBC offerings. See: New York Times, December 25, 1945, p. 20:5.

Business Week indicated that most of the international music programs or broadcasts affected by the ban were distributed by the BBC. Business Week, January 5, 1946, p. 86.

> which sells the program to a local advertiser. The network pays this fee over to the artist, keeping only a small portion.[247]

One distinct advantage that was often cited in favor of the cooperatively sponsored program was that it allowed local radio stations to offer to local advertisers network quality programs at local prices.[248] In other words, small local advertisers, under this procedure, could bring high quality radio programs to their local communities which featured talent of the highest calibre which would be economically impossible under any other circumstances.

AFM's Action Against Cooperative Programs.--Although the AFM's policy toward cooperative programs was of long standing, it did not attract much attention until 1947. In early November of that year, musicians were pulled off of several network cooperative programs.[249] The producers of one of the programs, MBS's "Information Please," decided to resist the Union in its action of prohibiting a pianist from participating in their program. Petrillo had indicated that "Information Please" could use the pianist if every one of the stations on which the cooperative program was being carried with local sponsorship would hire a standby pianist at $31.88

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[247] Testimony of Theodore C. Streibert, MBS vice-chairman of the board, see: U.S. House of Representatives, Committee on Education and Labor, Hearings: Restrictive Union Practices of the American Federation of Musicians, 80th Cong., 2nd Sess., 1948, p. 284.

[248] Ibid., p. 284.

[249] For an account, see: New York Times, November 11, 1947, p. 31:4.

per man. This would amount to an added cost of $9,564 which the producers of the program objected to very strenuously.

Cooperative Ban.--The above incident did not serve to provide the basis for instituting a policy with respect to cooperative programs. Rather, it provided an occasion for the AFM to invoke a previously adopted policy that heretofore had attracted little or no attention.[250] The 1940 AFM convention referred the following resolution to the Union's international Executive Board for consideration:

> Whereas, It is the contention of the Federation and its locals that radio stations the country over should employ more musicians; and
> Whereas, the Federation has, and is still using every effort toward the employment of more of its members in the radio field; and
> Whereas, Many radio stations are refusing our members because they claim they do not have enough time on their schedule for the use of local musicians; and
> Whereas, It is a known fact that there are many network radio programs originating from key stations, and sold to different sponsors in the various towns and cities for less than the same number of local musicians would cost if the program were sold locally; and
> Whereas, There is no doubt that this practice is the worst kind of unfair competition and should it continue, will help to a large degree destroy what employment our members now enjoy, (expecting a few key stations);
> Therefore, Be It Resolved, That Federation members are forbidden to play network radio programs wherein said program is sold commercially to different sponsors in the various towns and cities covered by said network unless the same number of musicians, exclusive of staff musicians, are employed and by and paid the local scale by the radio stations in each jurisdiction in which said program is sold.[251]

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[250] No mention of the AFM's policy toward cooperative programs was found in the press or popular periodicals reviewed for this study prior to the incident outlined above.

[251] AFM, Proceed., 1940, pp. 269-70.

The IEB did consider this resolution which authorized them to take action against cooperative programs.[252] It was decided to refer the matter to the president's office and let Petrillo formulate the necessary policy.

The result of Petrillo's consideration of the matter was the following letter which was sent to the major radio networks on September 25, 1940:

> This is to advise that on and after September 30th, 1940, members of the American Federation of Musicians will not be permitted to accept or play cooperatively sponsored radio engagements.
>
> The above means that a single engagement program paid at the single engagement price cannot advertise more than one sponsor, regardless of the number of stations over which the program is broadcast.[253]

Petrillo emphasized that the above order stopped all studio orchestras or staff musicians from playing for commercial or sustaining programs which in any way could involve cooperatively sponsored broadcasts.[254] Also, the order meant that local stations were not to sell any time for commercials during, or as a part of, any network sustaining programs on which AFM musicians were utilized. Prior to 1947, no evidence was found which indicated that the AFM had invoked this policy regarding cooperative programs.[255]

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[252] Ibid., pp. 359-60.

[253] Ibid., 1941, p. 42.

[254] Ibid.

[255] It was stated in the introduction that the organization of this chapter would be more or less in terms of chronological order. With regard to the date of adoption, this section would be out of place. However, it was not on this basis that this section was placed in this order. It was on the basis of when the policy achieved the most attention.

Union Objection to Cooperative Programs.--According to the New York Times, the Federation objected to cooperative programs on the grounds that they jeopardized employment opportunities for local members.[256] AFM officials must have reasoned that if local advertisers could get big name musicians on broadcast through cooperative sponsorship for about the same price as they could get local musicians, they would naturally favor the big name musicians. In this manner, the local musicians would be at a distinct disadvantage in securing local radio engagements. This would explain why the condition that the employment of local standbys was demanded before the AFM would allow a pianist to be utilized on the "Information Please" program. It should be noted also, that such a condition for cooperative program employment was outlined in the resolution that was referred to the IEB.

Effect on Programming.--Apparently, the cooperative ban was in effect for about seven years before it was invoked. It would seem likely that, given its other actions, the AFM would have invoked this policy if the networks had given them an opportunity to do so. Also, if the AFM had invoked this policy against the networks, it would seem unlikely that the networks would not have squelched any publicity on any such occasions. Since no mention of this policy or its application was found in the literature reviewed for this study before 1947, it would seem safe to conclude that the AFM did not invoke this policy prior to that time, and probability because

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[256]New York Times, November 19, 1947, p. 54:2.

the networks used very little or no live music on cooperative programs.

Some hint of this was contained in the testimony of an MBS official to a Congressional committee in January of 1948. He said:

> In the first stages of cooperative broadcasting, programs were limited largely to commentary and news programs. The Fulton Lewis, Jr., program from Washington was one of the first. Somewhat later an attempt was made to introduce variety into the programs and to broaden their scope. The union, however, did not permit the use of musicians on such programs.[257]

Although he did not specify dates in his testimony, it might be logically inferred that it was about 1947 when the first attempts were made to utilize musicians on cooperative programs. It appears then, that before 1947, the networks must not have used musicians on such programs or even made any serious attempts to do so. If the networks had used musicians on such programs to any great extent, the AFM--in all probability--would have voiced strenuous objections which, in turn, would have been reported in the press.

The evidence found seems to indicate that the cooperative ban was invoked for the first time in early November, 1947. By the following month, however, the ban was revoked.[258] It is not known to what extent the AFM policy concerning cooperative

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[257] Testimony of Theodore C. Streibert, MBS vice-chairman of the board, see: U.S. House of Representatives, Committee on Education and Labor, Hearings: Restrictive Union Practices of the American Federation of Musicians, 80th Cong., 2nd Sess., 1948, p. 284.

[258] The removal of the ban will be more fully discussed in Chapter V.

programs prior to 1947 influenced decisions whether musicians would be used on such programs. There was no evidence which would indicate whether it was a factor or not. There was some inferential evidence which suggested that the networks probably did not use musicians on cooperative programs to any great extent prior to the first time the ban was invoked. However, the question still remains that if the AFM did not think the situation was serious enough in 1940, why did it formulate its policy concerning such programs. No logical answer was found for this question, unless the Federation, at that time, was taking no chances of losing any kind of employment no matter how small. Safely, about the only thing that can be concluded was that prior to 1947, very few, if any, musicians were used on cooperative programs. Also, it would seem that if the networks had wanted to use musicians on such programs, they would have brought the problem out in the open. There is no reason to believe that they would not have wanted the AFM to receive some more unfavorable publicity.

In conclusion, it would appear that the cooperative ban was more restrictive in a theoretical sense than in a practical one. It almost seems that this policy of the AFM was prohibiting the networks from doing something that they were not doing anyway prior to 1947. Then, when the networks did start to use musicians on cooperative programs and came face to face with the AFM policy, the ban was revoked a short time later. In a practical sense then, the ban was directly restrictive only a short time. Nevertheless, the principle

still remains that it represented an attempt to control programming. As has been pointed out previously, control of programming, under terms of federal regulatory policy, is supposed to remain in the hands of the broadcast licensee.

I. The Recording Ban of 1948

Taft-Hartley.--In June of 1947, the Labor Management Relations Act of 1947 or the Taft-Hartley Act was enacted into law by Congress.[259] Among other things, there were some provisions which specified certain conditions that had to be met before the so-called union welfare funds could be considered legal. The AFM's unemployment fund, the Recording and Transcription Fund, which was established under the royalty agreements with the recording and transcription companies was generally considered to be a welfare fund which would come under these provisions of Taft-Hartley.[260] It will be remembered that these agreements ended the recording ban of 1942. In essence, Section 302 of the law, laid down the following conditions for establishing the legality of a welfare fund:[261]

1. Welfare funds can be used only for the "sole and exclusive benefit" of the employees and their

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[259] 61 Stat. 136 (1947).

[260] This was admitted by one of the AFM's lawyers in testimony before a Congressional investigation, see: U.S. House of Representatives, Committee on Education and Labor, Hearings: Restrictive Union Practice of the American Federation of Musicians, 80th Cong., 2nd Sess., 1948, p. 471.

[261] 61 Stat. 136, 157 (1947),

families and dependents of the company(ies) involved.

2. The fund from which the payments are to be made has to be held in trust.

3. The detailed basis of the benefits received from such funds had to be specified in a written agreement between the union and employer involved.

4. Employers and union officials have to be equally represented in the administration of the fund.

5. Procedures have to be specified in the event the administrators of the fund can not come to a decision for the resolution of such deadlocks through the use of a neutral empire.

6. Purposes for which such funds can be utilized were specified in Section 302, also.

The AFM's Unemployment Fund.--The unemployment fund established by the earlier agreements was to be solely administered by the AFM. The detailed basis for benefits to be distributed from the fund was not specified in writing, either. The benefits of the fund were to be used primarily for persons other than the employees of the recording and transcription companies.[262] The AFM's unemployment fund rather clearly did not meet the conditions laid down in Section 302 of Taft-Hartley for it to be considered legal. When the agreements expired which established the AFM's fund, in all probability, their renewal without change would have constituted grounds for action by the Justice Department. The penal provisions of Section 302 provided that:

> Any person who willfully violates any of the provisions of this section shall, upon conviction

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[262]For texts of the agreements reached with regard to the 1942 recording ban, see: Broadcasting, October 25, 1943, pp. 58-59; November 20, 1944, p. 20.

> thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both.[263]

Recording Ban of 1942.--The royalty agreements were due to expire December 31, 1947. There was almost no prospect of continuing the unemployment fund as it had been established by these agreements without a battle in the courts. Probably, with such considerations in mind, a motion was introduced and unanimously passed by the AFM convention in the summer of 1947 which authorized the Union's International Executive Board to call a recording ban when the present contracts expired.[264] A short time later, the recording and transcription companies received the following notice from the AFM:

> GENTLEMEN: Your contract with the American Federation of Musicians for the employment of its members in the making of musical recordings will expire on December 31, 1947.
>
> This contract will not be renewed because on and after January 1, 1948, the members of the American Federation of Musicians will no longer perform the services provided in said contract.
>
> This notice carries with it our declared intension, permanently and completely, to abandon that type of employment.
>
> James C. Petrillo
> President, American Federation of Musicians[265]

The wording of this ban notice differed from the 1942 ban in certain respects. In the earlier one, the AFM simply

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[263] 61 Stat. 136, 158 (1947).

[264] AFM, Proceed., 1947, pp. 277-78.

[265] U.S. House of Representatives, Committee on Education and Labor, Hearings: Restrictive Union Practices of the American Federation of Musicians, 80th Cong., 2nd Sess., 1948, p. 11.

announced that its members would no longer be permitted to make recordings and transcriptions. In the announcement of the 1948 ban, the Federation was very careful to specify that it was not simply calling a strike against companies, rather it was its intention to permanently abandon that section of its jurisdiction which included employment in the recording and transcription industries.[266] No demands were accompanied by the notice since demands would not be appropriate if the intent was never to work for the companies involved again.

Leiter concluded that the purpose of the wording in the 1948 notice was to give the AFM added bargaining strength.[267] In other words, the Federation was overstating its position in the matter for effect. However, in reaching this conclusion, Leiter overlooked one very important aspect. Section 8(b) (3) of the Taft-Hartley Act had made it an unfair labor practice for a union to refuse to bargain collectively with an employer.[268] It would seem likely that the AFM worded the ban notice in such a way that it would be difficult for the recording and transcription companies to utilize this section of the act in opposing the ban.[269]

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[266]The New York Times reported that Petrillo was very emphatic about the point that the AFM was "quitting forever" employment in the recording and transcription industry. See: New York Times, October 19, 1947, pp. 1:2, 5:2.

[267]Leiter, op. cit., p. 166.

[268]61 Stat. 136, 141 (1947).

[269]Broadcasting reported that sources at the Harvard Law School viewed the wording of the ban as an attempt designed to circumvent Taft-Hartley. See: Broadcasting, December 1, 1947, p. 88.

Purpose of the Ban.--One of the purposes of the 1942 recording ban, as admitted by Petrillo, had been an attempt to control the use of recordings on radio. With respect to this goal, the Union had not been too successful in the earlier ban. On the occasion of the 1948 ban, Petrillo admitted that there was no way he knew of to force broadcasters to limit their use of recorded music.[270] In lieu of this goal, he said that the AFM had resorted to the royalty arrangement which established the Recording and Transcription Fund which, in turn, could be used to provide employment for musicians who had been displaced by technology. It had taken a long battle to establish this arrangement and it is doubtful that the AFM would sit idly by and watch its efforts being outlawed by Taft-Hartley. The recording ban of 1948, in all likelihood, represented an attempt to salvage the unemployment fund in some form or other. This point was suggested by Petrillo in his testimony to a Congressional Committee in January of 1948.[271]

Effects of the 1948 Ban on Programming.--There was further evidence that Petrillo and the AFM were more interested in salvaging the unemployment fund than in restricting

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[270] New York Times, June 5, 1947, p. 50:2.

[271] U.S. House of Representatives, Committee on Education and Labor, Hearings: Restrictive Union Practices of the American Federation of Musicians, 80th Cong., 2nd Sess., 1948, p. 353. Several years after the recording ban of 1948, Petrillo admitted that the impetus of the AFM's 1948 action was because the Taft-Hartley had outlawed the existing royalty arrangements. See: James C. Petrillo, "Musicians' Fight," American Federationist, 62 (June, 1955), p. 19.

the use of recording on radio. At first, it was assumed by broadcasters that the ban would be complete and would cover all forms of broadcast transcriptions.[272] In anticipation of such a situation, most of the producers of commercial radio programs being distributed by transcriptions built up a backlog of programs that would last for a year or two before the ban went into effect.[273] However, shortly after the ban did go into effect, Petrillo clarified the applicability of it. In early January, it was announced that the AFM would "permit recorded and transcribed repeats in those instances where they ....[were] performed because of time zone differentials in various time zones."[274] Early the following month, the Federation indicated that the recording ban did not apply to "recorded or transcribed network programs."[275] In other words, commercial programs distributed on transcriptions were exempted. This would allow network programming to proceed as usual, with little or no noticable effect due to the ban.

The area of broadcast programming most affected by the ban was in the area of non-network programming particularly in those segments of programming that were composed primarily of music on processed recordings and transcriptions. Here again, as in the case of the 1942 ban, the kind of music that was most affected was popular music. The ban meant that there

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[272] Broadcasting, October 27, 1947, p. 88.

[273] Ibid., January 5, 1948, p. 13.

[274] Ibid.

[275] Ibid., February 9, 1948, p. 15.

would be an interruption in the continuous recording of newly written "hit" or "pop" tunes upon which the popular music business depended so heavily. For some stations, this kind of music was one of the principal sources of programming material. These stations would not be able to get all of the newly written and recorded popular tunes that they might desire as long as the ban was in effect. However, they would not be without recorded music since they would have a tremendous backlog of previously recorded popular music. During the 1948 ban, there were only a minimum of restrictions which tended to have an effect on broadcast programming. This would suggest that the principal emphasis of the ban with respect to the AFM was to restore or maintain the unemployment fund in some form or other.[276]

Final Settlement of the 1948 Recording Ban.--The final settlement of the 1948 recording ban did not allow the Federation to salvage the Recording and Transcription Fund, in toto.[277] However, it was salvaged in a different form. The

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[276] On the eve of the recording ban, the New York Times reported that the public would not even be aware that the ban was in effect for at least a year because of the stockpiles of selections that were recorded before the ban became effective. Petrillo and officials of the recording industry were supposedly to have expressed this point of view. See: New York Times, December 27, 1947, p. 15:5.

Time reported that RCA Victor had a stockpile of recorded classical selections that could last for 25 years if necessary. See: Time, November 24, 1947, p. 74.

[277] For some of the accounts of the negotiation and execution of the agreements ending the 1948 recording ban, see: Broadcasting, November 1, 1948, pp. 21, 68; November 15, 1948, pp. 21, 82; December 20, 1948, pp. 21, 62-63; New York Times, November 6, 1948, p. 28:2; December 11, 1948, p. 3:7; December 14, 1948, pp. 1:6, 39:2; Milton Diamond, "Following the Ban--The Petrillo Deal," Saturday Review of Literature, 32

principle that contributions to the fund were to come from a royalty paid by the manufacturer on all recordings and transcriptions produced remained essentially the same. However, the significant difference with respect to the 1942 arrangements related to the manner in which the fund was to administered. The royalties would be paid to a trust fund to be administered by an independant trustee who had no connections whatsoever with either the recording industry or the AFM.

Under the trust agreement, the trustee was charged with:

> "organizing and arranging the presentation of personal performances by instrumental musicians ....at such times as in the judgement of the Trustee will contribute to the public knowledge and appreciation of music."[278]

Regarding the expenditures from the fund, the trust agreement provided:

> "The Trustee shall organize such performances upon occasions where no admission fees are charged, in connection with activities of patriotic, charitable, educational, civic, and general public nature, such as, but not limited to, veterans' hospital entertainment programs, educational programs in schools and institutions of higher learning, patriotic and recruiting drives, symphony society or other musical activities of a non-profit nature, and similar programs and activities, entirely without profit to the trust fund.[279]

The first trustee of the fund was Samuel Rosenbaum, Philadelphia lawyer and one time president of radio station

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[278] Diamond, op. cit., p. 51.

[279] Ibid.

WFIL of the same city.[280] All succeeding trustees of the Musicians Performance Trust Fund, the title the trust fund was given, were to be appointed by the U.S. Secretary of Labor.

Since the trust fund had been designed in such a way that it would not be in violation of the pertinent sections of Taft-Hartley, the parties wanted assurances that the fund was a legal arrangement. Before the trust fund agreement became final, it was submitted both to the Department of Justice and the Department of Labor for rulings with regard to its legality. Both the Justice and the Labor Departments, after careful study, approved the plans in mid-December of 1948. The Department of Justice specifically indicated that the trust fund agreement did not violate Section 302 of Taft-Hartley, the provision dealing with union welfare funds. By the end of 1948, full-scale production of recordings and transcriptions were resumed. Thus ended the last major undertaking by the American Federation of Musicians during the decade of the forties.[281]

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[280] It is interesting to note that a former broadcaster was named as trustee of the newly created Musicians Performance Trust Fund. However, Rosenbaum was highly favorable to the AFM. During the recording ban of 1942, when President of WFIL, he had gone on record as opposing an all out fight with the AFM. He indicated that he felt that there was considerable merit in the unemployment claim espoused by Petrillo. It will be remembered that the NAB was, of sorts, the unofficial leader of the opposition to Petrillo and the AFM during the 1942 ban. Rosenbaum had proposed a plan whereby all commercial users of recorded music should pay a royalty for the use of such music into an independent fund to be administered for the purposes of providing for the employment and the encouragement of live music. See: Broadcasting, February 1, 1943, pp. 14, 50.

[281] For some accounts regarding the operation of and the

musical activities supported by the Recording and Transcription Fund, the Musicians Performance Trust Fund, and other trust funds established by the settlement of the TV-film issue (for the latter, see Footnote 111, Chapter V), see some of the following: AFM, Crescendo (New York: AFM, N.D. [1959?]; AFM, Diminuendo (New York: AFM, 1954); AFM, The Story of the American Federation of Musicians (New York: AFM, 1953); Broadcasting, April 14, 1945, p. 16; Leo Cluesmann, "Music in the Public Interest," International Musician, 49 (June, 1951), pp. 6-7; "Free Public Concerts in Philadelphia," American Federationist, 54 (October, 1947), p. 34; Paul Hume, "A Lot of D.C. Music is Given for Free," International Musician, 51 (May, 1953), p. 8; "Musicians Will Give Free Concerts," American Federationist, 54 (May, 1947), p. 34; "Promoting Employment and Live Music," International Musician, 51 (November, 1952), p. 11; Leonard Quinto, "Music Comes to Disabled Veterans," International Musician, 51 (May, 1953), pp. 6-8; James C. Petrillo, "Musicians' Fight," American Federationist, 62 (June, 1955), pp. 18-22; James C. Petrillo, "Musicians' Progress," American Federationist, 56 (October, 1949), pp. 33-35; U.S. House of Representatives, Committee on Education and Labor, Hearings: Restrictive Union Practices of the American Federation of Musicians, 80th Cong., 2nd Sess., 1948, pp. 417-19.

The trust funds created by the settlements of the recording ban of 1948 and the TV-film issue, collectively called the Musicians Performance Trust Funds by the AFM, were the subject of an investigation in 1956, see: U.S. House of Representatives, Committee on Education and Labor, Hearings: Musicians Performance Trust Fund, 84th Cong., 2nd Sess., 1956.

For the report on these hearings, see: U.S. House of Representatives, Committee on Education and Labor, Report: Musicians Performance Trust Fund, 84th Cong., 2nd Sess., 1956.

CHAPTER IV

CONGRESS INTERVENES: LEGISLATIVE HISTORY OF THE LEA ACT

A. The Seventy-Seventh Congress

First Hint of Congressional Interest.--One of the first indications of overt interest of Congress in the activities of the AFM came a few days after Petrillo notified NBC that it would not be permitted to carry the Interlochen concerts for the summer of 1942. Senator Vandenberg of Michigan registered a strong protest on the floor of the Senate concerning the part that Petrillo and the AFM had in the cancellation of the NBC series of radio concerts featuring the student symphony orchestra of the National Music Camp.[1] Also, Vandenberg filed a formal letter of protest with the FCC concerning the Federation's action.[2]

The AFM recording ban of 1942 provided the basis for the next overt action in Congress. Late the following month, Senator D. Worth Clark of Idaho introduced a resolution (S. Res. 286) calling for a full scale investigation of the AFM and the recording ban.[3] The comments of both Senator Clark

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[1] 88 Cong. Rec. 6284 (1942).

[2] For text of letter, see: Ibid.

[3] 88 Cong. Rec. 6974 (1942). S. Res. was introduced on August 27, 1942. For text of the resolution, see: 88 Cong. Rec. 6974-75 (1942).

and Vandenberg indicated that at least some of the members of Congress were looking with disfavor on certain of the actions of the AFM, notably the Interlochen affair and the recording ban.[4]

The Clark Hearings.--On September 17, 18, and 21, 1942, Senator Clark headed a subcommittee on the Senate Committee on Interstate Commerce which conducted a preliminary investigation of the recording ban pursuant to the proposed resolution (S. Res. 286).[5] The principal testimony at these hearings was provided by Elmer Davis, Director of the Office of War Information; James L. Fly, Chairman of the FCC; and Thurman Arnold, Chief of the Antitrust Division of the Department of Justice. Both Davis and Fly emphasized in their testimony that the recording ban was a matter of great concern to their respective government agencies because of the possible ill effects of it on the nation's radio stations.[6] It was emphasized that because many radio stations relied so heavily on recorded music for programming material, the recording ban would interfere seriously or even shut off this important source of program material and cause stations to lose their audiences. Without audiences, advertisers would hesitate to invest in broadcasting, and stations would have to go off the air as a result. In time of war, they pointed out that this was a very undesirable

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[4] 88 Cong. Rec. 6975-76 (1942)

[5] U.S. Senate, Committee on Interstate Commerce, Hearings: Use of Mechanical Reproduction of Music, 77th Cong., 2nd Sess., 1942.

[6] Ibid., pp. 4-5, 25-26.

result because all radio stations were needed to convey vital war information to the American people. Fly indicated that the FCC did not have any jurisdiction in the recording ban from a legal point of view.[7] He indicated that about all the Commission could do was to make public statements opposing the AFM action. Arnold, who was in charge of the government's antitrust suit against the AFM and its officers, revealed that part of the basis of the government's case was the possible ill effects on the nation's radio stations which both Davis and Fly had outlined.[8]

As a result of the investigation, the Committee on Interstate Commerce recommended to the Senate the following:

> The committee is of the opinion that the problem presented by this resolution is an urgent one. The Nation is engaged in a great war to preserve the free democratic system, and the conduct of that war in the best and most efficient manner is threatened by the acts and practices which this resolution proposes the Senate shall investigate.
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> The Committee on Interstate Commerce of the Senate recommends that Senate Resolution 286 be adopted with the amendment indicated.[9]

The amendment referred to above was that the Committee be given $5,000 to cover the cost of the investigation.[10] On September

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[7] Ibid., pp. 48-49.

[8] Ibid., pp. 61-62.
Other testimony provided by Davis, Fly, and Arnold will be found in Chapter III, Section D. The testimony of Fly relating to the extent to which music and its various forms in broadcasting will be found in Chapter II, Section C.

[9] U.S. Senate, Committee on Interstate Commerce, Report: Investigation of Certain Practices of the American Federation of Musicians and its President, James C. Petrillo, S. Rep No. 1614, 77th Cong., 2nd Sess., 1942, p. 2.

[10] Ibid., p. 1.

24, the Senate considered S. Res. 286 and passed it authorizing Senator Clark and the Committee on Interstate Commerce to conduct a full scale investigation of the AFM and its activities concerning the recording ban.[11]

House Interest.--During the same period, the House became interested in the actions of the AFM but to a lesser degree. The House interest had not gone beyond the stage of a few representatives placing some unfavorable newspaper articles in the Record. An article entered by Representative Hoffman called Petrillo "America's musical Hitler."[12] Another representative placed in the Record a number of articles from the Ann Arbor News concerning the Interlochen affair.[13] Representative Cox of Georgia entered an article charging an AFM local with interfering with a Treasury Department program designed to sell war bonds.[14] According to the article, Local 802 had prevented an amateur music group from participating on a radio program that was to be carried over a number of FM stations.

The Clark Bill.--Near the end of October, Senator Clark introduced a bill (S. 2874) designed to cope with the AFM and the recording ban.[15] The title of the bill gave some

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[11]88 Cong. Rec. 7402 (1942).

[12]88 Cong. Rec. A2776 (1942).

[13]88 Cong. Rec. A2820-30 (1942).

[14]88 Cong. Rec. 7913 (1942).

[15]88 Cong. Rec. 8562 (1942). S. 2874 was introduced on October 23, 1942. No further action was indicated in the Record on this measure.

hint as to its nature: "A bill to prohibit certain contracts, agreements, conspiracies, and combinations which prevent the making of recordartions for use by radio broadcasting stations and coin operated phonographs."[16] No further action on this measure was indicated in the Record. Apparently, the 77th Congress came to an end before the Senate could take any action on the proposed legislation.

B. The Seventy-eighth Congress

Continuation of Clark Hearings.--One of the first actions of Senator Clark in the new Congress was to introduce an identical bill (S. 149) to the one he had introduced during the last Congress.[17] This was necessary as measures not enacted are not carried over from one Congress to the next. On January 21, 1943, Clark submitted S. Res. 81 to the Committee on Interstate Commerce asking for authority to continue the investigation of the AFM and the recording ban.[18] The senator needed the authority renewed since the resolution of the last Congress authorizing the investigation did not carry over to the 78th Congress, either. A week later, Clark submitted a favorable report of his committee on the resolution to the Senate. This committee reported the Clark resolution to the floor of the Senate on February 4,

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[16] Ibid.

[17] 89 Cong. Rec. 35 (1943). S. 149 was introduced on January 7, 1943. No further action was indicated in the Record on this measure.

[18] 89 Cong. Rec. 258 (1943).

1943 and asked for immediate consideration.[19] The Senate agreed to the resolution. Clark now had authority to continue his investigation of the AFM.

More Clark Hearings.--Clark and his subcommittee heard testimony on January 12, 13, and 14, 1943 from AFM officials.[20] The principals at these sessions were Petrillo and the counsel for the AFM, Joseph A Padway. Throughout their testimony, Petrillo and Padway emphasized that what the AFM was concerned with and always had been was with the protection of job opportunities of its members. They stated that the Federation did not necessarily want higher wages but more importantly, it wanted more money spent for the employment of a greater number of musicians. It was brought out in the testimony that no demands had been presented to the recording and transcription companies by the AFM thus far during the course of the recording ban. It was in this area that Clark and his subcommittee made their biggest contribution to the settlement of the ban. They got Petrillo to agree to formulate demands and submit them to the companies for their consideration. The hearings adjourned on this agreement. Petrillo fulfilled his agreement early the following month and presented to the recording industry the plan which was to ultimately provide the basis for the final settlement of the dispute.[21]

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[19] 89 Cong. Rec. 570 (1943). Text of S. Res. 81 will be found at this place in the Record.

[20] NAB, Sp. AFM Bul., No. 15, January 22, 1943, pp. 1-35. (These hearings were unpublished, see Footnote 32, Chapter I.)

[21] For a more detailed account of the settlement of the recording ban, see Chapter III, Section D.

Other Congressional Action to March 1944.--Shortly after Clark had obtained authority in early February to continue the investigation of the AFM and its activities, the Congressional interest in the Union appeared to wane. Only two minor actions were noted in the Record prior to March 1944. In mid-February of 1943, Representative Gossett made a few comments on the floor of the House concerning the AFM.[22] He charged that the AFM was a monopoly with which the government should deal. Also, he called Petrillo a "racketeer." Then in early July of 1943, Senator Tunnell introduced a bill (S. 1333) "to make unlawful certain practices relating to the making of records for radio transcriptions and for other purposes."[23] The Record contained no mention of further action on this measure throughout the remainder of the 78th Congress.

Public and Press Reaction.--It will be remembered that the controversy generated by the AFM's actions in the Interlochen dispute and the recording ban almost literally engulfed the country in a storm of protest directed at the Federation.[24] Public and press reactions were running very high against the Union. Despite the intensity of this indignation, the whole affair managed to quiet down in early 1943 and remained quiet until early 1944. Little notice of the AFM

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[22]89 Cong. Rec. 951 (1943).

[23]89 Cong. Rec. 7423 (1943). S. 1333 was introduced on July 8, 1943.

[24]For a more detailed account of the public and press reaction associated with the Interlochen affair and the recording ban of 1942, see Chapter III, Sections C and D, respectively.

and its activities was taken in the press during this period. Also, it will be noted that this period coincided with a period of inactivity and apparent lack of interest in Congress regarding the Union.

Clark Hearings Reopen.--Shortly after Petrillo made the mistake of boasting about how no more amateurs had been broadcast by the networks since the Interlochen incident in 1942, Dr. Maddy called this to the attention of the Senate Committee on Interstate Commerce.[25] This provided the impetus for the Clark subcommittee to reopen the investigation of the AFM around the middle of March, 1944.[26] Maddy was the star witness at these proceedings. He recounted his experiences with the AFM with regard to the Interlochen affair. During these sessions, Clark asked Rosel Hyde, then assistant general counsel for the FCC, to prepare legislative drafts to cover the Interlochen incident and to send them to the Department of Justice for study. It is not known what resulted from this request. However, the Record does not indicate that Senator Clark introduced any legislation after these hearings. As has been indicated previously, Senator Clark and his associates never did publish these hearings nor did they offer any report on them to the Senate.[27]

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[25]For a more detailed account of Petrillo's comments which enraged Dr. Maddy, see Chapter III, Section C.

[26]For accounts, see: Broadcasting, March 27, 1944, pp. 26, 28, 36; New York Times, March 18, 1944, p. 28:1. (These hearings were unpublished, see Footnote 32, Chapter I.)

[27]See Footnote 32, Chapter I.

Senator Vandenberg Acts.--Senator Vandenberg of Michigan introduced a bill in late May of 1944 which was prompted by the Interlochen incident.[28] It will be noted that Vandenberg represented the state in which the National Music Camp was located. The proposed legislation was "to amend the Communications Act of 1934, as amended, so as to prohibit interference with the broadcasting of noncommercial, cultural, or educational programs."[29] In his comments when introducing the measure, the senator revealed his intent: "The chief and important objective is to release the music of American school children from the domination of James C. Petrillo."[30]

Vandenberg's bill was referred to the Senate Committee on Interstate Commerce at the time of its introduction. It was not until late November that the bill was finally reported out of the committee.[31] The report which accompanied S. 1957 recommended that the measure be passed by the Senate.[32] A letter from FCC Chairman Fly was contained in the report. Fly implied FCC approval by indicating that insofar as the proposed legislation was designed to prevent the recurrence of incidents such as the Interlochen affair,

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[28] 90 Cong. Rec. 5074 (1944). S. 1947 was introduced on May 29, 1944.

[29] Ibid.

[30] 90 Cong. Rec. 5075 (1944).

[31] 90 Cong. Rec. 8537 (1944). S. 1957 was reported out of Committee on November 29, 1944.

[32] U.S. Senate, Committee on Interstate Commerce, Report: Amendment to the Communications Act, S. Rep. No. 1233, 78th Cong., 2nd Sess., 1944, p. 1.

it represented "a desirable objective" and merited "consideration."[33] About two weeks later, the Senate passed the Vandenberg bill without debate.[34] Before the House had time to act on the measure, the 78th Congress came to a close, ending any chance of immediate Congressional approval of the legislation proposed by Vandenberg.

C. The Seventy-ninth Congress

The Vandenberg Proposal and the New Congress.--Having seen his proposed legislation killed with the ending of the previous Congress, the first thing that Vandenberg did in the new Congress was to introduce another identical bill (S. 63) on January 6, 1945.[35] The bill was read for the first time and then referred to the Senate Committee on Interstate Commerce. Another bill (H.R. 1648), identical to the Vandenberg measure, was introduced in the House by Representative Dondero of Michigan about two weeks later.[36] It would seem that Vandenberg wanted to make sure that some kind of action would be taken by the new Congress against Petrillo and the AFM.

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[33] Ibid.

[34] 90 Cong. Rec. 9431-32 (1944). S. 1947 was passed by the Senate on December 14, 1944. The text of the bill will be found at this place in the Record. Also, the version of the bill in Appendix A is essentially the same as the bill at this stage of development.

[35] 91 Cong. Rec. 77 (1945).

[36] 91 Cong. Rec. 431 (1945). H.R. 1648 was introduced on January 22, 1945.

The Vandenberg bill (S. 63) was considered by the Senate on February 1, 1945 and was passed by unanimous consent.[37] Four days later, the bill was referred to the House Committee on Interstate and Foreign Commerce.[38] Indications in the Senate report which accompanied the bill to the House showed that the Senate action was prompted to a large extent by the AFM ban on the radio broadcasts of the National Music Camp at Interlochen, Michigan.[39] Also, contained in the report was a copy of the letter from FCC Chairman Fly which implied FCC approval of the measure. The Record indicated that no further action was taken on either of the proposed bills (S. 63 and H.R. 1648) during the rest of the First Session.

Inadequacy of the Vandenberg Measure.--The Vandenberg bill proposed to make it unlawful for anyone to interfere with the broadcasting of noncommercial, educational or cultural programs of a tax exempt, academically accredited educational institution provided that the commercial radio station carrying the program was doing it free of charge.[40] Also, such interference with a program would not be unlawful if it was part of a more general action in which the purpose was not specifically to cause interference to this kind of program.

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[37] 91 Cong. Rec. 698 (1945).

[38] 91 Cong. Rec. 837 (1945).

[39] U.S. Senate, Committee on Interstate Commerce, Report: Amendment to the Communications Act, S. Rep. No. 9, 79th Cong., 1st Sess., 1945, p. 1.

[40] For text of the bill, S. 63, see Appendix A.

The purpose of this latter qualification appears to have been an attempt, for example, to exempt a strike from the provisions of this proposed law which was being conducted for higher wages which might, incidently, cause interference to a protected educational program.

Hearings on the proposed legislation were scheduled for late February. These hearings were probably scheduled as a partial result of the pessimism with which the Vandenberg measure was being received in some quarters. In early February, just before the hearings, the AFM announced the TV ban. Also, besides the Interlochen affair and the entire question of amateurs on the air, the broadcasting industry was very concerned about the secondary boycotts that the AFM was instituting against the networks in the attempt to increase local employment.[41] These tended to have a restrictive effect on programming which many people were aware of. Also, there were other activities that the AFM was engaging in during this time that do not fall within the scope of this study which many were resentful of.[42] At this point, there were

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[41]For more details of these AFM actions, see Chapter III.

[42]The AFM's actions during the decade of the forties were not limited to just those contained in this study. In the mid-forties, the AFM had demanded that the broadcasting industry employ its members to load and unload the turntables used to air recordings and transcriptions. The Federation was even successful in getting the networks and their owned and operated stations to agree to this demand. See: AFM Proceed., 1944, pp. 61-62.

However, it was generally considered to be the work of the broadcast technicians to load and unload turntables and their union, the National Association of Broadcast Employees and Technicians, objected to this agreement on the grounds

other things besides the Interlochen situation which prompted support for Congressional action against Petrillo and his Union. The Vandenberg bill was designed specifically for the prevention of any further incidents such as Interlochen. Some of the other activities of the Federation that some wished to control were not covered in the proposed legislation as it then stood. Hence, there was criticism that the Vandenberg bill was not broad enough to cover all of the situations that it might be desirable to control.

Business Week expressed grave doubts with respect to the Vandenberg bill's ability to fulfill its intended

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of encroachment of its jurisdiction. The result was a long proceeding before the National Labor Relations Board which finally ended up in the courts before it was settled. For highlights of the dispute, see: Broadcasting, January 22, 1945, p. 58; April 9, 1945, p. 30; August 16, 1945, p. 18; October 1, 1945, p. 83. The AFM was not successful in enforcing this demand.

With regard to the above demand, the AFM struck two local stations in late 1944 and early 1945 in the attempt to enforce it. The two stations involved were KSTP in Minneapolis, and WJJD in Chicago. Before these two strikes were settled, Petrillo and the Federation defied the War Labor Board and refused to go back to work. It will be remembered that the war had not yet ended and such action on the part of the Union was not favorably received by the American public. For highlights of these disputes, see: Broadcasting, May 8, 1944, pp. 11, 51; August 21, 1944, pp. 10, 62; February 19, 1945, p. 14; New York Times, May 2, 1944, pp. 1:2, 13:3.

The above gives some suggestion of some of the other activities of the AFM that many people were resentful of. One of the limitations that was placed on this study was that the activities and policies of the AFM had to have some kind of observable effect on broadcast programming to be included. It was felt that such activities as the above did not have such an observable effect and hence, were excluded. Other activities that were excluded related to the Union's activities in the area of theatre employment. Some of its actions in these other areas, such as the theatre, attracted public notice during the forties, also.

purpose.[43] An editorial in the New York Times suggested that the bill did not strike at the heart of the problem.[44] It indicated that what might be needed was a "re-examination of the whole existing body of Federal Labor law."[45] At about the same time, the public ire was being aroused by the War Labor Board's disclosure that the AFM had been engaging in featherbedding practices in the face of serious wartime man power shortages.[46] Even before the House committee had heard any testimony, its chairman, Representative Lea, indicated that he might press for amendments to the Senate bill to provide for punitive provisions.[47] The Vandenberg bill, as passed by the Senate, did not contain any such provisions.

The Lea Hearings.--On February 22 and 23, 1945, Lea and his committee held hearings on S. 63 and H.R. 1648, the bills introduced by Vandenberg and Dondero, respectively.[48] Principal witnesses at these sessions were FCC Chairman Paul A. Porter, and Dr. Maddy, president of the National Music Camp. Even before any testimony was heard, four members of the committee expressed doubts that the Vandenberg measure

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[43] Business Week, February 17, 1945, p. 108.

[44] New York Times, February 8, 1945, p. 18:2.

[45] Ibid.

[46] Broadcasting, January 22, 1945, p. 58.

[47] Ibid. February 12, 1945, p. 15.

[48] U.S. House of Representatives, Committee on Interstate and Foreign Commerce, Hearings: Interference with Broadcasting of Noncommercial Educational Programs, 79th Cong., 1st Sess., 1945, pp. 1-65.

would correct the "evils" it was intended to correct.[49] The concensus of the four representatives was that probably the bill would have to be enlarged to encompass all of the "evils" that needed to be proscribed.

Porter Testimony.--Porter told the committee that the FCC was still in favor of the bill.[50] He expressed the same point of view about the bill that had been expressed by his predecessor, Fly. Chairman Porter commented on the restrictive implications of the Interlochen ban as it was related to the control of broadcast programming and the public service responsibility of broadcast licensees:

> The evil inherent in the ban by the American Federation of Musicians on the Interlochen broadcasts so far as broadcasting is concerned is twofold. In the first place, this action of the American Federation of Musicians results in a severe restriction being imposed upon what may be broadcast over the air. Under the American system of broadcasting, as you know, the Government is expressly forbidden to dictate to broadcasters what shall and what shall not be broadcast. But more than this is necessary if radio is really to be free. We must make sure that no arbitrary restrictions are imposed by private groups concerning material which shall be braodcast. It is the Commission's constant endeavor to see that the radio industry keeps itself as free as possible of all unreasonable fetters so that radio stations are in a position to discharge their obligation of operating in the public interest. Radio's ability to fulfill this obligation is hampered fully as much when its freedom of action is imposed upon by a labor organization as when it is self-imposed. If an organization can prevent radio stations from broadcasting a concert by high school students, a precedent is established where by broadcasts of speeches forums, conventions, and so forth, will be prevented. Such precedents should not be permitted to be established.

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[49] Ibid., pp. 3, 7, 10.

[50] Ibid., p. 11.

> The second evil is found in the effect of the American Federation of Musicians' action on small radio stations. We all are familiar with the fact that most of the professional talent is concentrated in the large cities. For the small stations this means that it must to a great extent rely on amateur talent which it can find or develop in the community. Many of these communities have a good deal of latent talent that can be developed to the benefit of both the talent and the community; this is particularly true of communities which have universities located nearby. However, the action of the American Federation of Musicians prevents radio stations from using musical talent of this kind, and if the American Federation of Musicians can prevent the use of musical talent other groups will direct this activity to dramatic groups, singers, etc. Such action would force small radio stations to either broadcast network programs all day or to use records and transcriptions instead of developing their own talent individually and contributing to the growth of the community.
>
> I think that from what I have said you can realize the importance as far as radio is concerned, of preventing arbitrary restrictions on the use of noncommercial educational or cultural programs such as that of Interlochen.[51]

Porter told the committee that he felt corrective measures should be taken with respect to the AFM but, at the same time, he indicated that Congress should proceed in such a fashion that the legitimate rights of organized labor would be protected.[52]

Joseph Maddy retold the story of the Interlochen incident.[53] This was the third time that Maddy had been before

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[51] Ibid., pp. 11-12.
Porter's second objection relating to the development of local amateur talent was incorporated into the Blue Book which was released the following year, see: U.S. FCC, Public Service Responsibility of Broadcast Licensees (FCC Report, March 7, 1946), pp. 36-39.

[52] U.S. House of Representatives, Committee on Interstate and Foreign Commerce, Hearings: Interference with Broadcasting of Non-commercial Educational Programs, 79th Cong., 1st Sess., p. 18.

[53] Ibid., pp. 18-24 ff.

a Congressional committee to relate his encounter with the AFM. Maddy revealed that the AFM had placed the National Music Camp on the Union's unfair list. Such action by the Federation would virtually make it impossible to put the concerts back on the air. Contracts between broadcasters and the AFM precluded such a possibility. In effect, Maddy told the Committee, the proposed law had been nullified before it was passed as far as Interlochen was concerned.

At these sessions in February, Lea entered into the record of the hearings two correspondences from organizations which supported Congressional action. The National Congress of Parents and Teachers urged the passage of the bill in a telegram.[54] A letter from the National Commission for the Defense of Democracy through Education gave its support to the corrective measure pending before Congress that was to cope with the AFM.[55] An enclosure in the letter indicated that the National Education Association endorsed the Congressional efforts, also.

The May Continuation of the Lea Hearings.--During the course of the February hearings, Lea became convinced that the Vandenberg measure was too limited in its scope to cover the kinds of AFM activities that he felt warranted Congressional censure. This point of view was expressed in a letter of invitation that he sent to the NAB to appear before further

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[54] Ibid., p. 58.

[55] Ibid., p. 55.

hearings which were scheduled for May.[56] He wanted the NAB to provide any information about the activities of the AFM that might need regulating. The hearings were finally held on May 8 and 10, 1945.[57] The principal witnesses at these sessions represented the industry. They were J. Harold Ryan, NAB president, and Sydney M. Kaye, special counsel for the NAB.

Ryan Testimony.--Ryan cited many instances of AFM intervention in broadcast activities, among them were the TV ban, the secondary boycotts, alleged restrictions on amateur broadcasts, as well as a number of problems that related strictly to collective bargaining.[58] With respect to the prosposed legislation, Ryan told the committee the following:

> I have not appeared before you as the advocate or sponsor of any specific piece of legislation. Nor have I any specific legislation to suggest. I do not believe the bill which is before you successfully meets any phase of the problem which has been outlined. That the problem exists and that it must be remedied, however, I hope that this presentation of the bald facts has made clear....
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> At the present time we have no remedy when we are confronted with demands which are unjust.[59]

Kaye Kaye's Testimony.--Kaye's testimony collaborated the testimony of Ryan.[60] With respect to the proposed legislation,

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[56] NAB. Sp. AFM Bul., No. 2 (Vol. 13), March 5, 1945, p. 2.

[57] U.S. House of Representatives, Committee on Interstate and Foreign Commerce, Hearings: Interference with Broadcasting of Noncommercial Educational Programs, 79th Cong., 1st Sess., pp. 64 ff.

[58] Ibid., pp. 65-86.

[59] Ibid., p. 86.

[60] Ibid., pp. 87-103.

Kaye stated:

> ....in this matter, I should say, it would clearly indicate that the existing laws did not meet the situation.[61]
>
> ....If you want to reach these issues, it is essential that legislation be passed, because the present laws are wholly ineffective in that direction.[62]

In summing up, the two representatives of the broadcasting industry were of the opinion that there were no laws on the federal statute book which could be used to stop the activities of the AFM that affected broadcasting adversely. Both men were in favor of Congressional action in order to remedy the existing situation. Also, they felt the Vandenberg measure was totally inadequate to cope with the situation as it then existed. Broadcasting reported that Chairman Lea and his House committee became convinced as the hearings progressed that the proposed legislation was not adequate and that other means would have to be devised to stop the Union interference with broadcasting.[63]

Other AFM Activities.--Things remained rather quiet throughout the summer of 1945, but in the fall, public reaction was aroused again by a series of actions of the AFM. In mid-September, one minor incident associated with the TV ban attracted attention. A Union organist was prohibited from participating in a Jewish religious program over a Chicago

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[61] Ibid., p. 102.

[62] Ibid., p. 103.

[63] Broadcasting, May 14, 1945, p. 17.

television station.[64] In the following month, Petrillo announced one of the AFM policies which affected FM.[65] After October 31, 1945, a double crew would have to be employed for all network music programs broadcast simultaneously over AM and FM. Then, in the following month, this policy was enlarged somewhat. The announcement of the FM policies was followed by a storm of protest from the industry with cries that these actions would set back the progress of FM for years. Chairman Porter publicly stated that there was not a thing the FCC could do about these AFM policies which adversely affected FM. Before these situations had a chance to be resolved, the AFM instituted the international music ban.[66] This policy almost totally curtailed the broadcasting of musicial programs originating outside the United States and Canada. The international ban caused a storm of protest not only in this country but overseas, also.

In the closing moments of the 1st Session of the 79th Congress, Lea introduced a bill (H.R. 4737) in the House on November 19, 1945. Its title, "A bill to prevent control of broadcasting by coercive practices," suggested that it was a broader measure than the one originally introduced by Senator Vandenberg.[67] No further action was indicated in the Record on this particular bill.

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[64]For an account, see: Broadcasting, September 17, 1945, p. 90.

[65]For more discussion, see Chapter III, Section F.

[66]For more discussion, see Chapter III, Section G.

[67]91 Cong. Rec. 10826 (1945).

The Second Session.--In the opening proceedings of the 2nd Session, Representative Lea introduced still another bill (H.R. 5117) which was broader that either the Vandenberg bill (S. 63) and the one (H.R. 4737) he had introduced near the close of the last session.[68] The language of this bill was essentially the same as the language of the act as it was finally passed; the only changes were of a minor nature.[69] The essential content and provisions were identical. Its title was "A bill to amend Title V of the Communications Act of 1934 so as to prohibit certain coercive practices affecting radio broadcasting." The New York Times indicated that Lea admitted that the bill was directed at the activities of Petrillo and the AFM.[70] The Times also pointed out that the timing of the international ban was such that it allowed Lea to make a last minute addition which prohibited interference with foreign broadcasts.[71]

The Lea Committee Report.--H.R. 5117, the measure introduced by Lea, was reported favorably out of the Committee on Interstate and Foreign Commerce.[72] The report which accompanied the bill provided some hint of the general temper

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[68] 92 Cong. Rec. 17 (1945).

[69] For text of the bill as finally passed, see Appendix B.

[70] New York Times, January 15, 1946, p. 3:6.

[71] Ibid.

[72] U.S. House of Representatives, Committee on Interstate and Foreign Commerce, Report: Prohibiting Certain Coercive Practices Affecting Broadcasting, H.R. Rep. No. 1508, pt. 1, 79th Cong., 2nd Sess., 1946.

of the men in the House who were working actively to curb the activities of the AFM.

About the general purpose of the proposed legislation, the report stated:

> For some years the radio broadcasters of the Nation have been harrassed by ever-increasing extortionate and racketeering demands to which they have been forced to yield by coercive methods. The tributes thus exacted are now measured by millions of dollars.
>
> These exactions have not been in compensation for services performed for broadcasters or in settlement of any obligations due from them. They have not been made for the enforcement of any rights due those who demanded them.
>
> The object of this proposed legislation is to put an end to these exactions for the protection of the broadcasting industry and for the integrity of the Nation.[73]

The committee report alleged that the so-called tribute that the AFM was demanding and getting from the broadcasting industry amounted to "probably much in excess of $20,000,000 a year."[74] No evidence in support of this charge was contained in the report. It will be noted that the Congressmen qualified the allegation with "probably." It seems doubtful that this charge would have been true in fact. The wages that the AFM were receiving from their services in the broadcasting industry from all sources (includes not only stations and networks, but sponsors and advertising agencies) was in the neighborhood of twenty million dollars in 1944 and 1945. If the charges made in the report were true, this would have meant that the AFM and its members were receiving from the industry

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[73] Ibid., p. 1.

[74] Ibid., p. 3.

an annual sum in the forty to fifty million dollar range. This would have been equal to more than one half of the industry's total income (total revenues less total expenses) before federal taxes for 1944 and 1945 or equal to about one forth to one third of the total expenses for the same years.[75] It might be that all money received by the AFM or its members from the broadcasting industry was considered by the committee as tribute irrespective of whether it was legitimate or not despite the report's avowal to the contrary. If this were the case the sum contained in the charge could have been accurate, but such a definition of tribute would have been unjustifiable. However, given the temper of the times and the attitude toward the AFM, such a definition could have been endorsed.

The report also enumerated some of the "evils" that the Congressmen wished to have corrected by the bill introduced by Lea:

> Broadcasting has become one of the great industries of our time. It is now one of the chief means of communication of our Nation. It is one of our greatest implements for free speech. It promptly carries news to the remotest sections of the country. It is a forum for the discussion of our political, economic, and social problems. It is a source of information, education, entertainment, music, culture, and a vehicle for the messages of all religions, utilized by practically every home in the Nation.
>
> In recent years the broadcasting industry has been subjected to extortionate demands enforced by coercive methods which increasingly threaten to

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[75] For wages paid to musicians and income data, see Tables 11 and 12, respectively, in Chapter II.

> restrict and handicap it in performing its rightful functions to the Nation.
>
> Those making these demands, empowered by organized groups, not only have exacted tributes from the broadcasters but have assumed and exerted the power to say what shall and shall not be communicated over radio. True, they have limited their dominations and demands to purposes which serve their particular groups, but nevertheless they have set a pattern for a like power of private control exerted for mercenary purposes over other phases of the broadcasting industry of the Nation. The same power exercised for other purposes, if permitted might make the right of free speech only a name and establish censorship of broadcasting for private gain.[76]

Despite all of their emotionality, it will be noted from the above that at least some of the Congressmen recognized one of the basic issues associated with the actions of the AFM was related to the control that tended to be exerted by the Federation over broadcast programming.

The report also contained a summary of the so-called "coercive practices" that the committee alleged the Union was guilty of:

> The local broadcasters of the Nation are greatly dependent on the networks for rounding out their programs. This situation had augmented the coercive power of the Federation of Musicians in forcing compliance with its demands. Through coercive efforts, including boycotts and strikes, and threats of boycotts and strikes against broadcasters, the networks and those who furnish materials for broadcasters, the industry has been forced to comply rather than suffer penalizations that would follow a refusal to submit to these extortionate demands.
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> Among other things, the following demands upon the broadcasting industry have thus been made in recent years: That broadcasters employ persons in excess of the number wanted; that in lieu of failure

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[76]U.S. House of Representatives, Committee on Interstate and Foreign Commerce, Report: Prohibiting Certain Coercive Practices Affecting Broadcasting, H.R. Rep. No. 1508, pt. 1, 79th Cong., 2nd Sess., 1946, p. 2.

> to employ such persons the broadcaster should pay to the federation sums of money equivalent to or greater than funds required for the employment of members of the federation; that payments for services already performed and fully paid for should be repeated; that payments should be made for services not performed; that broadcasters should refrain from broadcasting noncompensated noncommercial educational or cultural programs; that broadcasters should refrain from broadcasting musical programs of foreign origin; that tributes should be paid for using recordings, transcriptions, and other materials used for broadcasting; that restrictions should be placed on the manufacture and use of recordings and transcriptions for the purpose of restricting and preventing the use of such materials for broadcasting; that tributes should be paid for recordings previously paid for; that dual orchestras should be employed for a single broadcast over two or more outlets; that over 400 small broadcast stations in the country be compelled to employ such orchestras; that the use of voluntary noncompensated orchestras be barred from broadcasts unless an orchestra of the Federation of Musicians were also employed or that the union was paid an equivalent or greater amount than the regular charge for a federation orchestra.[77]

Provisions and Intent of the Lea Measure.[78]--Subsection (a) of the proposed bill as reported out of committee by Lea and his associates would make unlawful acts involving the

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[77] Ibid., p. 3.

[78] The following discussion at this point was primarily designed to apply to the proposed Lea bill at the time it was reported out of the House Committee on Interstate and Foreign Commerce. All of the references to the proposed bill and its provisions are based on the version of the bill at that time which was contained in the report which accompanied it out of committee. For text of the bill, see: U.S. House of Representatives, Committee on Interstate and Foreign Commerce, Report: Prohibiting Certain Coercive Practices Affecting Broadcasting, H.R. Rep. No. 1508, pt. 1, 79th Cong., 2nd Sess., 1946, pp. 9-10.

However, since the version of it as it was reported out of committee was essentially the same as the bill that was actually passed, the discussion at this point which relates to the provisions and intent is applicable to the Lea bill as it was finally passed with one exception. Subsection (d) regarding the penal provisions was amended with reduced penalities. This will be discussed later.

"use or express or implied threat of the use of force, violence, intimidation, or duress, or by the use or express or implied threat of the use of other means, to coerce, compel, or constrain or attempt to coerce compel or constrain" a broadcast licensee to do any of the following:[79]

1. To employ or agree to employ more persons than are needed for the conduct of broadcast business;

2. To pay or agree to pay more persons than are needed for the normal conduct of broadcast business;

3. To pay or agree to pay more than once for services performed;

4. To pay or agree to pay for services not performed;

5. To refrain or agree to refrain from broadcasting noncommercial educational or cultural programs performed by unpaid performers on a noncommercial basis;

6. To refrain or agree to refrain from broadcasting any radio communication originating outside the United States.

Items 1 and 2 listed above represented an attempt to put a stop to the Union's practice of forcing stations to hire more musicians than were actually needed. In orther words, the attempt was to prevent the AFM from enforcing its quota rules. It will be remembered that the common objective of the network remote band strikes in the early part of the forties was often to force the affiliated stations to hire additional musicians. The objective then, was to put a stop to such actions of the Union designed to force broadcasters to hire or pay for musicians not needed in the normal conduct of broadcast business.

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[79]For text of subsection (a), see: Ibid.

Items 3 and 4 were to be directed against the AFM's so-called "standby demands." Such demands were manifested in the directive that was issued by Petrillo which touched off the FM problem:

> ....beginning Monday, October 29, 1945, wherever musicians play for FM broadcasting and AM broadcasting simultaneously, the same number of men must be employed for FM broadcasting as are employed for AM broadcasting, which means a double crew must be employed.[80]

The objective of these sections was to prevent the AFM from forcing broadcasters to employ standby musicians or to pay money directly to the Union in lieu of the employment of standbys.

Items 5 and 6 are more or less self-explanatory. Item 5 was to be directed against the recurrence of incidents such as Interlochen. Its intent, according to Lea, was as follows:

> This was designed primarily to prevent Mr. Petrillo's ban on the Interlochen, Michigan Music Camp broadcasts, but it applies, also, to local school and other amateur bands, service bands, etc. when performances is without pay and in the public interest.[81]

The last item grew out of the AFM ban on the broadcasting of musical programs originating outside the United States and Canada which became effective on the first day of 1946.

Subsection (b) of the proposed Lea measure contained three provisions with respect to the broadcast use of recordings and transcriptions. These provisions were introduced with the same language as the six provisions contained in

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[80] AFM. Proceed., 1946, p. 50.

[81] Broadcasting, April 15, 1945, p. 104.

subsection (a) with one exception. Whereas subsection (a) was applicable only in cases of coercion involving broadcast licensees, subsection (b) was applicable to coercion involving anyone. Any actual or attempted coercive act which forced a broadcast licensee or any other person to do any of the following were to be unlawful:[82]

1. To pay or agree to pay an exaction for the privilege to broadcasting any kind of recordings;
2. To accede to or impose any restriction on the use of any kind of recordings or recording equipment for broadcast purposes;
3. To pay or agree to pay any exaction for the rebroadcast of recorded or transcribed programs for which services have been previously paid.

The items in subsection (b) probably grew out of the recording ban of 1942 and the settlement which resulted in the payment of royalties on all recordings manufactured to a fund to be used by the Union for mitigating the effects of technological unemployment. Subsection (b) represented some attempt at preventing or at least controlling such funds. However, Representative Lea indicated that such funds created by future contracts would not be unlawful per se but that the determining factor would be whether coercion was involved and whether the record makers entered into such contracts willingly.[83]

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[82]For the text, of subsection (b), see: U.S. House of Representatives, Committee on Interstate and Foreign Commerce, Report: Prohibiting Certain Coercive Practices Affecting Broadcasting, H.R. Rep. No. 1508, pt. 1, 79th Cong., 2nd Sess., 1946, p. 10.

[83]Broadcasting, April 15, 1945, p. 104.

Also, Item 3 related to a practice that was not included in this study as a practice which tended to have an observable restrictive effect on broadcast programming. It was to apply to the forced payment of residuals through coercive means when recordings and transcriptions were used more than once. If a broadcaster agreed willingly to pay added or additional fees for the rebroadcast of transcriptions, such agreements would not be construed as unlawful under the proposed legislation according to its author.[84] The payment of residuals had to be accompanied by coercion before it would come under the prohibitions of the bill.

The Lea committee's report made some comments with respect to the "broad" language which introduced subsections (a) and (b) which the committee felt it was forced to use in order to endow the proposed law with some degree of effectiveness:

> It has been necessary to use the broad language "or by the use or express or implied threat of the use of other means" in order to make the legislation effective. It was necessary to use language broad enough to embrace actual or threatened boycotts and actual or threatened strikes, because these, as well as action or threatreatened action of like character, could well be among the means by which the coercion, compulsion or constraint prohibited by the bill may be accomplished or attempted to be accomplished. If the language were not this broad the legislation would fail to accomplish its purpose.
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> This subsection [(a)] does not prohibit the right to strike or to withhold services, or force individuals to work againt [sic] their will or desire. It will place no limitation whatsoever on the use of strikes for the accomplishment of legitimate objectives, such as wage increases or better

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[84] Ibid.

> working conditions. What it does do is to prohibit the accomplishment, by actual or attempted coercion, compulsion, or constraint, of certain unconscionable and wrongful objectives regardless of the means used. A strike or threat to strike is one method by which it is possible to exert or attempt to exert such coercion, compulsion or constraint, and, if it is the method used, the wrongful character of the offense is the same as though other means have been used.[85]

In addition to the two subsections outlined above, the Lea bill contained three other short subsections. Subsection (c) provided that the law could not be used as a means of circumventing a contract or legal obligation lawfully entered into and legally binding. Penal provisions were contained in subsection (d). Willful violation of any provision of the proposed law, upon conviction, would carry with it a maximum fine of $5,000 or imprisonment for not more than two years, or both. The last subsection, (e), defined a broadcast licensee as including "the owner or owners, and the person or persons having control or management, of the radio station in respect of which a station license has been granted."[86]

The House Passes the Lea Measure.--Apparently, the House was rather stirred up about Petrillo and the AFM and was desirous of taking some overt action against them. At any rate, in the middle of February, the House Rules Committee took steps which resulted in hastening the consideration of

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[85]U.S. House of Representatives, Committee on Interstate and Foreign Commerce, Report: Prohibiting Certain Coercive Practices Affecting Broadcasting, H.R. Rep. No. 1508, pt. 1, 79th Cong., 2nd Sess., 1946, p. 6.

[86]For text of subsections (c), (d), and (e), see: Ibid., p. 10.

the Lea measure.[87] On February 21, 1946, the House passed a resolution (H. Res. 524) calling for the immediate consideration of the bill introduced by Lea (H.R. 5117).[88] The debate that followed was very spirited and, at times, was accompanied by boisterous applause and shouting.[89]

The history of the proposed legislation and was reviewed as well as most of the activities of Petrillo and the AFM which prompted it. Much of the argument for the bill centered around the highly controversial president of the American Federation of Musicians, James C. Petrillo. Some of the remarks of Representative Brown illustrated the level of a good share of the debate. He gave his support to the bill saying that it was "specifically designed for the purpose of putting in his place and the cutting down to size a man by the name of James Caesar Petrillo."[90] Also, he recalled how Petrillo had told President Roosevelt and the Congress that "they could go to hell." He added: "I may go to hell some day, but not because of James Caesar Petrillo." Typical of the allegations made against Petrillo was the following by Representative Boren:

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[87]92 Cong. Rec. 1275 (1946); 92 Cong. Rec. 1300 (1946).

[88]92 Cong. Rec. 1542 (1946). Text of H. Res. 524 will be found at: 92 Cong. Rec. 1275 (1946).

[89]92 Cong. Rec. 1542-66 (1946).
In Broadcasting's report of the House proceedings, it was characterized as follows: "Four hours of stormy debate were marked by applause and cheers when the name of the AFM dictator was mentioned critically." See: Broadcasting, February 25, 1946, p. 15.

[90]92 Cong. Rec. 1547 (1946).

> He [Petrillo] is a power-grasping dictator and, in the realm of his nefarious activities, his actions are exactly in the same pattern as the dictators over the nations whose power frenzy brought the world to the chaos of war.[91]

In reading the House debate, it would be difficult to forget that Petrillo's middle name happened to have been "Caesar." The basic issues involved in the proposed legislation were generally ignored by its proponents who, as suggested above, centered their argument on Petrillo, his alleged arbitrary power and abuses, and his middle name. It was fairly evident from their comments during the debate that the country was generally up in arms against Petrillo and the AFM. Undoubtedly, many of the Congressmen were under pressure from "back-home" to do something about Petrillo and his Union. Even those members of the House who opposed the bill appeared to have been quite apprehensive in their opposition to it so that it could not be construed as approval of Petrillo or the activities of the AFM. During the entire debate not a single Congressmen made a positive statement in behalf of either Petrillo or the AFM.

The opposition, led by Representative Marcantonio, objected to the bill on what considered its anti-labor characteristics. It was feared that the bill would severely restrict the right to strike of the employees of the broadcasting industry as guaranteed to all employees by the Wagner Act. Marcantonio said that an analysis of the bill revealed that "it goes further than any other bill that the Congress

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[91] 92 Cong. Rec. 1556 (1946).

has ever had before it with respect to the right to strike."[92] He added that the language of the law was so broad that a musician can go to jail just for going on strike for any purpose whatsoever. Representative Lea defended the bill indicating that this was not true.[93] He said that coercion must be present and for the purposes outlined in the bill's provisions. He further defended his proposed legislation and his position that the bill did not limit the right to strike, per se, by reading the section of his committee's report which was cited previously in this chapter which disclosed the intent of the so-called broad language.[94]

The only other fairly significant point of contention was related to the penal provisions. In an amendment sponsored by Lea, the maximum fine was reduced from $5,000 to $1,000 and the maximum period of imprisonment was cut from two to one year. The above was the only significant amendment to the proposed bill; all others which were adopted were minor. Several other amendments, including one by Marcantonio to delete the phrase "of the use of other means," were rejected by the House.

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[92] 92 Cong. Rec. 1545-46 (1946).
Also, see the minority section of the Lea committee's report to the House authored by Marcantonio for more of the argument against the bill: U.S. House of Representatives, Committee on Interstate and Foreign Commerce, Report: Prohibiting Certain Coercive Practices Affecting Broadcasting, H.R. Rep. No. 1508, pt. 2, 79th Cong., 2nd Sess, 1946.

[93] 92 Cong. Rec. 1559 (1946).

[94] See text beginning at Footnote 85 of this chapter.

The Bill Goes to Conference.--The final vote was 222 in favor to 43 in opposition. To prevent the bill (H.R. 5117) from being killed in committee after it was sent back to the Senate, it was passed as an amendment to the Vandenberg bill (S. 63). That is, everything after the enacting clause of the Vandenberg bill was struck out and substituted with the provision of the Lea bill. It was thought that this would force the Senate to submit the bill to a conference committee. This was exactly what did happen in the Senate.[95]

The House, over the objections of Representative Marcantonio, agreed to the conference asked by the Senate.[96] Marcantonio was still objecting to the bill on the grounds that it infringed on the worker's right to strike. The House was the first to act on the report of the conference committee.[97] The conferees, by unanimous vote, had agreed to the substitute measure and recommended that it be passed. With very little serious discussion or debate, the conference report was accepted by the House on March 29, 1946 by a vote of 186 to 16.

Debate in the Senate.--The conference report and the consideration of the revised bill as passed by the House occasioned a fairly considerable amount of debate in the Senate.[98] Broadcasting reported that the debate lasted about

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[95]92 Cong. Rec. 1709-1710 (1946).

[96]92 Cong. Rec. 1827 (1946).

[97]92 Cong. Rec. 2820-23 (1946).

[98]92 Cong. Rec. 3241-58 (1946).

four hours.[99] The opposition arose with regard to the question of whether the bill would restrict the right to strike and whether it would adversely affect the legitimate rights of radio employees.[100] The reply to these charges was quite similar to that of Representative Lea with respect to the same charges in the House.[101] In general, the supporters of the bill were able to dispel the doubts of many of the Senators in regard to this matter. Also, several senators expressed great concern that the legislative intent of the bill be thoroughly understood and that it appear in the Record.

The approach of the senators who spoke in favor of the bill dealt more with the basic issues involved in the legislation. At no time did the Senate debate resolve itself into a discussion of the middle name of Mr. Petrillo as it had in the House.

The most significant issues of the proposed legislation were brought to light rather clearly by Senator White. He cited the testimony of FCC Chairman Paul Porter at the

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[99] Broadcasting, April 15, 1946, p. 15.

[100] Some of the senators were under pressure from some of the broadcast talent unions to oppose the Lea bill. The Lea bill were passed, residuals would be outlawed. However, Lea had stated publicly that it was not the intent of his proposed legislation to outlaw such arrangements, per se, but rather only those which were obtained through coercion. Some of the big name stars that contacted some of the senators in this regard were Bob Hope, Bing Crosby, Frank Sinatra, Dinah Shore, and Gene Hershold. See: Broadcasting, April 8, 1946, pp. 15, 73; New York Times, April 5, 1946, p. 18:1.

[101] See text beginning at Footnote 93 of this chapter.

hearings conducted by the House. As indicated previously, Chairman Porter testified that certain practices of the AFM have interfered seriously with the responsibility of broadcast licensees to maintain control over their programming as well as their ability to operate in the public interest and provide public service.[102] In the conclusion of his remarks, Senator White pointed out another very closely related issue involved:

> ....there is one other consideration to which I wish to allude briefly. We speak about a free radio. We have endeavored, in assuming a free radio to the people of this country, to assert Federal jurisdiction over the channels of the air and over the control and licensing of all those who use the air for broadcasting. We have placed certain regulations and authorities over that activity, and we have vested in the Federal Communications Commission certain responsibilities. That Commission determines the channels of the air on which stations shall operate, and whether the stations are conforming to the technical requirements laid down by the Commission. We also have to see that stations serve a public interest, a public convenience, or a public necessity.
>
> I say to the members of the Senate that if we are to admit for a single moment that anyone other than the broadcasting stations, subject to the jurisdiction of the Commission, is to determine what shall be broadcast over the air in the United States, we shall have taken the responsibility which must be its, if we are to have an ordered system of communications in this Nation.[103]

Apparently the members of the Senate concurred with Senator White's comments and observation; no one took exception to them.

The Bill Becomes Law.--The bill was submitted to a roll call vote and was passed by a margin of 47 to 3. The

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[102]See text beginning at Footnote 50 of this chapter.

[103]92 Cong. Rec. 3255 (1946).

bill was then sent to the President.[104] On April 16, 1946, President Truman gave his approval to the measure by signing Senate Bill Number 63.[105] Thus, the Lea Act became federal law.

D. The Broad Pressures Which Converged and Precipitated the Lea Act

One writer, Robert D. Leiter, concluded the following with regard to the passage of the Lea Act:

> The Lea Act represented the first significant legislative curb imposed on the activities of labor unions subsequent to the introduction of the New Deal labor policy by the federal government. The enactment of legislation such as the Lea Act, was inevitable, given the temper of Congress in 1946. The practices of featherbedding, of standbys, and of banning various groups from broadcasting had irked many people who were not fully conversant with the issues.
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> It should be recognized that the policies similar to those adopted by the musicians union, directed towards increased employment, were approved and enforced by many other labor organizations. Make-work problems are certainly more serious on the railroads and in the building trades. But the methods used by the musicians union constantly were arousing bitterness and resentment. Attention had been centered on Petrillo and every move he made was deemed worthy of newspaper headlines. The public relations of the union were rather unsatisfactory....
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> ....At the culmination of public disapproval, the Lea Act was passed.[106]

The perspective taken by Leiter would appear to be a rather narrow or limited one. The Lea Act was interpreted

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[105] 92 Cong. Rec. 3829 (1946).
For the final version of the Lea Act, see: 60 Stat. 89 (1946).

[106] Robert D. Leiter, The Musicians and Petrillo (New York: Bookman Associates, Inc., 1953), pp. 162-63.

almost entirely in the context of a labor law. The question is asked, if it were strictly a labor law--why was it not passed as an amendment to a labor law like the Wagner Act[107] instead of the Communications Act? Granted, the Lea Act is a law which can affect labor organizations, but it is suggested that it is not a labor law, per se. It is a law designed primarily to regulate aspects of the broadcasting industry, not to regulate labor unions or organizations. Labor unions are not even mentioned anywhere in the language of the statute. The closest the Lea Act comes to regulating labor unions is that some acts of labor organizations may be prohibited as the impinge upon broadcasting. Some measure of support is given to this view by the mere fact that the Lea Act was passed as an amendment to the Communications Act rather than to some labor law. It should be noted that the applicability of the Lea Act is not just limited to members of labor organizations. It can be applied to any persons or organizations who engage in the behaviors proscribed.

Leiter almost suggested that the Lea Act represented the precusor to the Taft-Hartley Act. The latter rather clearly constituted the first major large-scale legislative curb on the activities of labor unions since the Wagner Act, the heart of the New Deal labor policy.[108] However, there

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[107] 49 Stat. 449 (1935).

[108] For a short summary concerning the background associated with the passage of the Taft-Hartley, see: Lloyd G. Reynolds, Labor Economics and Labor Relations (2nd ed. rev.; Englewood Cliffs, N. J.: Prentice-Hall, Inc., 1956), pp. 284-89

is one difficulty in considering the Lea Act in this light. The Lea Act was passed by the 79th Congress, a democratic controlled one which had been elected with Roosevelt in 1944. It will be remembered that it was a democratic administration under Roosevelt's leadership that had enacted the Wagner Act in 1935. The Taft-Hartley Act was passed by the republican dominated 80th Congress.

Public Disapproval.--In Leiter's analysis of the Lea Act, he concluded that public disapproval was one of the most significant pressures which resulted in the Lea Act. In effect, Leiter said that the American people had gotten "fed up" with the AFM's "practices of featherbedding, of standbys and of banning various groups from broadcasting." This interpretation can be supported to some extent, but there are other considerations. If as Leiter said, featherbedding and make-work problems are more serious on the railroads and in the building trades than they were in the broadcasting industry, why has not something been? It is true that one provision of Taft-Hartley was intended to prohibit make-work tactics.[109] However, it has been concluded by some that this attempt had proved, by in large, rather ineffective.[110] It is suggested that it was not concern for make-work tactics or methods themselves (featherbedding, standbys, and bans),

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[109]The pertinent section is 8(b)(6). For text, see: 61 Stat. 136, 142 (1947).

[110]This point is stressed in the following, see: Charles H. Tower, "Labor Relations in the Broadcasting Industry," Law and Contemporary Problems, 23 (Winter, 1958), p. 98.

per se, that contributed significantly to the public disapproval of the AFM. For if there had been concern for such behaviors in and of themselves, it would seem likely that the Lea Act would have been directed more specifically at labor unions in general. Benjamin Aaron, in an article on featherbedding, suggested that the public revulsion toward such tactics is not necessarily related logically to the degree of importance or economic loss resulting from such actions.[111] Rather, he indicated that public revulsion seems to be more related to the manner in which a union enforces such practices. Also, Aaron implied that the impetus for the Lea Act did not grow out of a sudden public interest in the evils of featherbedding practices in general, but rather, it was the result of specific situations and the manner in which the AFM enforced such practices.[112] It is suggested that there were at least three such situations which gave rise to the public indignation. Aaron only suggested one, the Interlochen affair.

Recording Ban of 1942.--In effect, the recording ban of 1942 was a strike or at least it was probably perceived by the majority of Americans as a strike. The ban was imposed when the nation was at war. Just the mere fact of a labor organization, in time of war, going on a "strike" would be considered by many as "un-American." Also, during the

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[111]Benjamin Aaron, "Governmental Restraints on Featherbedding," Stanford Law Review, 5 (July, 1953), p. 686.

[112]Ibid., pp. 697-98.

war, there was a great deal of interest in the effect and importance of music on the morale of the American people.[113] Recorded music was being used in defense plants and was considered to be a good means of increasing production and decreasing error by relieving the boredom and monotony of routine tasks and long hours. The AFM's recording ban was interfering with the supply of music when the nation was at war. Hence, it was probably felt by many that the AFM was interfering with the war effort. Also, during the course of the recording ban, Petrillo and the AFM had defied President Roosevelt, America's wartime leader, by refusing to comply with his request to return to work. Such action would not be conducive to public support and backing. Also, the recording ban was instituted by what would be considered by many as a "dictatorial fiat." Considering the times and the tactics used, the recording ban served to alienate the American people against the AFM.

Interference with Radio Programming.--As documented in Chapter III, the AFM had caused interference with a number of radio programs, particularly on the network level. Even though the press did a very adequate job of keeping the American people informed regarding the activities of the AFM,

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[113]For some accounts of the growing interest and alleged importance of music to the war effort, see: Business Week, April 3, 1943, pp. 64, 66, 68; New York Times, September 12, 1943, p. 6:3; D. K. Antrim, "Importance of Music in Wartime Industry," Etude Music Magazine, 61 (February, 1943), pp. 90, 130-36; B. March, "Music is Proving a War-Time Need," Musician, 50 (March, 1945), pp. 51-52; D. Moore, "Importance of Music in Wartime," Saturday Review of Literature, 26 (January 30, 1943), p. 12; William D. Revell, "How Music Can Help Win the War," Etude Music Magazine, 60 (November, 1942), pp. 741, 779.

many of the make-work policies of the AFM such as the remote band strikes would be apparent to the public just by listening to the radio. There were programs missing from the airways from time to time. It is suggested that this gave rise to some of the public indignation and it was not because the American people necessarily and expressly disapproved of "featherbedding, standbys, and bans." It was because the AFM was depriving the American people of something that it enjoyed, radio programs involving music. Also, the manner in which the Union achieved these ends gave the appearance that it was dictating to the American people what kind of music they could hear.

A letter to the New York Times from one of its readers occasioned by one of the bans appears to support this view.[114] Petrillo probably had the best interests of the musicians at heart when he put into effect some of his bans suggested the reader, but is it not a bit short-sighted and selfish of him to rob the American people of hearing their favorite musicians. Other articles and letters decried the control that was being exerted over radio programming by the Federation.[115] It was the public disapproval over being denied something that it desired and the manner in which it was accomplished--not over

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[114] New York Times, January 1, 1946, p. 26:7.

[115] For other examples of letters to the Times from its readers either complaining about the AFM policies or urging federal government action, are: New York Times, September 12, 1942, p. 12:7; September 21, 1942, p. 14:6; October 9, 1944, p. 22:7; October 19, 1944, p. 22:7; November 16, 1944, p. 22:7; October 28, 1945, p. 14:7.

featherbedding, standbys, and other make-work policies, as such--which represented one of the broad pressures which helped precipitate the Lea Act.

Interlochen.--The entire Interlochen affair contributed immensely to public disapproval. No single incident contributed as much to the public disgrace of the AFM as did this incident. In the Interlochen affair, it was suggested that Petrillo and the AFM attempted to tamper with one of the American people's "sacred cows," little school children. Story captions in Time such as "Petrillo v. the Boys and Girls" certainly suggested this.[116] This is one of those sensitive areas that it is disasterous to become associated with. Public disapproval was the only possible consequence of the AFM's actions in this realm.

Also, Dr. Maddy, president of the National Music Camp at Interlochen, Michigan, kept this incident in the public notice throughout most of the decade of the 1940's. The incident provided the impetus for Senator Vandenberg, by his own admission, to introduce the bill which eventually evolved into the Lea Act. Between 1943 and 1948, Maddy appeared before Congressional committees at least five times and related the Interlochen incident.[117] It almost seemed that Maddy took

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[116] Time, February 19, 1945, p. 19.

[117] See Footnotes 70 and 72 of Chapter III for documentation of hearings in January, 1943 and March, 1944 of the earliest appearances of Maddy before Congressional committees. For other testimony, see: U.S. House of Representatives, Committee on Interstate and Foreign Commerce, Hearings: Interference with Broadcasting of Noncommercial Educational Programs, 79the Cong., 1st Sess., 1945, pp. 18-24 ff.

as his personal responsibility the task of keeping the American people stirred up about this incident. This is no doubt that the Interlochen affair coupled with the assistance from Dr. Maddy contributed significantly to the public disapproval which resulted in the passage of the Lea Act. In the face of such public reaction, Congress had to act.

Industry Reaction.--Although it has been suggested that the American people were not "irked" with the AFM's make-work policies, per se, there was one group that definitely was--the broadcasters. Such policies of the Federation which required the hiring of additional employees that were not wanted or even allegedly not needed would represent added or unnecessary costs which broadcasters, as would most good businessmen, would like to avoid. The broadcasters, as businessmen, would naturally try to do everything possible to stop such actions of the AFM. There is no doubt that the National Association of Broadcasters and other segments of the industry put a considerable amount of pressure on Congress to get remedial legislation passed. Such pressure can be easily detected in the hearings that were conducted by committees of Congress. The opposition of the NAB and

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Then after the Lea Act was passed, Maddy testified a couple of more times. For one see: U.S. House of Representatives, Committee on Education and Labor, Hearings: Restrictive Union Practices of the American Federation of Musicians, 80th Cong., 2nd Sess., 1948, pp. 239-55.

At these 1948 hearings, Maddy testified that he had appeared before the committee in early 1947, As part of his testimony at the 1948 hearings, Maddy included the formal statement that he had presented at the 1947 sessions. See: Ibid., pp. 243-49.

broadcasters, in general, represents another broad pressure which resulted in the Lea Act.

Concern for the Basic Issues.--Probably, the most basic issues involved in the Lea Act were associated with one aspect of the federal regulatory policy toward broadcasting in this country. Who is to control broadcast programming? What is to be ultimately served, public or private interest? In this country, the public owns the channels which are used for broadcasting. We are committed to the policy of private ownership of broadcast facilities which are licensed by the government to be operated by qualified persons on these public channels for the public interest, convenience, and necessity. This imposes a responsibility upon the licensee for the selection and presentation of program material to be broadcast. Both the FCC and the courts have stressed this responsibility rests on the individual licensee, and can neither be delegated nor transferred to any network or other persons or groups, or be unduly affected or restricted by contractual arrangements.[118] To be consistent with this federal policy, this responsibility for maintaining control over broadcast programming should not be subject to infringement in behalf of private interest.

Certain of the make-work policies of the AFM tended, in effect, to usurp the control of certain types of broadcast programming from licensees. For example, the AFM demand that double crews be hired for simultaneous music broadcasts

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[118]For documentation of this federal regulatory policy, see Chapter I.

over AM and FM was a case in point. For many stations, this policy made it economically impossible for live music broadcasts to be presented over FM. FM was new and underdeveloped at the time, and advertisers were reluctant to invest in this newer media of broadcast. This left a big share of the financial burden on the broadcast industry to develop FM. This was part of the FCC's reasoning in not continuing its prohibitions against the complete duplication of programming over both AM and FM. This Union policy tended to restrict the use of live music broadcasts over FM. Similar cases can be built up for many of the other policies of the Federation such as those affecting remote band broadcasts, live TV programs, film on TV, international music broadcasts, and etc. These policies represent examples of imposed restriction by the AFM on broadcasters which tended to exert a certain amount of control over broadcast programming.

In the circumstances alluded to above, the broadcasters had the choice of either acceding to the Union's demands or losing the services of professional musicians entirely. It must be remembered that nearly every competent musician in the U.S. was a member of the AFM. Since the latter, in many cases, would result in severe program service disruption and considerable economic loss, particularly in the case of the networks, the former was probably conceived as the lesser of the two evils. This, as can be readily seen, tended to interfere very seriously with the broadcast licensee's responsibility to maintain control over his broadcast program-

ming. As Chairman Porter indicated, in the face of such situations, the FCC was powerless to do anything. Sidney Kaye, the music counsel of the NAB, was of the opinion that there were no existing federal laws which could be used to remedy the restrictive actions of the AFM. It was becoming very apparent that some kind of corrective measures would have to be taken by Congress if the Union continued to engage in such actions.

What is to be ultimately served, private or public interest? There is no doubt that federal policy demands that broadcasting serve the public interest. This point is at the heart of the Communications Act. To refer back to Leiter's statements cited earlier, he said:

> It should be recognized that policies similar to those by the musicians union, directed towards increased employment, were approved and enforced by many other labor organizations. Made-work problems are certainly more serious on the railroads and in the building trades.[119]

What Leiter failed to point out was that there is one significant difference between the broadcasting industry and the railroad and building industries. Broadcast stations are licensed by the federal government to operate in the public interest. This is not the case with the railroad and building industries. The imposed restrictions of the AFM which affected broadcast programming through its make-work policies were specifically designed to create more jobs for its members--about 182,000 members in all in 1946--which tended rather clearly to be private interest. It would be difficult to

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[119]Leiter, op. cit., p. 163.

rationalize such imposed restrictions on broadcast programming as being in public interest, as defined by the Communications Act, the policies of the FCC, and the decisions of the courts.

Chairman Porter of the FCC, Representative Lea, and Senator W. White were concerned about a precedent being established which might lead to censorship of broadcast programming in behalf of private interest or gain. The concern of men like Porter, Lea, and White that broadcasting remain as free as possible from unreasonable restraint in behalf of private interest, undoubtedly, represented another broad force which helped precipitate the Lea Act.

Summing Up.--First of all, a view of the Lea Act as strictly a labor law, tends to obscure certain aspects of it. In the first place, the Lea Act is an amendment to the Communications Act of 1934, as amended. As such, it was designed to regulate certain aspects of the broadcasting industry. Not just limited to activities of labor unions, the Act can be applied to any person or group who commit the behaviors proscribed by the statute.

The broad pressures which converged and precipitated the Lea Act came from at least three sources: (1) public reaction, (2) industry reaction, and (3) concern of men who wished broadcasting to remain as free as possible from unreasonable restraints. The Interlochen affair along with Dr. Maddy's efforts contributed more to the public disgrace of the AFM than did any other single incident associated with the Union during the entire decade of the forties. Hence,

the Interlochen affair contributed significantly to the passage of the Lea Act. In essence then, the Lea Act was a public declaration that vast segments of the American culture were very much displeased with many of the actions and policies of the American Federation of Musicians.

CHAPTER V

POST LEA ACT: RESOLUTION OF THE CONFLICT

A. AFM Test of the Lea Act in the Courts

Immediately after the Lea Act was passed, Petrillo and the Federation's counsel, Joseph Padway, announced that the AFM would test the constitutionality of the Lea Act in the Courts.[1] At radio station WAAF in Chicago, the first situation that presented itself which was suitable for such a purpose came in mid-May, 1946.[2] By the middle of the following month, the federal government had filed a criminal information with the U.S. District Court at Chicago charging Petrillo with the willful violation of the Lea Act.[3]

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[1]That Petrillo and the AFM publicly admitted that a test in the courts of the Lea Act was sought by them and that the situation in which to do was deliberately created by them was emphasized in the press, see: Broadcasting, April 22, 1946, pp. 17, 97; June 3, 1946, pp. 13-14; New York Times, April 19, 1946, p. 5:2; United States News and World Report, April 26, 1946, p. 48; Newsweek, June 17, 1946, p. 29; Time, June 10, 1946, pp. 24-25.

In early June, during the midst of the preparation for the first court test of the Lea Act, Broadcasting reported that Petrillo said the following at a news conference: "We are violating the laws of the United States if the Lea Act is a constitutional law. If I have violated a Federal Law, it is only because I feel it is unconstitutional." Broadcasting, June 3, 1946, p. 13.

[2]AFM. Proceed., 1948, p. 91.

[3]New York Times, June 15, 1946, pp. 1:2, 12:3.

Chain of Events Leading up to the Court Test of the Lea Act.[4]--Radio station WAAF, located in Chicago, was owned and operated by the Drovers Journal Publishing Company. Approximately 90 per cent of the station's programming consisted of recorded and transcribed program material. In May, 1946, WAAF had in its employ three members of the Chicago local of the AFM who functioned in the capacity of record librarians. However, the contracts with the radio station for these AFM members had stated that two were supposed to function as record turners and the third was to function in the dual capacity of record turner and pianist. Not one of them performed the duties prescribed in their formal contracts. They only performed the duties of record librarians. As of May, 1946, there was no contract between WAAF and the AFM or one of its locals. However, there had been contacts in the past, but the most recent one had elasped in February of 1944 and had never been renewed.

On May 11, 1946, Petrillo, in behalf of the Chicago local of the AFM, sent the following letter to radio station WAAF:

> "Inasmuch as our agreement concerning wage scales, rules and regulations for broadcasting over your station has expired, the following are the changes and revisions requested by the Chicago Federation of Musicians to cover a new agreement:

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[4]For accounts of the chain of events which led up to the government's suit, see: U.S. v. Petrillo, 75 F. Supp. 176, 177-79 (1948); Broadcasting, June 3, 1946, pp. 13-14; 1947, p. 72; AFM. Proceed., 1948, pp. 92-93.

The above sources will serve as the documentation for this section. The first named source above is the best and most complete.

"(1) New agreement to be for a period commencing May 20, 1946, and terminating February 1, 1947;

"(2) Three (3) extra musicians shall be employed as staff musicians, making the total number of musicians employed, six (6);

"(3) The record turners shall turn records exclusively and shall not be required to perform as instrumentalists.

"All other conditions now in force and effect as relating to local broadcasting stations, as stipulated in Section 7 of the by-laws of the Chicago Federation of Musicians, known as Radio Wages Scales, Rules and Regulations (a copy of which is attached hereto) shall remain in force and effect during the terms of this agreement, except as herein altered, revised, or amended.

"Kindly advise whether the foregoing proposals are acceptable to you."[5]

Following the receipt of the above letter by WAAF officials, Petrillo was contacted by the station's attorney who requested a meeting between Union and station officials. Petrillo refused to agree to such a meeting. Finally, after several telephone discussions between Petrillo and the station's attorney, it was disclosed on May 25th that WAAF would be willing to employ one additional musician. Petrillo indicated that he would take the counteroffer under consideration and then inform the station of his decision on May 27th. On the 27th, WAAF officials received a telegram from Petrillo stating that he had no alternative but to withdraw the services of the three AFM members employed by the station in view of the inability to reach an agreement. On the same day, the three AFM members employed at the station were notified that they were not to report to work starting May 28 until further notice. Subsequently, an AFM picket was placed in

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[5] U.S. v. Petrillo., 75 F. Supp. 176, 177-78 (1948).

front of the station.

The Government Starts Action in District Court.--The information filed by the U.S. district attorney charged Petrillo with willfully violating the Lea Act.[6] It was contended by the government that the three AFM members employed by WAAF "were sufficient and adequate in number to perform all of the actual services needed ....in connection with the operation of its radio broadcasting facilities."[7] Specifically, the information charged that Petrillo had willfully:

> ....by the use of force, intimidation, duress and by the use of other means did attempt to coerce, compel and constrain said licensee to employee and agree to employ in connection with the conduct of its radio broadcasting business, three additional persons not needed by said licensee to perform actual services, in the following manner, towit:
> (1) By directing and causing three musicians, members of the Chicago Federation of Musicians, theretofore employed by the said licensee in connection with the conduct of its broadcasting business to discontinue their employment with said licensee;
> (2) By directing and causing three employees and other persons, members of the Chicago Federation of Musicians, not to accept employment by said licensee; and
> (3) By placing and causing to be placed a person as a picket in front of the place of business of said licensee.[8]

The section of the Act alleged by the government to be violated was Section 506(a)(1).[9]

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[6]For a summary of the information, see: U.S. v. Petrillo, 68 F. Supp. 845, 847-48 (1946).

[7]Ibid., 847.

[8]Ibid.

[9]For text of the Lea Act, see Appendix B.

AFM attorneys filed a motion with the District Court to dismiss the government's information on the grounds that the Lea Act contravened the First, Fifth, and Thirteenth Amendments to the Constitution. The contents of the motion were briefly described in Petrillo's report to the 1948 AFM convention as follows:

> Our attorneys filed a motion to dismiss the information on three constitutional grounds, (1) that the statute imposed involuntary servitude contrary to the Thirteenth Amendment; (2) that it deprived us of freedom of speech contrary to the First Amendment; (3) that the phrase "more persons than are needed" was so vague and indefinite to deprive us of due process of law contrary to the Fifth Amendment.[10]

Hearings and argument on the information and motion were heard in November, and then on December 2, 1946, Judge LaBuy of the Federal District Court at Chicago handed down his decision which challenged the constitutionality of the Lea Act.[11]

The District Court's Decision.--Briefly, Judge LaBuy's decision attacked the constitutionality of the Lea Act on four principal grounds. First, the framing of Section 506

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[10] AFM, Proceed., 1948, p. 92.
Further explanation of the AFM motion will not be presented. The grounds used by the District Court to attack the constitutionality of the Lea Act were essentially the same as those contained in the AFM motion plus one other. The court's constitutional attack of the Lea Act will be covered fully in the next section of this chapter.

[11] U.S. v. Petrillo, 68 F. Supp. 845 (1946).
For some of the news accounts of the proceedings, see: Broadcasting, August 26, 1946, p. 87; October 7, 1946, pp. 15, 108; November 11, 1946, p. 84; December 9, 1946, pp. 18, 37; 83; New York Times, May 29, 1946, pp. 1:6, 4:1; June 15, 1946, pp. 1:2, 12:2; July 16, 1946, p. 13:2; August 6, 1946, p. 22:7; August 16, 1946, p. 2:8; October 1, 1946, p. 2:6; October 9,

(a)(1), particularly with reference to the phrase "to employ or agree to employ, in connection with the conduct of the broadcasting business of such licensee, a person or persons in excess of the number of employees needed by such licensee to perform actual services" was held by the Judge to be "patently defective in its failure to define with reasonable certainty the crime charged."[12] He stated that there was "no means, or guide, or standard by which the defendant may know 'the number of employees needed.'"[13] Further, he indicated that the "number of employees needed" was "established by the licensee without the prior knowledge upon the part of the person subjected to prosecution for violation of the section."[14] Judge LaBuy held that such a provision in a criminal statute was repugnant to one of the essentials of the principle of due process of law as guaranteed by the Fifth Amendment. It was pointed out that a criminal statute cannot either forbid or require "the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application."[15] Because it would be the licensee who would determine the "num-

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1946, p. 2:3; October 16, 1946, p. 4:7; November 5, 1946, pp. 1:3, 30:7; December 3, 1946, pp. 1:4, 34:2; Newsweek, December 9, 1946, p. 70; United States News and World Report, June 21, 1946, p. 38.

[12] U.S. v. Petrillo, 68 F. Supp. 845, 848 (1946).

[13] Ibid.

[14] Ibid.

[15] Ibid.

ber of employees needed," the Judge suggested that life and liberty would "be imperiled by or subject to such a frail and uncertain device as one man's opinion against another's."[16] The Judge held that "the will of an individual to make an act a crime or not, depending upon his own judgement,....[was] abhorrent to our form of government."[17]

With reference to the second grounds upon which he attacked the Act, Judge LaBuy noted that the law did not prohibit the employment of more persons than are needed if there was an absence of constraint and coercion upon the licensee and if he agreed to do so willingly. The information charged that one of the means by which the defendant enforced his demands was through the use of the technique of peaceful picketing. Peaceful picketing "had been repeatedly and universally held ....[by the courts as] a form of speech and discussion that cannot under the First and Fourteenth Amendments be curtailed by any legislative enactment."[18] With regard to the law's application in this situation, the Judge asked the following question:

> Can the hiring of additional employees which can be done legally by agreement of the licensee and the union, or by the licensee alone, be constitutionally denounced as illegal when done by the right of free speech as manifested by peaceful picketing?[19]

In answer to this question, the Judge held that:

> It is this fundamental right that is here challenged as an unlawful means to procure the

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[16] Ibid.

[17] Ibid.

[18] Ibid., 849.

[19] Ibid.

> accomplishment of an admittedly legal objective. The court is of the opinion, therefore, that picketing where not accompanied by any force or violence, used merely for the purpose of disseminating the views of defendant and the members of the musicians union is a manifestation of the exercise of the right of free speech and cannot be defined as illegal except under circumstances which warrant a restraint upon freedom of speech or where it is used for some unlawful purpose.[20]

Thirdly, Judge LaBuy pointed out that the government's infor mation charged Petrillo with attempting "to coerce, compel and constrain employment by means of (1) causing three musicians to discontinue their employment; and (2) causing three musicians not to accept employment by such licensee."[21] The application of the law in this situation, the Judge contended, would tend to impose "involuntary servitude." Further attacking the constitutionality of the Lea Act, the court held that:

> Under the Thirteenth Amendment the right of any worker to leave his employment at will or for no reason at all is protected and that right is inviolate. The freedom to quit and refuse to undertake work may as readily be exercised through a group organization as individually.[22]

The fourth and last grounds of attack related to the law's allegedly discriminatory nature. In short, the law could be used as a means whereby broadcasting employees could be deprived of the right to peaceful picketing and the right to quit collectively in order to enforce their demands. However, all other employees in the country would have such

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[20] Ibid.

[21] Ibid., 850.

[22] Ibid.

rights because the law only applied to broadcast employees. Judge LaBuy held that:

> A penalty which applied uniquely to broadcasting station employees and no others; a prohibition which relates solely to contracts between these same employees and no others; an inhibition which defines lawful acts as unlawful when applied to these employees and no others cannot survive the constitutional test. This segregation and classification plainly falls within the arbitrary group of class legislation.[23]

In summing up the decision of the court, Judge LaBuy stated:

> The court finds it necessary to hold that the statute here involved in the application here sought to be made violates the First Amendment because of the indefiniteness and uncertainty in the definition of a criminal offense; violates the First Amendment by its restrictions upon freedom of speech by peaceful picketing; violates the Fifth and Thirteenth Amendments by its restriction upon employment of labor; and violates the Fifth Amendment by an arbitrary classification as between employers and employees and as to other communication industries.
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> Whether or not the objectives sought to be attained by this statute are or are not economic evils which should be restrained or suppressed are questions not within the province of this court. This court does not hold that Congress is powerless to act or that the declared objectives of this law are beyond the reach of federal legislative control. The only question before the court is the constitutional aspect of this statute as was written by Congress. On this question the court is of the opinion that this statute is unconstitutional for the above stated reasons.[24]

District Court's Decision Appealed.--Shortly after Judge LaBuy handed down the decision of the District Court, the Department of Justice announced plans of appealing the case to the Supreme Court.[25] Representative Lea, the author

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[23] Ibid.

[24] Ibid.

[25] New York Times, December 27, 1946, p. 3:3.

of the law, was rather unhappy with the decision of the lower court and he suggested that the court involved had disregarded the Congressional intent in its decision.[26] Lea said that if the Lea Act failed, the fight to get legislation to remedy the situation involving the AFM and all other similar situations involving labor unions must not stop. Lawyers for the Justice Department agreed with Lea in his contentions that Judge LaBuy ignored Congressional intent in his decision.[27] The government filed its briefs with the Supreme Court in late April, 1947.[28] In them, the argument of the District Court with regard to the constitutionality of the Lea Act was refuted.[29] In the AFM briefs filed a few days later,[30] the constitutional attack of the District Court was essentially repeated.[31] Argument was presented by both parties before the Supreme Court on May 5th and 6th with the decision being handed down on June 23, 1947.[32]

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[26] Broadcasting, December 9, 1946, p. 18.

[27] Ibid., December 30, 1946, p. 81.

[28] New York Times, April 25, 1947, p. 14:6.

[29] For a summary of the briefs with citations, see: U.S. v. Petrillo, 91 L.ed. 1877, 1880 (1947).

[30] Broadcasting, May 5, 1947, p. 15.

[31] For a summary of the briefs with citations, see: U.S. v. Petrillo, 91 L.ed. 1877, 1880 (1947).

[32] U.S. v. Petrillo, 332 U.S. 1 (1947).
For some of the news accounts of the proceedings, see: Broadcasting, December 30, 1946, p. 81; May 5, 1947, p. 15; May 12, 1947, p. 92; June 30, 1947, pp. 13, 72, 74-75; New York Times, December 27, 1946, p. 3:3; January 28, 1947, p. 4:6; April 15, 1947, p. 20:7; April 25, 1947, p. 14:6; May 6, 1947, p. 7:1; June 24, 1947, pp. 1:7, 5:5.

Decision of the Supreme Court.--In a 5-3 decision, the Supreme Court reversed the decision of the District Court and remanded the case back to it for retrial. In the official publication containing the decisions of the Supreme Court, this decision was summarized as follows:

1. Section 506 (a)(1) of the Communications Act, making it a crime, by the use or threat of use of force, violence, intimidation, or duress, to coerce, compel or constrain a radio-broadcasting licensee to employ or agree to employ, in connection with the conduct of the licensee's broadcasting business, any person or persons "in excess of the number of employees needed by such licensee to perform actual services," is not so vague, indefinite or uncertain as to violate the Due Process Clause of the Fifth Amendment....
   (a) the question was properly presented to this Court for a decision on an appeal by the Government under the Criminal Appeals Act from a decision of a District Court dismissing, on the sole ground that the section was unconstitutional, an information charging a violation in substantially the statutory language....
   (b) The contention that persons of ordinary intelligence would be unable to know when their compulsive actions would force a person against his will to hire employees he did not need, cannot be sustained....
   (c) When measured by common understanding and practices, the language of the statute provides an adequate warning as to what conduct falls under its ban, and marks boundaries sufficiently distinct for judges and juries fairly to administer the law in accordance with the will of Congress; and the Constitution requires no more....
2. It does not contravene the Due Process Clause of the Fifth Amendment by denying equal protection of the laws to radio-broadcasting employees as a class--even though it provides no punishment for employers violating the policy and leaves other classes of employees free to engage in the practices forbidden to radio workers....
   (a) This question was properly presented to this Court for a decision on an appeal by the Government under the Criminal Appeals Act dismissing an information on the sole ground that the statute is unconstitutional as written....
   (b) It is not within the province of this Court to say that, because Congress had prohibited some

practices within its power to prohibit, it must prohibit all within its power....

3. On its face, the statute does not contravene the First Amendment by abridging freedom of speech; but, since the statute does not mention picketing and it is uncertain on the record in this case whether it would have been applied so as to prohibit peaceful picketing, the question of whether such an application would violate the First Amendment is not before this Court in a form appropriate for decision...

4. On its face, the statute does not violate the provisions of the Thirteenth Amendment prohibiting slavery and involuntary servitude; but no decision is made on the question whether some possible application of it to particular persons in particular sets of circumstances would violate the Thirteenth Amendment, since questions of that kind are not presented in the record in this case in a form appropriate for decision by this Court....

5. The Criminal Appeals Act does not require this Court to pass on constitutional questions prematurely decided by a district court's dismissal of an information which had not been tested by a motion to strike or for a bill of particulars....

68 F. Supp. 845, reversed and remanded.[33]

With regard to parts 3 and 4 of the above summary of the decision when it was stated that a question was not presented in a form suitable for decision, some discussion might be in order.[34] The AFM's motion to dismiss was made only on the grounds that the statute, as written, was in contravention of the First and Thirteenth Amendments with regard to restricting peaceful picketing and imposing involuntary servitude. Also, it will be noted that the statute does not specifically mention picketing or any aspect of the involuntary servitude issue. From this standpoint, then, the application of the statute to cover these specific actions

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[33] U.S. v. Petrillo, 332 U.S. 1, 1-2 (1947).

[34] For a full discussion of these questions in the decision, see: Ibid., 9-13.

did not come from prohibitions specifically written into the act. Rather, they came from the information's charges that Petrillo attempted to compel the radio station to hire unneeded employees by calling a strike and placing a picket in front of the station. "Thus, rather than holding the statute as written to be.... unconstitutional...., the District Court ruled on the statute as it was proposed to be applied by the information as it then read."[35] This constituted a ruling with regard to the information and how the statute was to be applied, and not specifically to the statute as written.

The motion to dismiss only challenged the statute as written. However, if the information had been challenged, the case would have taken a different route to the Supreme than the one taken. Under the Criminal Appeals Act, it would have had to have gone to the Circuit Court of Appeals first. Since the motion to dismiss only challenged the statute as written with not mention with regard to the information, the case could then be directly appealed from the District Court to the Supreme Court. Because the Criminal Appeals Act did not require it, the Supreme Court found it appropriate, under these circumstances, to rule only on the statute as it was written and not on the statute as it was proposed to be applied by the information. With regard to the issues of peaceful picketing and involuntary servitude then, the Court ruled only that the statute, on its face, did not violate

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[35] Ibid., 9-10.

the Constitution. In a sense, the Supreme Court's review of the Lea Act in this situation was of a limited nature.

With regard to the three justices who dissented, their objection to the statute was with respect to its vagueness and indefiniteness regarding the "statutory description of the thing for which force must not be used--that is, 'to compel' a licensee under the Communications Act 'to employ.... any person or persons in excess of the number of employees needed by such licensee to perform actual services.'"[36] It was pointed out that the Lea Act was creating new crimes. As such, common experience had not created any general understanding of their criminality. "Consequently, in order to adequately inform the public of the limitations on conduct, a more precise definition of the crime....[was] necessary to meet constitutional requirements."[37]

Retrial in District Court.--Upon being reversed and remanded by the Supreme Court, the case was retried in District Court with Judge LaBuy presiding. The government filed an amended information near the middle of October, 1947 with the government still charging Petrillo with violation of Section 506 (a)(1) of the Lea Act. In this amended information, all reference to picketing was deleted supposedly as a result of the Supreme Court decision.[38] Then in the

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[36] Ibid., 16.
For the full dissent, see: Ibid., 16-18.

[37] Ibid., 17.

[38] For an account of the filing of the amended information, see: Broadcasting, October 20, 1947, p. 74.

following month, Petrillo only entered a plea of not guilty.[39] In the retrial, no motion to dismiss or petition of any kind was filed with the Court as had been done previously. Also, Petrillo waived the right of jury trial, so the full responsibility for the decision was left in the hands of Judge LaBuy.[40] The decision was handed down by the Judge on January 14, 1948.[41]

Judge LaBuy's Decision.--Judge LaBuy indicated, in his decision, that the key issue in the retrial was the following:

> The amended information charges that the defendant "knowing that the licensee had no need for the services of additional employees" did commit the acts complained of. This allegation is an essential element of the offense charged and must be proven beyond a reasonable doubt.[42]

In an attempt to get at this issue, the Judge presented a rather complete summary of the chain of events which led up to the government's charges.[43] After examining the evidence in this regard, Judge LaBuy finally concluded the following in his decision:

> From the evidence presented during the trial the court is of the opinion that three additional musicians were not needed by the station under its

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[39] Broadcasting, November 17, 1947, p. 19.

[40] New York Times, January 3, 1948, p. 10:2.

[41] U.S. v. Petrillo, 75 F. Supp. 176 (1948).
For some of the news accounts of the proceedings, see: Broadcasting, October 20, 1947, p. 74; November 17, 1947, p. 19; January 5, 1948, pp. 13, 84; January 19, 1948, pp. 11, 87-88; New York Times, November 13, 1947, p. 19:3; December 31, 1947, pp. 1:2, 5:1; January 1, 1948, p. 3:3; January 3, 1948, p. 10:2; January 15, 1948, pp. 1:2, 17:2; Newsweek, January 26, 1948, pp. 23-24.

[42] U.S. v. Petrillo, 75 F. Supp. 176, 180 (1948).

[43] Ibid., 177-79.

> program of using records and transcriptions during 90 per cent of its time. But, is there any evidence in the record which shows that defendant had knowledge or information of, or was advised of the lack of need for additional employees either at the time of the request made in his original letter of May 11, 1946, or at any time during the entire period of negotiations? Nothing contained in the letters and telegrams between defendant and the representatives of the station disclosed to defendant the lack of need for additional employees as a reason for rejecting the defendant's demands. Neither does the testimony in this case show that the defendant had knowledge of or was told that the station had no need for additional employees. There is no evidence whatever in the record to show that defendant had knowledge of or was informed of the lack of need for additional employees prior to the trial of this case.
>
> For the reasons above stated the court is of the opinion that the prosecution has failed to prove the defendant guilty of the violation charged.[44]

Summing up.--Thus, the Lea Act--an amendment to the Communications Act--had stood the test of a limited review by the Supreme Court. Representative Lea was not too happy with the acquittal of Petrillo and called it unwarranted.[45] However, he noted that the decision did not bar further prosecutions since the Act still stood despite the fight to defeat it. As one observer put it: "The union thus won the battle, but lost the war."[46] What was Petrillo's reaction to the battle in the courts? Would the AFM seek further test in the courts? Some clue was given in this regard in a statement by Petrillo reported in the New York Times:

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[44] Ibid. 181.

[45] For Lea's comments, see: Broadcasting, January 26, 1948, p. 47.

[46] Charles H. Tower, "Labor Relations in the Broadcasting Industry," Law and Contemporary Problems, 23 (Winter, 1958), p. 99.

> "The Supreme Court has spoken. This is my country and the Supreme Court makes the final rulings on its laws. No one will say that Jim Petrillo fought his country or the Supreme Court. I thought that I had the law on my side, and I made the best fight I knew how. The Supreme Court has spoken and I bow to its dictates."[47]

The AFM did not make any further efforts to contest the statute in the courts. It will be remembered that two weeks prior to the time the decision was handed down, the AFM had instituted the recording ban of 1948. Wishing to devote all energy to this endeavor, the AFM definitely wanted to put an end to the litigation over the Lea Act.[48] However, this did not stop the Federation and its officials from working for the repeal of the Act in Congress.[49] Also, it will be noted that the Petrillo case represented the only action brought by the federal government in the courts under the Lea Act.[50]

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[47] New York Times, June 24, 1947, p. 5:6.

[48] This point was emphasized by Petrillo in his report to the AFM convention, see: AFM. Proceed., 1948, p. 93.

[49] This was suggested by Petrillo in: James C. Petrillo, "An Important Message to all Members of the American Federation of Musicians," International Musician, 49 (September, 1950), pp. 8-9.

For evidence of a general growing concern for greater participation in the political process, see: Herman D. Kenin, "It's Still a Depression for America's Musicians," American Federationist, 66 (January, 1959), pp. 15-16; James C. Petrillo "Musicians' Fight," American Federationist, 62 (June, 1955) pp. 18-22; James C. Petrillo, "The Tax of No Return," American Federationist, 62 (December, 1955), pp. 13-14; AFM. Proceed., 1960, pp. 82-91, 102-117.

[50] The Lea Act has been given some incidental consideration in two civil cases and has been construed in a series of decisions in the New York state courts. No discussion of these cases has been included in this study because it is felt that they do come within the realm of the problem under study. For

B. Effectiveness of the Lea Act

Unwanted Musicians.--One of the principal goals of the policies of the AFM which tended to interfere with broadcast programming, as has been emphasized previously, was to increase employment of its members in the broadcasting industry. Also, it will be noted that this had been a consistent and continuing goal of the policies and actions of the Federation in all of its spheres of influence, not just with regard to broadcasting. One of the reactions of the industry to this goal, and the AFM actions to implement it, was that it forced broadcasters to employ more musicians than they felt they needed and hence, represented an undesirable economic burden. One of the objectives of the Lea Act was to prevent the AFM from forcing broadcasters to employ more musicians than were needed for the normal conduct of broadcast business. Of all of the specific objectives of the Lea Act, this one relating to "unwanted" musicians was realized to a greater extent than any of the others. The Lea Act alone, however, did not accomplish this result. It was aided by the passage of the Taft-Hartley Act.[51]

One of the most effective means that the AFM had employed to force broadcasters to employ more musicians had been the strikes conducted against the networks with the

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a short discussion and citation of these cases, see: Tower, op. cit., pp. 99-100.

[51]Taft-Hartley was passed June 23, 1947. For text of thebill, see: 61 Stat. 136 (1947).

purpose of getting the networks to apply pressure on their affiliates to come to terms with AFM locals.[52] It will be remembered that these AFM actions involved primarily strikes of musicians on the late evening remote band broadcasts, but did, on occasion, involve studio bands and bands on commercial programs. The procedure involved putting pressure on the network--in many cases, a strike of musicians--during a dispute between an AFM local and one of the network's affiliated stations generally over how many musicians the affiliate should employ. In nearly every case, the number of musicians that the AFM local wanted the affiliate to employ was a number in excess of the number that the affiliated wanted or allegedly needed to employ. Rather than suffer prolonged disruption of network service, it was hoped by the AFM that the networks would bring pressure to bear on affiliated stations involved to settle such disputes with the Federation's locals. The evidence indicated that this procedure was rather effective, in that, the AFM was able to help its locals achieve settlements, many of which, were considered quite favorable.[53] The evidence, also, indicated that the networks did become involved in the disputes on a number of occasions and, in all probability, did put pressure on affiliates to seek

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[52]For a detailed discussion of this technique, see: Section A of Chapter III.

[53]See Tables 13, 14, and 15 of Chapter III.

settlements with the AFM locals involved. On two occasions, the AFM got one network to stop feeding affiliates network programs involving live music.

This technique of applying economic pressure on the network during a dispute which did not involve them directly constituted a secondary boycott. The secondary boycott has been defined as a "union tactic whereby a dispute with Employer A is used as a justification for putting economic pressure on Employer B."[54] With the passage of Taft-Hartley (Labor Management Relations Act of 1947), the secondary boycott was outlawed.[55] Petrillo admitted to a Congressional investigating committee in early 1948 that Taft-Hartley was preventing the AFM from continuing to use the technique of the "secondary boycott" in their attempts to increase employment.[56] In other words, the AFM discontinued the use of this technique out of fear of violation of Taft-Hartley. Coupled with the Lea Act, the AFM, faced a double threat of action if it continued to use the technique of the secondary boycott to increase employment in radio stations if the employer established that the additional employees were not needed.

Being unable to utilize the secondary boycott without risk of action under Taft-Hartley and with the Supreme Court's

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[54]Charles H. Tower, "Secondary Boycotts: An Outline," Labor Law Journal, 5 (March, 1945), p. 185.

[55]Section 303 of the Act pertains to secondary boycotts, see: 61 Stat. 136, 159 (1947).

[56]U.S. House of Representatives, Committee on Education and Labor, Hearings: Restrictive Union Practices of the American Federation of Musicians, 80th Cong., 2nd Sess., 1948, p. 382.

decision that the Lea Act which prohibited compelling a licensee "to employ....any person or persons in excess of the number needed by such licensee to perform actual services" was not too vague or indefinite so as to avoid prosecution, the AFM began to lose its ability to force broadcasters to employ more musicians than they felt they needed. Shortly after the Supreme Court's decision in mid-1947, WAPO, a radio station in Chattanooga, ceased employing an orchestra of 10 AFM musicians which a station official said had not been used by the station since 1943.[57] It was reported that the annual cost to the station to maintain this orchestra which was not even used was $13,000.[58] About two weeks later, radio station KWK in St. Louis dismissed 10 of the 16 musicians employed by it when its AFM contracts expired.[59] It was reported that there were no reprisals threatened by the Federation. About the same time, Petrillo told a Congressional committee that the Federation had "several thousand men on notice" as a result of the Lea Act.[60]

In September, 1947, Broadcasting reported that a radio station in Rochester, New York had defied the AFM.[61] The

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[57] Broadcasting, July 14, 1947, p. 15.

[58] Ibid.

[59] Ibid., July 28, 1947, pp. 15, 76.

[60] U.S. House of Representatives, Committee on Education and Labor, Hearings: Investigation of James C. Petrillo, the American Federation of Musicians, et. al, 80th Cong., 1st Sess., 1947, p. 195.

[61] Broadcasting, September 15, 1947, p. 60.

station allegedly had told the AFM that if it dared to call a strike, "it would discharge as many musicians as it wanted to."[62] Later in January of 1948, in testimony to a House investigation, Petrillo said the following:

> And, as of this date, since the Lea Bill and Taft-Hartley Bill, we have lost so far $332,000 in wages and in the neighborhood of 164 men in radio.
>
> As the contracts expire in the smaller stations, the musicians are being let out.
>
> So, while the industry that we work for is growing more and more each day, our future is very dark.[63]

In April, 1948, the New York Times carried an editorial commenting on the fact that since the passage of the Lea and Taft-Hartley Acts a great number of radio stations had discharged musicians that they felt were unneeded.[64]

Also, a drop in employment can be detected in Table 11 of Chapter II which reports the employment of musicians in the broadcasting industry as compiled from Federation records. Gross salaries paid to musicians by networks, stations, advertising agencies, and sponsors declined in the three years following the passage of the Lea and Taft-Hartley Acts--1947, 1948, and 1949--nearly six million dollars. Over the three year period, this represented a drop of approximately 23 per cent under the 1946 level. When the 1958 figures are compared with the 1946 figures, the drop in income of

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[62] Ibid.

[63] U.S. House of Representatives, Committee on Education and Labor, Hearings: Restrictive Union Practices of the American Federation of Musicians, 80th Cong., 2nd Sess., 1948, pp. 234.

[64] New York Times, April 20, 1948, p. 12:3.

musicians from broadcasting was even more dramatic. The gross salaries paid by all sources dropped from $25,531,441 in 1946 to $17,862,150.[65] This represented an approximately 8 million dollar drop in income or about 30 per cent under the 1945 level.

With respect to the effectiveness and results of the Lea Act, Charles H. Tower, when manager of the National Association of Broadcasters' Employer-Employee Relations Department, concluded the following:

> The effect of the Lea Act on broadcasting labor relations has been a good deal more significant than the cases [refers to the Petrillo cases and the other cases in which the Lea Act played some part (see Footnote 50 of this chapter)] might indicate. The employment of unwanted staff musicians has ceased to be a problem in station bargaining. The act is not, of course, limited in its application to the employment of standby musicians. Its prohibitions are drawn in the broadest terms--broad enough, in all probability, to cover other instances of featherbedding in broadcasting. The announcer-control issue comes readily to mind. Restrictions on the use of recorded voices or of unpaid public personalities on noncommercial programs may be others. Once agreed to, of course, such commitments are binding until the contract is terminated. Nevertheless, at the bargaining table, the force of the Act may well be behind station management on many of these issues. Broadcasters have been reluctant to use this power because they feel, and rightly, that criminal prosecution is a drastic remedy to be used only as a last resort. Furthermore, they feel that, given any degree of reason, the complex human problems involved in accomodation to changing conditions are, under most circumstances, best worked out in the framework of collective bargaining.[66]

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[65] AFM. Proceed., 1958, pp. 82-86.

[66] Tower, "Labor Relations in the Broadcasting Industry," op. cit., p. 100.

Given the degree to which musicians' employment has dropped in the face of a greatly expanding broadcasting industry, there is certainly evidence that unwanted musicians have ceased to be a problem for broadcasters. No doubt further development in broadcast technology, e.g., higher fidelity recordings and transcriptions, higher quality broadcast film, video tape recordings, etc., has contributed to the loss in musicians' employment. However, with these developments, since the forties, there was no evidence that indicated that the AFM has resisted or attempted to soften the effects of them with the vigor and determination that it did during that decade. Probably in no small measure, the Lea Act coupled with Taft-Hartley has prevented the AFM from continuing to use the same tactics it used during the 1940's to increase employment. In all probability, if the AFM had, it would have run the great risk of a great many legal actions under both laws. In 1949, Petrillo openly admitted that both the Lea Act and Taft-Hartley had hurt the Union's bargaining power considerably.[67] Also, he told his 1950 convention that every time the Federation tried to make a move to improve employment in the broadcasting industry, it was being blocked by the Lea and Taft-Hartley Acts.[68] He further indicated that the AFM was now fighting an up-hill

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[67]James C. Petrillo, "Musicians' Progress," American Federationist, 56 (October, 1949), pp. 34-35.

[68]AFM. Proceed., 1950, p. 91.

battle. He admitted the following: "We have lost a great number of men in radio stations since the passage of the Lea Act." The following year, in an article in the International Musician, Petrillo stated: "The Lea Act prohibits our organization from dealing with radio stations to increase employment opportunities."[69] He further emphasized that, to September, 1950, approximately 600 staff musicians had lost their jobs since the law was passed. With the secondary boycott no longer being used coupled with the prohibitions in the Lea Act, one of the Federation's more restrictive policies with respect to broadcast programming came to an end.

International Ban.--Another specific objective of the Lea Act was to prevent the interference with programs which originated outside the United States. Section 506(a)(6) specifically related to this problem and did prohibit coercive interference with them.[70] The Federation's international ban was put into effect on December 31, 1945, just three and a half months prior to the passage of the Lea Act.[71] Apparently, the Lea Act put a stop to any further activities in this area. At any rate, after the passage of the Act, not a single mention was made in any of the literature reviewed for

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[69]James C. Petrillo, "An Important Message to all Members of the American Federation of Musicians," International Musician, 49 (September, 1950), p. 8.

[70]For text of Section 506(a)(6), see Appendix B.

[71]For more details of the international ban, see Section G of Chapter III.

this study which indicated that the AFM had taken any further action in this direction. If the AFM had done so, in all probability, broadcasters would have seen to it that it would have been aired in the press. On this basis, it can probably be safely inferred that the Lea Act aided substantially in preventing the AFM from continuing its interference with broadcast programs involving music which originated outside the United States and Canada.

Amateur Musicians.--Also, the Lea Act outlawed coercive interference with the broadcasting of "noncommercial educational or cultural programs."[72] The intent of Congress was clear with respect to its application to amateur and school musicians such as the series of concerts which had been broadcast by NBC prior to 1942 originating from the National Music Camp at Interlochen, Michigan which featured the Student Symphony Orchestra. Most of the wrath that had been aroused in this area was created primarily by a single instance of interference with school musicians, the Interlochen affair.[73] Little evidence was found which would support the allegation that the Federation had stopped completely the broadcasting of all amatuer and school musicians by any announced policy on its part. It was suggested previously that what interference may have been caused might have been caused more by the broadcasters themselves rather than by any overt action

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[72]This was the primary purpose of Section 506(a)(5). For text, see Appendix B.

[73]For more details of the Interlochen affair, see Section C of Chapter III.

or announced policy on the part of the Union specifically in this regard. This is, the broadcasters did indicate on several occasions that they believed the AFM did have a policy which prevented them from utilizing amateur and school musicians. No evidence was found which indicated that the Federation had any such announced general policy. The only consistent policy in this regard that could be ascertained was that the AFM objected to the broadcast performances of amatuer and school musicians when they were in competition with the customary employment of professional musicians. It was suggested that possibly broadcasters had imposed on themselves a broadcast ban on amatuer musicians. Since the AFM was "banning" everything else, there must be a ban covering amateur musicians was the kind of thinking suggested which could have produced such a self-imposed ban. If such were the case, Petrillo would have been the last person to inform broadcasters that no such policy existed regarding amateur and school musicians.

About a year after the Lea Act was enacted, a House investigator asked Petrillo about the status of amateur and school music on the air. Petrillo replied:

> Now, of course, with the Lea bill passed, the American Federation of Musicians has no part there at all. We are finished. If the broadcast companies desire to put .../amateur and school musicians/ on the air, that is their business; we will not interfere. We live up to the law as passed by Congress. If Congress says that is the law, then we are a part of this country, and we live up to the law.[74]

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[74]U.S. House of Representatives, Committee on Education and Labor, Hearings: Investigation of James C. Petrillo,

With this kind of an attitude expressed by the AFM leader, the way would seem clear for resumption of such broadcasts that may have been affected by any real or imputed restrictions in this area. During the same investigations, Petrillo expressed a willingness to meet with music educators to formulate a policy with regard to school musicians which would be mutually advantageous to both sides.[75] Representative Kearns, chairman of the investigation, arranged such meetings which resulted in a formal agreement between the Music Educators National Conference, the American Association of School Administrators, and the American Federation of Musicians.[76] Entitled "A Code of Ethics," it was signed by representatives of each group on September 22, 1947.[77] In essence, this agreement delineated very carefully the respective fields of "professional music and music education" in such a way that school musicians would not be in competition with the customary employment of professional musicians.[78] In actuality,

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the American Federation of Musicians, et al., 80th Cong., 1st Sess., 1947, p. 279.

[75] Ibid., p. 264.

[76] U.S. House of Representatives, Committee on Education and Labor, Report: Investigation of James C. Petrillo and the American Federation of Musicians, H.R. Rep. No. 1162, 80th Cong., 1st Sess., 1947, p. 4.

For some of the news accounts concerning the agreement and its negotiations, see: Broadcasting, July 21, 1947, pp. 17, 74; July 28, 1947, pp. 15, 76; New York Times, September 23, 1947, p. 21:2; September 24, 1947, p. 46:3.

[77] For text of the agreement signed, see: U.S. House of Representatives, Committee on Education and Labor, Hearings: Restrictive Union Practices of the American Federation of Musicians, 80th Cong., 2nd Sess., 1948, pp. 363-65.

[78] The agreement that was signed was not the first time

the agreement did little except formalize the already existing policy of the Federation in this regard. Thus, the air had been cleared of misunderstanding and now the broadcasting of school musicians, under terms of the formal agreement, could proceed with little fear of interference from the AFM.

It is a little difficult to access the impact of the Lea Act on the AFM's policies toward amateur and school musicians. Except for a few isolated and one highly publicized incident, little evidence was found which indicated that the AFM had interfered actively to any great extent with the braodcasting of such musicians. No doubt, if broadcasters believed that the Union had some kind of a policy which prevented amateur music broadcasts, amateur and and school musicians might have been kept off the air under such circumstances. If this were the case, the principal effect of the provision in the Lea Act relating to noncommercial educational or cultural programs was that it brought the problem out in the open where a reasonable solution of it could be achieved. In this respect, it could be said that this specific objective of the Lea Act was realized to some extent.

Interlochen.--However, one very specific objective that the framers of the Act had in mind for this provision relating to educational programs--resumption of the Interlochen concerts--was never fully realized. The Interlochen concerts

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that such a settlement had been proposed. As far back as 1939 and 1940, efforts had been made to get resolutions adopted by AFM conventions which called for such a demarcation of professional and amateur activities. However, these efforts had met with failure. See: AFM. Proceed., 1939, pp. 395-96; 1940, pp. 321-22.

were never again carried by any of the networks. However, broadcast concerts of the National Music Camp's Student Symphony Orchestra were resumed on July 1, 1943 on a very limited basis. At that time, WKAR, the educational AM radio station owned and operated by Michigan State University at East Lansing, Michigan, began the exclusive carrying for many years to follow of the Interlochen concerts.[79]

Dr. Maddy, the Camp's director, did make attempts in 1946 and 1948 to get the concerts back on the air on a national basis. A few months after the Lea Act was passed in 1946, Maddy wrote a letter to NBC suggesting that the concerts could be resumed if arrangements could be worked out.[80] In reply to Maddy's letter, NBC informed him that there was no room in its summer schedule for resumption of the Interlochen concerts.[81] Two years later, in 1948, Maddy again tried.[82] According to Maddy, NBC flatly refused his request on the grounds that the Camp was on the AFM's unfair list. With MBS, apparently he did not receive a flat negative answer. At any rate, Maddy made the announcement to the press in the latter part of May, 1948 that Mutual had agreed to

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[79]Robert William Kamins, "The History of Radio Broadcasting and Radio Education at Michigan State College 1917-1947" (Unpublished Master's thesis, Department of Speech, Michigan State University, 1947), p. 36.

[80]New York Times, June 17, 1946, p. 43:1.

[81]Ibid., June 19, 1946, p. 18:6.

[82]For accounts of the 1948 attempts by Maddy, see: Broadcasting, May 31, 1948, p. 26; New York Times, May 22, 1948, p. 17:2; May 28, 1948, p. 26:8.

carry concerts from Interlochen starting on July 5. Almost immediately, MBS officials accused Maddy of making the announcement without consulting them. Emphasizing the tentative nature of any plans that had been made, they were angered at the premature disclosure of them before they had an opportunity to discuss them with the AFM. The result was that MBS withdrew its invitation to Maddy to present the concerts and canceled any plans that it may have had in this regard. MBS said that it felt as if it had been used as an "instrument" in Dr. Maddy's private controversies with Petrillo, the AFM, and the other networks. Thus, the Interlochen concerts were never resumed on a national basis.

Other Lea Act Objectives.--The Lea Act was supposed to provide the broadcasting industry with remedies for such AFM actions as those which affected FM and live TV and was supposed to prevent recurrence of another recording ban. The Lea Act did not prevent the recording ban of 1948 and it did not play any apparent significant part in the settlement of it, either. It was primarily settled through negotiation between the recording industry and the AFM. With respect to the AFM policies affecting FM and live TV, the Lea Act did not have any immediate effect which could be detected. Some of the Federation's policies with regard to these broadcast media remained in effect for nearly two years after the law was enacted. These issues were finally settled during the negotiations for the renewal of the contracts between the networks and the AFM which were to expire on January 31, 1948. To what extent, the possibility of legal action under

the Lea Act influenced the AFM to come to terms when it did with regard to the issues concerning FM and live TV, it is difficult to assess. However, since it was nearly two years before they were settled, it would seem to indicate that the Lea Act was not immediately effective in this regard.

C. Negotiations for Renewal of the Contracts Between the AFM and the Networks Which Were to Expire January 1, 1948 and the Issues Settled During Them

FM.--The FM question was the subject of a series of meetings between the AFM and various groups representing various segments of the broadcasting industry, i.e., the national AM networks, an FM network, the FM Association, the NAB, and a special industry-wide committee created to cope with the problem, during the latter part of 1947.[83] This whole series of meetings can be viewed as part of the general negotiations that went on with respect to the contracts that were to expire on January 31, 1948 between the AFM and primarily the networks. These meetings accomplished very little before the first week in October, 1947. At which time, Petrillo lifted the ban on FM network employment temporarily until the date the present contracts were due to expire.[84] This move marked the first concession that the AFM had made

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[83]For some of the accounts of these earlier meetings, see: AMF. Proceed., 1948, pp. 128-30; Broadcasting, August 4, 1947, pp. 18, 73; September 29, 1947, pp. 13, 73; October 5, 1947, pp. 17, 84; October 20, 1947, pp. 13, 74; New York Times August 20, 1947, pp. 1:2, 14:4; August 27, 1947, pp. 44:2; September 9, 1947, p. 24:6; October 7, 1947, p. 54:2.

[84]Broadcasting, October 6, 1947, p. 17.

thus far regarding the FM problem. The decision allowed the Continental Network, a newly formed exclusive FM network, to start distributing a few programs involving live musicians. However, on October 14, Petrillo withdrew part of the concession that he had made.[85] As of that date, no additional AFM musicians other than those which had already become employed were allowed to play for FM networks. Also at this time, Petrillo reinterated that the prohibitions relating to the dual performance of AFM members simultaneously on AM and FM were still in effect.

In 1947, a great deal of optimism was still being shared by many with regard to FM's future. There was still a rather substantial amount of pressure being exerted for the purpose of settling this problem. In July, a few months prior to the AFM's first concession, the AM networks had been asked when they were going to release music programs for broadcast by FM stations.[86] Network officials stated definitely that they would not release such programs until the AFM officially withdrew its objections. In the following month, a group of industry officials asked the Department of Justice to look into the FM situation for possible violations of the Lea and Taft-Hartley laws.[87] The Department of Justice

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[85] Ibid., October 20, 1947, p. 17.

[86] New York Times, July 25, 1947, p. 34:2.

[87] For some of the accounts concerning the possible action by the Department of Justice, see: Broadcasting, August 25, 1947, pp. 13, 74; September 1, 1947, pp. 13, 75; New York Times, August 20, 1947, p. 14:1; August 22, 1947, p. 9:3; August 29, 1947, p. 18:6.

promised it would do so, but nothing ever resulted from this promise. In addition to this pressure, there was some evidence that some FM stations were defying Petrillo and the AFM by presenting AM network programs involving live music without Union permission.[88] In all probability, the broadcasters who took this course of action did so on the strength of the Lea and Taft-Hartley Acts. In the face of the pressures like the above, it would be difficult for the AFM to hold out indefinitely with regard to this issue.

The break finally came on the eve of the date the contracts were to expire. On January 30, Petrillo agreed to end the ban on the broadcasting of AM network programs by affiliated FM stations.[89] Since negotiations on the other issues were not yet complete, it was agreed by the AFM and the networks to continue the present contracts for an additional sixty days so that the remaining issues could be ironed out.[90] Broadcasting was of the opinion that the way was now clear for the AFM and the networks to come to agreement over the other issues then facing them.[91] By the time the contracts were signed, the FM problem was completely resolved.

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[88] For examples of this alleged defiance, see: New York Times, September 17, 1947, p. 21:3; September 28, 1947, p. 58:2; October 7, 1947, p. 54:2.

[89] New York Times, January 30, 1948, pp. 1:2, 2:3.

[90] Broadcasting, February 2, 1948, pp. 13, 18.

[91] Ibid., p. 13.

Cooperative Programs.--It was also during the negotiations for the 1948 contracts that agreement was reached between the AFM and the industry which allowed musicians to be employed for cooperative programs. It will be remembered that the AFM had a long standing policy which prohibited its members from being employed on such programs.[92] Also, it was during the 1948 contract negotiations that his problem had come to a head over the use of a pianist on a MBS program. It was in this area, that Petrillo made the second major concession. In the closing days of November, 1947, the prohibitions against the employment of AFM members on coop programs was terminated until the present contracts expired.[93] Within a week, Broadcasting reported that live music was added to seven of the coop programs out of the thirty-five that the major networks were presenting.[94] As with the FM problem, the coop program issue was resolved permanently with the signing of the 1948 contracts.

TV.--When the 1948 contracts were signed on March 18, 1948, the AFM prohibition of its members from appearing on live television came to an end, also.[95] The only restrictions left with respect to TV were related to the use of film on TV which utilized AFM members in its production. These latter

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[92]For more details concerning the coop ban, see Section H of Chapter III.

[93]For accounts of the termination of the coop ban, see: Broadcasting, December 1, 1947 pp. 13, 88; New York Times, November 27, 1947, p. 33:3.

[94]Broadcasting, December 8, 1947, pp. 15, 90.

[95]Ibid., March 22, 1948, pp. 13-14.

issues were not settled by the 1948 contracts completely. On March 20, NBC and CBS celebrated the ending of the live TV ban by presenting TV firsts.[96] Both networks presented special music programs. NBC featured the NBC Symphony Orchestra conducted by Arturo Toscanini with CBS featuring the Philadelphia Symphony Orchestra conducted by Eugene Ormandy.

Final Settlement Contained in the 1948 Contracts.[97]--As indicated above, the 1948 contracts covered the following issues that had been plaguing the industry for some time, FM cooperative programs, and live TV. In addition to the contracts signed on March 18, further contracts were signed in the latter part of April covering the wage scales applicable to TV. This issue could not be resolved in time to have it included in the earlier contracts, so special contracts were negotiated and executed covering only this issue. In a letter to all locals upon conclusion of the TV wage agreements, Petrillo notified all members of the Federation of the terms and conditions of the 1948 settlement, thus making it official. The following represents a summary of the resolution of the various issues agreed upon during the negotiation and execution of the 1948 contracts.

FM.--All AFM restrictions affecting musicians'

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[96]"Petrillo Relents," Life, 24 (April 5, 1948), pp. 43-44, 46.

[97]For accounts of the final settlement as established by the 1948 agreements, see: AFM. Proceed., pp. 97-101; Broadcasting, March 22, 1948, pp. 13-14, 86; March 29, 1948, pp. 14, 102; April 12, 1948, p. 29; May 3, 1948, p. 23; Business Week, March 27, 1948, pp. 100-102.
The above serves as documentation for this entire section.

employment on FM were withdrawn. FM networks could employ musicians. AM networks could feed live music programs to affiliated FM stations. AM programs using live music could be presented simultaneously over FM. In other words, the settlement permitted all broadcasters to use AFM musicians on AM and FM, simultaneously and interchangeably. Also, there was no extra fee required for such use.

Coop Programs.--All restrictions with respect to the use of AFM musicians on cooperative programs or any programs of network origin which involved participation or local sponsorship were withdrawn. In short, the AFM's cooperative ban came to a permanent and unqualified end.

TV.--The restrictions applicable to the use of AFM members on live television programs were permanently withdrawn, also. The wage rates to be paid to musicians employed exclusively for TV were set at a level that was below the rates being paid to musicians being employed for radio (AM and/or FM). The agreement was that the TV wage rates would be adjusted upward as the infant TV industry prospered. The lower rates were to be the AFM's contribution to the growth and expansion of the TV industry. In addition, radio staff musicians could be utilized for TV programming. However, if such musicians were used, they must be paid at the full radio wage rates. The agreement provided, with respect to the duplication of radio programs involving live music over TV or vice versa, that an extra fee would be charged for such privileges. With respect to kinescope recordings, these would be allowed for delayed broadcast purposes only. In other words, kines

could be made of live music programs so that networks could provide service to affiliates who were not yet linked to the parent network by coaxial cable or micro-wave relay. However, kinescope recordings could be presented over any key station or affiliate only once. The understanding was that no music on the kines was to be dubbed off for any other purposes. Also, the networks agreed not to sell, lease, or in anyway dispose of such recordings without first obtaining the permission of the AFM.

Network Musicians' Employment.--The original demands that the AFM had made to the networks had included a substantial pay increase and more employment. However, the Federation gave in on these points. The final 1948 contracts with the networks provided for the same number of musicians to be employed and at the same wage rates that had been contained in the contracts that had expired. The Federation made no gains in this area.

It will be noted that most of the outstanding problems between the AFM and the broadcasting industry were resolved by the 1948 settlement.

Reasons Speculated for the Settlement.--Why did Petrillo and the AFM come to terms with the broadcasting industry so completely and quickly as they had? Business Week characterized the 1948 settlement as a surrender on the part of the Union.[98] On the surface, it appeared that Petrillo and the AFM had conceeded on almost every point of contention what

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[98]Business Week, March 27, 1948, p. 100.

had existed between them and the industry. The only issue that remained was concerned with the use of musicians for films produced specifically for TV and the use on TV of films produced primarily for theatre exhibition. In 1948, this issue was not very important. 1948 was the first big year on TV and the industry was greatly interested in exploiting and developing live television programming. In the early years, film--aside from the use of kinescopes for delayed broadcasts--was not extensively used. In this settlement, the surprising thing was the AFM had not even pressed its demands on the networks for higher wages and more employment.

Economics of the Industry.--For one thing, the economic shape of the broadcasting industry in 1948 left something to be desired.[99] Income for that year dropped 40 per cent over the previous one. Both FM and TV were losing propositions. Both media were in their infancy and, at their state of development, represented a financial liability to the broadcasting industry as a whole. When asked why the AFM did not press its demands for higher wages and more employment, Petrillo answered: "They (the networks) simply said they couldn't give us any more money or any more men."[100] Petrillo was a realist and recognized when it was of little use to press for something that, in all likelihood, would be impossible to get.

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[99] See Table 2, Chapter II.

[100] Broadcasting, March 22, 1948, p. 14.

Restrictive Legislation.--Also, the two laws on the statute books--the Lea Act and Taft-Hartley--undoubtedly influenced, to some extent, the AFM's actions in coming to terms with the broadcasting industry. Although neither law had been used very extensively, still there was always a constant threat hovering in the background that they could be if broadcasters became angered enough. Petrillo must have realized that he had been pushing broadcasters almost to the breaking point and that if the AFM continued its present course of action, there was the danger of reaching that point. Then, the probability that the laws might be used would increase. The attitude of the industry toward the AFM and Petrillo was revealed in a survey conducted by a House subcommittee in mid-1947.[101] Some 2,000 questionnaires had been sent out to broadcasters to voice their complaints about their dealings and relationships with the AFM. At the date the results were made public, approximately 1,500 had been returned. Of these, only <u>one</u> had a favorable comment about the Federation. Also, it will be remembered that in connection with the negotiations concerning FM, there had been some threats of legal action if a solution was not worked out. Coupled with the two statutes and the highly unfavorable attitude of the industry, in all likelihood, Petrillo must have realized that if the settlement was delayed much longer,

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[101]U.S. House of Representatives, Committee on Education and Labor, <u>Hearings: Investigation of James C. Petrillo, the American Federation of Musicians, et. al.</u>, 80th Cong., 1st Sess., 1947, p. 192.

the AFM's chances of avoiding legal action would become much less.

The Public Reaction.--The Lea and Taft-Hartley laws were indicative of another pressure on the AFM to come to terms with the industry. There was no doubt that public opinion was mobilized against the AFM and labor in general. The Lea Act represented an expression of public disfavor against the Union specifically. The Taft-Hartley can be viewed as an expression of disfavor toward organized labor in general. Another demonstration that public opinion was unfavorable toward the Union was exhibited by the actions of the House Committee on Education and Labor. Concurrent with the negotiations of the 1948 contracts, this House committee held two investigations of the AFM. A subcommittee listened to testimony in June, July, and August of 1947[102] with the full committee convening in early January, 1948 to hear more testimony.[103] These hearings dealt exclusively with the AFM.

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[102] Ibid.

[103] U.S. House of Representatives, Committee on Education an Labor, Hearings: Restrictive Union Practices of the American Federation of Musicians, 80th Cong., 2nd Sess., 1948.
Although two hearings within the span of less than six months might suggest considerable interest by Congress in the activities of the AFM, these hearings were part of a whole series of them that the House committee was conducting into the general area of organized labor's activities. No specific action or proposal resulted from these hearings in Congress with respect to the Federation.
The principal and most significant result of the first hearings which were headed by Representatives Kearns was that Kearns was instrumental in getting the formal agreement between the AFM and music educators.
The later hearings are significant only to the extent that they represent a very excellent review of the whole sweep of the AFM's policies and practices for the entire decade of the forties up to 1948.

From the testimony presented at them and the comments of the House investigators, it was not difficult to see that the American people, the broadcasting industry, and Congress was getting "fed up" with the actions of the AFM. There was strong evidence that the AFM recognized that this public reaction existed, also. For in January of 1948, the AFM set up a public relations department for the first time in the existence of the organization.[104] Also, the following year, the AFM published a public relations manual for its member locals.[105] Petrillo must have realized that the Federation would not have been able to hold out much longer in coming to terms with the industry in the face of such strong public opposition.

Changed Attitude of the AFM.--With the foregoing considered, the AFM and its officers must have realized that they were fighting a battle with fairly significant odds against them. In the past, the Federation, led by Petrillo, had thought nothing of fighting on several fronts at the same time. In this process, the AFM had angered vast segments of the American public. Under such circumstances, it was almost mandatory for the Federation to change its tactics

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[104] AFM. Proceed., 1948, p. 95.
There had been attempts at three previous conventions to get some kind of public relations department established, but all of these attempts had failed. This would indicate that at least some segments of the AFM were aware of the problem facing the Federation of growing public opposition. See: AFM. Proceed., 1944, p. 191; 1946, p. 253; 1947, p. 279.

[105] AFM, Public Relations Manual for Local Unions (New York: AFM, 1949).

and attempt to recapture some public goodwill if the AFM wanted any room at all in which to operate.[106] On the eve of the 1948 AFM convention, Petrillo was reportedly to have stated that in view of the restrictive labor legislation on the books and all other things considered, that it was unwise for the Federation to continue fighting on so many fronts.[107] He expressed the opinion that the AFM, in the past, had been fighting on too many fronts. Under the present circumstances, he said it would be disasterous to fight on more than one. In January, 1948, the AFM had committed itself to another recording ban. In all probability, the Federation wanted to resolve all of the old issues so that it could devote its full energies to this commitment.[108] Rather early in the negotiations for the 1948 contracts, according to Broadcasting,

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[106]A brief bit of Petrillo's testimony to a Congressional committee in January of 1948 tended to reveal that he had become fully aware that it was essential for the AFM to cultivate some public good will.

> And I say to you gentlemen, while I am talking about the public, I am satisfied that if the public of America knew the plight of the musician, knew what he is up against, that public sentiment would immediately change, and we are today making such a campaign.
>
> We are starting one of the finest campaigns that labor unions have ever started--good clean, no vilification like the National Association of Broadcasters...
>
> ....we are going to tell the people the story exactly as it really is.

See: U.S. House of Representatives, Committee on Education and Labor, Hearings: Restrictive Union Practices of the American Federation of Musicians, 80th Cong., 2nd Sess., 1948, p. 339.

[107]Broadcasting, June 14, 1948, p. 25.

[108]Petrillo expressed this point of view in his report to the 1948 convention with respect to the test cases of the Lea Act. It is felt that this point of view was equally applicable to the 1948 contract negotiations. See: AFM Proceed. 1948, p. 93.

Petrillo had expressed a determination to settle the conflicts, sign a contract, and to start out on a new era with friendlier feelings between the AFM and the industry.[109]

This apparently changed attitude on the part of the AFM along with the other factors indicated above probably account for the most of the mediating circumstances which resulted in the 1948 settlement. Regarding the changed attitude of the Union, a statement released by Petrillo on the occasion of the signing of the 1948 contracts was indicative of this change and also suggested that the AFM and the broadcasting industry were entering a new period where greater cooperation could be expected. With regard to TV, the statement read:

> The AFM fully recognizes the public's stake in television and that was a principal consideration throughout the negotiations. We were determined from the outset that we would go all-out to assist in the development of an art which has great educational and entertainment possibilities for the public. The musicians want to aid television's growth, just as we did in the early days of standard broadcasting.
>
> To prove our good faith, we have pledged that the rate pattern for live music during this development period for television will be reasonable. It will be available on a basis that this new, but growing industry can afford to pay. The industry, likewise has pledged that it will afford opportunity for our musicians to participate substantially in the development of television.[110]

This statement was certainly a far cry from many of the earlier statements of Petrillo with regard to television.

Summing Up.--The final 1948 settlement resolved most of the outstanding issues, problems, and difficulties which

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[109] Broadcasting, November 24, 1947, p. 13.

[110] Ibid., March 22, 1948, p. 13.

existed between the AFM and the broadcasting industry. The only unsettled problems that remained related to the use of musicians on films produced specifically for television and the use on TV of films involving music recorded by AFM members which were produced primarily for theatre exhibition.[111] All

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[111]As was indicated previously, these problems relating to the use of films on TV were probably not too salient during the decade of the forties. As an indication of that, they were not settled until the very early fifties. Since this study was limited to the decade of the forties, only the following brief summary of the settlement of these issues will be included.

The part of the problem that was settled first was with reference to the employment of musicians by the independent film producers for films produced specifically for TV use. This was the subject of agreements between independent film producers and the AFM in mid-1950. In exchange for the right to employ AFM members for such films, the producers agreed to pay five per cent of the gross receipts for the sale or rental of such films when released for exhibition on TV to a trust fund similar to the one established by the agreement ending the recording ban of 1948. This newly created fund was to be used for the same purposes as the recording trust fund. Expenditures from the fund would be controlled by the same trustee. See: Broadcasting, June 12, 1950, p. 52; "53rd Annual Convention," International Musician, 49 (July, 1950), p. 7.

Similar agreements were executed in the following year with the networks. In exchange for the right to employ AFM musicians for films made specifically for TV use, the networks agreed to pay five per cent of the gross revenues from such films to a similar trust fund. Independent stations could enter into the same general kind of an arrangement if they wished to produce films for TV. It was stipulated in these agreements that the networks or stations would not relinquish their control of these films. These agreements were signed in March, 1951. See: Broadcasting, March 19, 1951, pp. 27, 49, 63; James C. Petrillo, "From the President's Office," International Musician, 49 (April, 1951), p. 6. For text of the agreement, see: "Trust Agreement: Television Stations," International Musician, 49 (April, 1951), pp. 7, 20-21, 32.

The above settled the issue of the employment of AFM musicians for the production of films specifically for television. The only issue that remained related to the use on TV of feature films produced with the services of AFM musicians

indications were that the AFM and the broadcasting industry were entering a new era of greater cooperation and more cordial relations. To celebrate this new era and the signing of the 1948 contracts, it was reported by Time that the major networks presented Petrillo with an engraved gold trumpet.[112] The trumpet was the instrument which Petrillo had once made his livelihood before entering Union politics. Aside from the controversy generated by the recording ban of 1948, the press reported no controversies of any consequence between the AFM and the broadcasting industry throughout the remainder of the decade of the 1940's.

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primarily for theatre exhibition. This was first settled with an agreement effective May 14, 1951 with the Hollywood producers. This agreement provided that a film could be released for TV use only if the producer agreed to employ the same number of musicians as had been originally employed for the film for the purpose of re-recording the music that had been utilized in the making of that film. This arrangement proved to be unworkable and was subsequently modified. On September 3, 1952, it was changed to a provision that each of the musicians who had been employed in the production of the film were to receive a re-use payment of $25 before the film could be released for TV use. Then in 1955, it was modified again. It was agreed that the re-use payment would no longer be paid to the individual musicians, but instead, it was to be paid to a trust fund similar to the ones mentioned above. See: U.S. House of Representatives, Committee on Education and Labor, Hearings: Musicians Performance Trust Fund, 84th Cong., 2nd Sess., 1956, p. 48.

It does not appear that the above represented the final settlement with regard to theatre films. A news article in 1960 suggested that the condition for release for TV use was changed back to the 1952 arrangement. That is, the individual musicians who were employed in the production of the theatre film were to receive the re-use payment before the film could be released to TV. See: Wall Street Journal, August 17, 1960, p. 6:1.

This in brief, represents a summary of the way the issues relating to the use of film on TV were resolved.

[112] Time, March 28, 1948, p. 65.

CHAPTER VI

SUMMARY AND CONCLUSIONS

Summary of Findings.--With regard to broadcasting in this country, we have committed ourselves to a federal regulatory policy in which the government licenses qualified persons to operate privately owned broadcast facilities on publicly owned broadcast channels. The licensee is charged with the responsibility that this broadcast operation will serve the "public convenience, interest, or necessity." In this connection both the FCC and the courts have stressed that the individual licensees must bear the major responsibility for the presentation and selection of program material. Also, both the FCC and the Courts have stressed that this responsibility can neither be delegated nor transferred to others, or be unduly affected or restricted by contractual arrangements. Accordingly, the responsibility for maintaining control over programming should not be subject to infringement by outside parties.

However, during the decade of the forties, it has been demonstrated that a number of the policies, practices and activities of the American Federation of Musicians tended to have a restrictive effect upon certain types of broadcast programming, notably programs containing music. Among such policies, practices, and activities of the AFM were the following:

1. Network strikes of remote bands, studio bands, and bands for commercial programs which were associated with local disputes (secondary boycotts). (1940-1946.)

2. Restrictions on employment for FM programs. (1945-1948.)

3. Restrictions on employment for live TV programs. (1945-1948.)

4. Restrictions on the TV use of films producted specifically for theatre exhibition. (1946-1951.)

5. Restrictions on employment for filmed TV programs. (1945-1950.)

6. Recording bans of 1942 and 1948.

7. Ban on the broadcasting of music programs originating outside the U.S. and Canada. (1946.)

8. Policies affecting the broadcast performances of amateur, school, and military musicians. (1940-1947.)

9. Restrictions on employment for cooperatively sponsored radio programs. (1940-1948.)

The above list represents an approximate ordering in terms of their actual restrictiveness with respect to broadcast programming (the most restrictive being listed at the top). Despite the conclusion that some of the policies, with regard to their observable effects, were not very restrictive, the principle still remained in the background that they did represent attempts to exert undue control over broadcast programming by an outside group.

In the process of enforcing its policies and practices which tended to restrict programming, the Federation managed to engender considerable opposition and reaction from numerous segments of the American society. The most notable of these practices in this regard were the Interlochen affair, the recording ban of 1942, and the FM policies. The Interlochen

affair probably contributed more to the public disgrace of the AFM than did any other single incident.

At the culmination of this public disapproval of the AFM, the Lea Act was passed as an amendment to the Communications Act in 1946. One of the chief aims of the legislation was to place restraints on the Federation and its colorful leader, James C. Petrillo, and bar further actions which might cause interference with broadcast programming. Although there was considerable emotionality and bitterness associated with the passage of the Lea Act, some of its more rational supporters saw in the situation involving the AFM the danger that broadcasting could become unduly restricted by groups and organizations for strictly private gain or interest, thus negating the "public convenience, interest, or necessity" philosophy of federal regulatory policy. Although it might be argued that such considerations were not the primary motivations in the passage of the Act, they were none the less present. Two provisions of the law provide evidence of this. They forbid coercive interference with educational and international broadcast programs.

Subsequently, the Lea Act was approved by the Courts. Although the legislation was not immediately and entirely successful in causing the Federation to put a stop to its restrictive actions in the area of broadcast programming, it undoubtedly made the Union fully cognizant of the growing and widespread public disapproval and opposition to its policies and activities. Ultimately, the American Federation of Musicians had to bow to the public will. By 1948, the Union

had withdrawn by choice or force nearly every one of its policies of a restrictive nature which tended to affect broadcast programming.

One Last Consideration.--Behind every one of the AFM's policies affecting programming can be detected devotion to one of its primary goals as a labor organization: protection of employment opportunities of its members. After the disastrous unemployment which resulted from the introduction of the sound motion picture, the AFM tended to view all technological innovation within its sphere of influence with suspicion, the broadcasting industry not being exempted. Also, the Union feared that the growing reliance on the use of "mechanized" or recorded music, in all of its forms, for commercial purposes would drastically reduce musicians' employment opportunities. The AFM's policies and practices affecting broadcasting outlined in this study, were attempts on the part of the Union to ameliorate what it considered to be the effects or possible effects on employment resulting from technological innovation and the commercial use of recorded music. There is little doubt that musicians' employment since the mid-forties has been decreasing. It is very possible to argue convincingly that much of this decreased employment can be traced to technological innovation and the commercial use of recorded music.

However, Petrillo, the fiery leader of the AFM, was quick to point out that the deleterious effects of the situation did not stop with just decreasing professional musicians' employment. In essence, his argument was as follows. Such

a situation also endangered America's musical culture. With decreased professional employment opportunities, talented persons would be discouraged from pursuing instrumental music as a career. This would tend to narrow the base from which first-class musicians could emerge and develop. Not every career musician will ultimately develop into a first-class instrumentalist. It can be argued that, in order to insure an adequate supply of such instrumentalists, there must be a broad base of practicing or professional musicians in the field. Also, the lack of employment opportunities would prevent or at least make it considerably more difficult for the young professional who might decide to pursue a music career to gain the experience and competence necessary (which is needed in addition to early training and practice) in order to develop into a top-flight, accomplished instrumentalist. The long range effect could very well be a serious shortage of high calibre musicians. Composers can create vast quantities of beautiful music, but before it can have its full impact on culture, it must be interpreted by performing artists. In this respect, the instrumentalist performs a very vital service. A vital growing musical culture needs and demands an adequate supply of first class, accomplished instrumentalists, in addition to creative composers. With either element missing, musical culture will suffer.

Despite the immediate and selfish concern for the protection of its members' employment, the AFM also showed some concern for these aspects of the problem. This is demonstrated by the Union's establishment of the Recording and Transcription

Fund and ultimately the Musicians Performance Trust Funds. The earlier fund, the Recording and Transcription Fund, was solely administered by the AFM. Less than one per cent was utilized for administration. It was used almost entirely for payments to musicians who performed for free public concerts all over the United States. The Musicians Performance Trust Funds are administered by an independent trustee who has no connection with either the contributors to the funds or the American Federation of Musicians. The use of these funds is not restricted to just providing employment opportunities for AFM members. Non-union musicians can receive payments from these funds. Any live music activity can be subsidized if it is deemed by the trustee to be worthy. It is very doubtful if these funds would have ever been established if it had not been for the stubborn insistence of the Federation. The radio and recording industries vehemently fought the establishment of these funds. This suggests that the AFM was possibly motivated by other considerations above and beyond the immediate and selfish interest with respect to the economic welfare of its members.

However, the radio industry, for the most part, throughout the decade of the forties, demonstrated little concern for possible long range effects on music culture which might result from technological innovations and their commercial use. Generally, the industry seemed content to reap the profits from the use of recorded music with little interest in the welfare of the instrumentalists who made it possible for it to do so. The industry seemed little concerned about the

possibility that in the pursuit of its short term goal of maximizing profits that there could be, in the long run, a shortage of top-flight instrumentalists to make high quality recorded music in its various forms. What the radio industry apparently failed to recognize was, that despite its reliance on recorded music, in the long run, it would still need the professional musician. Actually, it is to the economic advantage of the broadcasting industry that there be maintained an adequate supply of accomplished instrumentalists. The technology has not replaced musicians entirely; the machine still, by and large, must depend upon their performance. It would seem that the broadcasting industry should assume some of the responsibility for maintaining an adequate supply of them. However, in general, it has not seen fit to do this. In view of the broadcast industry's rather extensive reliance on recorded music for commercial purposes, it would seem that some sort of plan should be worked out, possibly patterned after the trust funds, to which broadcasters would be encouraged to contribute and which would be utilized to foster live music culture.

In this area, there is much that can be said in favor of the AFM and little that can be said in favor of the broadcasting industry. It might be argued that the so-called aid to music culture fostered by the AFM is in actuality still nothing but selfish interest and an elaborate job protection scheme. In this situation, it is felt that the motives, as such, are not important. What is important is that the AFM has recognized that its economic future is closely tied to

the live music culture of the nation. With this in mind, the Union has turned to a course of action, in the case of the trust funds, which can be mutually advantageous to both its members' economic interest and the nation's live music culture. The broadcasting industry's course of action, on the contrary, during the forties, largely failed to consider the cultural aspects of this problem.

In pursuit of the objectives of protecting employment opportunities and fostering live music during the forties, the Federation made one serious error. It alienated the public because of some of the tactics it employed. It might have pursued a course of action which would have engendered less public animosity. The Federation should have realized that any hope of fully achieving its ends would require public approval and support. Also, Petrillo and the Federation should have listened to former AFM president Weber's advice in 1939 against enforcing policies, regardless of the legitimacy of the end, which involved exerting control over material to be broadcast. Weber must have realized that if the Federation got itself too heavily involved in policies of this nature that it would eventually get itself into difficulty. Such was the case during the decade of the forties.

Suggestions for Further Research.--With regard to the general problem of control being exerted over broadcast programming from organized groups, there are a number of areas that can be approached for study. The American Federation of Musicians is only one of the many labor unions associated with broadcasting. Studies could be made of the impact of the

policies, practices, activities, work rules, etc. of other broadcast unions upon programming. Also, in addition to labor organizations, there are a number of other organizations which appear to exert some control over broadcast programming. One such group of organizations is the so-called music licensing organization such as ASCAP, BMI, and SESAC. Professional, amateur, and school athletic organizations are among other groups that might be studies for their impact on broadcast programming. This class of organizations would include, for example, the National Boxing Association, the Amateur Athletic Association, and the National Collegiate Athletic Association, as well as many others. These are a few suggestions for further research in the general problem area with which this study has been concerned.

APPENDIX A

THE TEXT OF THE PROPOSED VANDENBERG BILL

Broadcasting of Noncommercial, Cultural or Educational Programs

SEC. 330. It shall be unlawful for any person, or any person representing an organization or group, to interfere with, intimidate any person or persons, hinder, extort, delay, prevent, or conspire with other persons for the purpose of hindering, delaying, interfering with, or stopping the production or transmission, by means of any radio station of any noncommercial educational or cultural program presented by any academically accredited and tax-exempt educational institution, prepared and planned for presentation by radio or in the process of being transmitted by radio stations, and it shall likewise be unlawful for any person as a part of a group or organization to threaten or intimidate any other person for the purpose of preventing by group action the operation of any broadcasting station while preparing for or in the operation of broadcasting such noncommercial educational or cultural programs, unless such interference, work stoppage, or group action is part of a general action for other purposes and is of general and broader nature or purpose than to prevent or interfere with the broadcasting of such noncommercial educational and cultural programs: Provided, That such radio station or stations have agreed to broadcast such programs and that no service, money, or other valuable consideration is directly or indirectly paid or promised to, or charged or accepted by such station from any person for broadcasting or agreeing to broadcast such program and no service, money, or other valuable consideration is directly or indirectly paid or promised to, or charged or accepted by the persons producing or participating in such program from such station or from any commercial sponsor, for services rendered in producing or participating in such program.

"Definition"

"To conspire, for the purposes of this section, shall mean to plan with others, to hold meetings for the purpose of planning, to take action as the result of a plan or purpose--such as united stoppage of work at the radio plant, or to

write communications urging interference by action or by word of mouth to induce action for purpose of interference.

Source.--90 Cong. Rec. 9431-32 (1944).

APPENDIX B

THE TEXT OF THE LEA ACT

Coercive Practices Affecting Broadcasting

SEC. 506. (a) It shall be unlawful, by the use or express or implied threat of the use of force, violence, intimidation, or duress, or by the use or express or implied threat of the use of other means, to coerce, compel or constrain or attempt to coerce, compel, or constrain a licensee--

(1) to employ or agree to employ, in connection with the conduct of the broadcasting business of such licensee, any person or persons in excess of the number of employees needed by such licensee to perform the actual services; or

(2) to pay or give or agree to pay or give any mondy or other thing of value in lieu of giving, or on account of failure to give, employment to any person or persons, in connection with the conduct of the broadcasting business of such licensee, in excess of the number of employees needed by such licensee to perform actual services; or

(3) to pay or agree to pay more than once for services performed in connection with the conduct of the broadcasting business of such licensee; or

(4) to pay or give or agree to pay or give any money or other thing of value for services, in connection with the conduct of the broadcasting business of such licensee, which are not to be performed; or

(5) to refrain, or agree to refrain, from broadcasting or from permitting the broadcasting of a noncommercial educational or cultural program in connection with which the participants receive no money or other thing of value for their services, other than their actual expenses, and such licensee neither pays nor gives any money or other thing of value for the privilege of broadcasting such program nor receives any money or other thing of value on account of the broadcasting of such program; or

(6) to refrain, or agree to refrain, from broadcasting or permitting the broadcasting of any radio communication originating outside the United States.

(b) It shall be unlawful, by the use or express or implied threat of the use of force, violence, intimidation or duress, or by the use or express or implied threat of the use of other means, to coerce, compel or constrain or attempt to coerce, compel or constrain a licensee or any other person--

(1) to pay or agree to pay any exaction for the privilege of, or on account of, producing, preparing, manufacturing, selling, buying, renting, operating, using, or maintaining

recordings, transcriptions, or mechanical, chemical, or electrical reproductions, or any other articles, equipment, machines, or materials, used or intended to be used in broadcasting or in the production, preparation, performance, or presentation of a program or programs for broadcasting; or

(2) to accede to or impose any restriction upon such production, preparation, manufacture, sale, purchase, rental, operation, use, or maintenance, if such restriction is for the purpose of preventing or limiting the use of such articles, equipment, machines, or materials in broadcasting or in the production, preparation, performance, or presentation of a program or programs, for broadcasting; or

(3) to pay or agree to pay any exaction on account of the broadcasting, by means of recordings or transcriptions, of a program previously broadcast, payment having been made, or agreed to be made, for the services actually rendered in the performance of such program.

(c) The provisions of subsection (a) or (b) of this section shall not be held to make unlawful the enforcement or attempted enforcement, by means lawfully employed, of any contract right heretofore or hereafter existing or of any legal obligation heretofore or hereafter incurred or assumed.

(d) Whoever willfully violates any provision of subsection (a) or (b) of this section shall, upon conviction thereof, be punished by imprisonment for not more than one year or by a fine of not more than $1,000, or both.

(e) As used in this section the term "licensee" includes the owner or owners, and the person or persons having control or management, of the radio station in respect of which a station license was granted.

Source.--60 Stat. 89 (1946).

BIBLIOGRAPHY

Books

Archer, Gleason L. History of Radio to 1926. New York: American Historical Society, Inc., 1938.

Banning, William P. Commercial Broadcasting Pioneer; The WEAF Experiment 1922-1926. Cambridge: Harvard University Press, 1946.

Barzum, Jacques. Music in America. Garden City, N.J.: Doubleday, 1956.

Carpenter, Pauls S. Music, an Art and a Business. Norman: University of Oklahoma Press, 1950.

Chase, Gilbert (ed.). Music in Radio Broadcasting. New York: McGraw-Hill Book Co., Inc., 1946.

Emery, Walter B. Broadcasting and Government: Responsibilities and Regulations. East Lansing: Michigan State University Press, 1961.

Forkosch, Morris D. A Treatise on Labor Law. Indianapolis: Bobbs-Merril Co., Inc., 1953.

Head, Sydney W. Broadcasting in America. Boston: Houghton Mifflin Co., 1956.

Landry, Robert J. This Fascinating Radio Business. Indianapolis: Bobbs-Merill, Co., 1946.

_____. Who, What, Why is Radio? New York: George W. Stewart, Publisher, Inc., 1942

LaParde, Ernest. Broadcasting Music. New York: Rinehart and Co., Inc., 1947.

Leiter, Robert D. The Musicians and Petrillo. New York: Bookman Associates, Inc., 1953.

Maclaurin, W. Rupert. Invention and Innovation in the Radio Industry. New York: Macmillan Co., 1949.

Mellers, Wilfrid. Music and Society. New York: Roy Publishers, 1950.

Moser, J. G., and Richard A. Lavine. Radio and the Law. Los Angeles: Parker and Co., 1947.

Partridge, Gordon R. A Dictionary of Electronic Terms. 4th ed. Chicago: Allied Radio Corporation, 1956.

Reynolds, Lloyd G. Labor Economic and Labor Relations. 2nd ed. rev. Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1956.

Ross, Murray. Stars and Strikes. New York: Columbia University Press, 1941.

Siepmann, Charles A. Radio Television and Society. New York: Oxford University Press, 1950.

_____. Radio's Second Chance. Boston: Little, Brown and Co., 1946.

Twentieth Century Fund. How Collective Bargaining Works. New York: American Book-Stratford Press, Inc., 1942.

Warner, Harry P. Radio and Television Rights. New York: Mathew Bender and Co., Inc., 1953.

White, Llewellyn. The American Radio. Chicago: University of Chicago Press, 1947.

Journal Articles

Aaron, Benjamin. "Governmental Restraints on Featherbedding," Stanford Law Review, 5 (July, 1953), 680-721.

Bartlett, Kenneth G. "Trends in Radio Programs," American Academy of Political and Social Science. Annals, 213 (January, 1941, 15-25.

Commons, John R. "Types of American Labor Unions.--The Musicians of St. Louis and New York," Quarterly Journal of Economics, 20 (May, 1906), 419-42.

Countryman, Vern. "The Organized Musicians: I," University of Chicago Law Review, 16 (Autumn, 1948), 56-85.

_____. "The Organized Musicians: II," University of Chicago Law Review, 16 (Winter, 1949), 203-297.

Daykin, Walter L. "Featherbedding," Labor Law Journal, 7 (November, 1956), 699-710.

Emery, Walter B. "An Ambivalent Congress--and a Frustrated FCC," NAEB Journal, 19 (March-April, 1960), 64-75.

_____. "Legal Restrictions on the Use of Program Materials," Journal of Broadcasting, 4 (Summer, 1960), 241-52.

"Featherbedding and Taft-Hartley," Columbia Law Review, 52 (December, 1952), 1020-33.

Gilbert, Robert W. "'Residual Rights' Established by Collective Bargaining in Television and Radio," Law and Contemporary Problems, 23 (Winter, 1958), 102-124.

"In General--State Court May Enjoin Activity Allegedly in Violation of Federal Criminal Antifeatherbedding Statute," Harvard Law Review, 68 (January, 1955), 550-52.

"James C. Petrillo," Current Biography (1940), 650-52.

"Lea Act, Taft-Hartley and State Remedies for Featherbedding," Columbia Law Review, 55 (May, 1955), 754-62.

Lunde, Anders S. "The American Federation of Musicians and the Recording Ban," Public Opinion Quarterly, 12 (Spring, 1948), 45-56.

Rodriguez, E. C. "The Lea Act: An Enactment to Proscribe Certain Coercive Practices Affecting Broadcasting," Georgetown Law Journal, 35 (November, 1946), 79-91.

Roquel, W. A. "The Petrillo Problem," Southwestern Law Journal, 2 (Spring, 1948), 211-25.

Silverberg, Herbert T. "Authors' and Performers' Rights," Law and Contemporary Problems, 23 (Winter, 1958), 125-64.

Tower, Charles H. "Labor Relations in the Broadcasting Industry," Law and Contemporary Problems, 23 (Winter, 1958), 62-101.

_____. "Secondary Boycotts: An Outline," Labor Law Journal, 5 (March, 1954), 183-88.

"Validity of the Lea Act Under the Fifth Amendment," University of Pennsylvania Law Review, 96 (November, 1947), 135-36.

News Periodicals

Business Week. 1943-1948

New York Times. 1940-1950, 1959

Newsweek. 1942-1950.

Time. 1942-1949.

United States News and World Report. 1946.

Wall Street Journal. 1960.

Broadcasting Industry Periodicals

Broadcasting. 1941-1951, 1959.

Broadcasting Yearbook. 1941-1951.

National Association of Broadcasters. *Special A. F. of M. Bulletin*. 1942-1945. (This periodical is contained in the bound volumes of the *N.A.B. Reports*, Vols. 10-13, located in the National Association of Broadcasters' library in Washington, D.C.)

"Two Exciting Decades," *Broadcasting*, October 16, 1950, 67-168.

Union Publications and Articles

American Federation of Musicians of the United States and Canada. *Constitution: By-Laws and Policy of the Federation*, 1958.

_____. *Constitution: By-Laws and Policy of the Federation*, 1959.

_____. *Crescendo*. New York: American Federation of Musicians of the United States and Canada, N.D. [1959?].

_____. *Diminuendo*. New York: American Federation of Musicians of the United States and Canada, 1954.

_____. *The Fifth Freedom*. New York: American Federation of Musicians of the United States and Canada, N.D. [1952?].

_____. *Proceedings*. 1939-1951, 1958, 1960.

_____. *Public Relations Manual for Local Unions*. New York: American Federation of Musicians of the United States and Canada, 1949.

_____. *The Record on Records*. New York: American Federation of Musicians of the United States and Canada, N.D. [1948?].

_____. The Story of the American Federation of Musicians. American Federation of Musicians of the United States and Canada, 1953.

Cluesmann, Leo. "Music in the Public Interest," International Musician, 49 (June, 1951), 6-7.

_____. "Music's Plight," American Federationist, 62 (October, 1955), 1.

"Free Concerts Huge Success in Philadelphia," American Federationist, 54 (October, 1947), 34.

"53rd Annual Convention," International Musician, 49 (July, 1950), 7.

Hume, Paul. "A Lot of D.C. Music is Given for Free," International Musician, 51 (May, 1953), 8.

"Joseph N. Weber: Master Builder of the American Federation of Musicians," American Federationist, 47 (July, 1940), 14-15.

Kenin, Herman D. "It's Still a Depression for America's Musicians," American Federationist, 66 (January, 1959), 15-16.

"Musicians Want Work," American Federationist, 50 (February, 1943), 23.

"Musicians Will Give U.S. Free Concerts," American Federationist, 54 (May, 1947), 34.

National Association of Broadcast Engineers and Technicians, Constitution: International By-Laws, 1959.

Padway, Joseph A. "Are Royalties Wrong?" American Federationist, 52 (April, 1945), 6-7, 34-35.

_____. "Musicians' Case," American Federationist, 51 (September, 1944), 12-14.

Petrillo, James C. "Don't Musicians Have the Right to Live," American Federationist, 64 (March, 1957), 10-11, 31.

_____. "From the President's Office," International Musician, 49 (April, 1951), 6.

_____. "An Important Message to all Members of the American Federation of Musicians," International Musician, 49 (September, 1950), 8-9.

_____. "Musicians' Fight," American Federationist, 63 (June, 1955), 18-22.

_____. "Musicians' Progress," American Federationist, 56 (October, 1949), 33-35.

_____. "The Tax of No Return," American Federationist, 62 (December, 1955), 13-14.

_____. "Union Musician and School Musician," International Musician, 48 (November, 1949), 10.

"Plight of the Professional Musician," American Federationist, 49 (October, 1942), 8.

"Promoting Employment and Live Music," International Musician, 51 (November, 1952), 11.

Quinto, Leonard. "Music Comes to Disabled Veterans," International Musician, 51 (May, 1953), 6, 8.

"Reproduction of a Letter from Chief Justice Earl Warren to James C. Petrillo," American Federationist, 61 (January, 1954), 13.

"Trust Agreement: Television Stations," International Musician, 49 (April, 1951), 7, 20-21, 32.

Contemporary Periodical Articles

Antrim, Doron K. "Importance of Music in Wartime Industry," Etude Music Magazine, 61 (February, 1943), 99, 130, 136.

Carson, Saul. "Television: Historic Weekend; Petrillo's Ban Lifted," New Republic, 118 (April 5, 1948), 22-23.

Coughlan, Robert. "Music's Stormy Petrillo," Reader's Digest, 41 (October, 1942), 77-81.

_____. "Petrillo: Little Caesar of Symphony and Swing Wages War on Juke Boxes, Musical Children, Army Bands," Life, 13 (August 3, 1942), 68-76.

DeVore, Nicholas. "For Bigger and Better Shellacking: Possible Solution for Petrillo Ban," Musician, 49 (April, 1944), 61-62.

_____. "Pegler Piffle," Musician, 49 (November, 1944), 197-99.

_____. "Petrillo Ban," Musician, 48 (August, 1943), 94.

Diamond, Milton. "Following the Ban--The Petrillo Deal," Saturday Review of Literature, 32 (January 29, 1949), 51-52.

"Don't Blame Petrillo, He's Been Satisfied," Saturday Evening Post, 218 (January 26, 1946), 108).

Frazier, George. "Santa Claus with a Horn," Collier's 119 (March 8, 1947), 17, 83-84.

Gottlieb, Bill. "Dragon or St. George?" Saturday Review of Literature, 30 (November 29, 1947), 47-48.

Gould, Jack. "Portrait of Musicians' Leader: James C. Petrillo, Head of the American Federation," New York Times, September 1, 1940, IX, 5:5.

Hughes, N. "In Defense of Petrillo," American Mercury, 63 (December, 1946), 759-60.

James, Ed. "Will Petrillo Unseat the Jockeys," American Magazine, 144 (December, 1947), 30-31, 82-88.

Kolodin, I. "Pax Petrillo," Saturday Review of Literature (Music Supplement), 30 (August 30, 1947), 4.

Lemmon, B. "School Music Broadcasts Everywhere: Music and American Youth Program," Etude Music Magazine, 59 (October, 1941), 654, 704.

March, B. "Music is Proving a War-Time Need," Musician, 50 (March, 1945), 51-52.

McDermott, William F. "Art Goes Camping," Rotarian, 64 (June, 1944), 28-30.

Moore, D. "Importance of Music in Wartime," Saturday Review of Literature, 26 (January 30, 1943), 12.

Pegler, Westbrook. "Thieves with Union Cards," Collier's 111 (January 9, 1943), 31, 30.

"Petrillo and Interlochen," New Republic, 112 (February 19, 1945), 246.

"Petrillo Relents," Life, 24 (April 5, 1948), 43-44, 46.

"Petrillo Stands Firm," Life, 23 (December 15, 1947), 40-41.

"Petrillo vs. the People," Collier's, 117 (February 15, 1946), 90.

"Petrillo Would Bar Foreign Broadcasts," Nation, 162 (January 5, 1946), 3.

"Pied Piper of Chi," Time, 51 (January 26, 1948), 18-22.

"Portrait," Life, 24 (June, 1948), 111.

Pringle, Henry F. "The Controversial Mr. Fly," Saturday Evening Post, 217 (July 22, 1944), 9-10, 40-42.

Riesel, Victor. "Petrillo of the Musicians Union," American Mercury, 63, (July, 1946), 56-53.

Revel, William D. "How Music Can Help Win the War," Etude Music Magazine, 60 (November, 1942), 741, 779.

Smith, Bernard B. "Is There a Case for Petrillo?" New Republic 112 (January 15, 1945), 76-79.

_____. "What's Petrillo Up To?" Harper's Magazine, 186 (December, 1942), 90-97.

Stanley, Frank. "Tycoons of the Turntable," Collier's, 119 (March 22, 1947), 18-19, 49, 53.

Williams, C. "Mr. Petrillo's Hopeless War," Nation, 155 October 3, 1942), 291-92.

U.S. Government Documents

U.S. Bureau of Public Inquiries, Office of War Information. United States Government Manual, Fall, 1942.

U. S. Congressional Record. Vols. 88-92.

U.S. Federal Communications Commission. Annual Report. 1937-1941, 1945-1953.

_____. An Economic Study of Standard Broadcasting. October 31, 1947. (Mimeographed.)

_____. In the Matter of Editorializing by Broadcast Licensees. Docket No. 8516, June 2, 1949. (Mimeographed.)

_____. Public Service Responsibility of Broadcast Licensees. Report, March 7, 1946.

_____. Radio and Television Broadcasting Primer. INF Bulletin No. 2, April, 1946. (Mimeographed.)

_____. Report on Chain Broadcasting. Docket No. 5060, May 2, 1941.

_____. Statistics of the Communications Industry in the United States. 1939-1949.

U.S. Federal Register. Vols. 4-12, 17.

U.S. House of Representatives, Committee on Education and Labor. Hearings: Investigation of James C. Petrillo, the American Federation of Musicians, et. al. 80th Cong., 1st Sess., 1947. Wash., D.C.: GPO, 1947.

_____. Hearings: Musicians Performance Trust Fund. 84th Cong., 2nd Sess., 1956. Wash., D.C.: GPO, 1956.

_____. Hearings: Restrictive Union Practices of the American Federation of Musicians. 80th Cong., 2nd Sess., 1948. Wash., D.C.: GPO, 1948.

_____. Report: Investigation of James C. Petrillo and the American Federation of Musicians. H.R. Rep. No. 1162. 80th Cong., 1st Sess., 1947. Wash., D.C.: GPO, 1947.

_____. Report: Musicians Performance Trust Fund. 84th Cong., 2nd Sess., 1956. Wash., D.C.: GPO, 1956.

U.S. House of Representatives, Committee on Interstate and Foreign Commerce. Hearings: Radio Frequency Modulation. 2 pts. 80th Cong., 2nd Sess., 1948. Wash., D.C.: GPO, 1948.

_____. Hearings: Interference with Broadcasting of Noncommercial Educational Programs. 79th Cong., 1st Sess., 1945. Wash., D.C.: GPO, 1945.

_____. Report: Prohibiting Certain Coercive Practices Affecting Broadcasting. H.R. Rep. No. 1508, 2 pts. 79th Cong., 2nd Sess., 1946. Wash., D.C.: GPO, 1946.

U.S. Senate, Committee on Interstate and Foreign Commerce. Hearings: FCC Policy on Television Freeze and other Communications Matters. 82nd Cong., 1st Sess., 1951. Wash., D.C.: GPO, 1951.

_____. Hearings: Progress of FM Radio. 80th Cong., 2nd Sess., 1948. Wash., D.C.: GPO, 1948.

_____. Hearings: Use of Mechanical Reproduction of Music. 77th Cong., 2nd Sess., 1942. Wash., D.C.: GPO, 1943

_____. Report: Amendment to the Communications Act. S. Rep. No. 9. 79th Cong., 1st Sess., 1945. Wash., D.C.: GPO, 1945.

_____. Report: Investigation of Certain Practices of the American Federations of Musicians and its President, James C. Petrillo. S. Rep. No. 1614. 77th Cong., 2nd Sess., 1942. Wash., D.C.: GPO, 1942.

U.S. Statutes at Large, Vols. 35, 39, 47-49, 60-61.

Case Material

Bellingham Broadcasting Co. et al., 8 F.C.C. 159 (1940).

National Broadcasting Company v. United States, 319 U.S. 190 (1943).

United States v. American Federation of Musicians, 47 F. Supp. 304 (1942).

United States v. American Federation of Musicians, 318 U.S. 741 (1943).

United States v. Petrillo, 68 F. Supp. 845 (1946).

United States v. Petrillo, 332 U.S. 1, 91 L.ed. 1877 (1947).

United States v. Petrillo, 75 F. Supp. 176 (1948).

Unpublished Material

Carol, Monroe. "An analytical Review of Congressional and Judicial Comments Concerning the Federal Regulation of Broadcast Programming." Unpublished Master's thesis, Department of Speech, Michigan State University, 1958.

Durr, Clifford J. Freedom of Speech for Whom? Speech delivered when serving a term as FCC Commissioner, N.D. [1944?]. (Mimeographed.)

Emery, Walter B. Government and Broadcasting in a Free Society. Background working paper for session on "Freedom and Responsibility in Broadcasting" at the 30th Institute for Education by Radio and Television, Ohio State University, May 4-7, 1960. (Mimeographed.)

Kamins, Robert William. "The History of Radio Broadcasting and Radio Education at Michigan State College 1917-1947." Unpublished Master's thesis, Department of Speech, Michigan State University, 1947.

Lee, Jack Kenneth. "An Analysis of current Practice in the Use of Music for Radio Broadcasting." Unpublished Master's thesis, Ohio State University, 1947.

Lunde, Anders S. "The American Federation of Musicians and the Radio and Recording Companies: A Report on a Controversey." Unpublished Master's thesis, Faculty of Political Science, Columbia University, 1947.

Westphal, Frederick William. "Music in Radio Broadcasting." Unpublished Ph.D. dissertation, Department of Music Education, Eastman School of Music, University of Rochester, 1948.

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