

Independent Research Paper for the University of Washington School of Policy, Government and Administration
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submitted June 30, 1986

"THEY'RE MUSICIANS AND THEY BELONG TO ME. SINCE WHEN IS THERE ANY DIFFERENCE BETWEEN HEIFITZ PLAYING A FIDDLE AND THE FIDDLER IN A TAVERN? THEY'RE BOTH MUSICIANS."

JAMES CAESAR PETRILLO, AUGUST, 1940

So spoke the president of the American Federation of Musicians (Federation) in a statement which characterizes the style and the mind set of the Federation then and now. The Federation started life as a rival to the American Musicians Union (AMU) and under the leadership of Petrillo effectively eclipsed that union. Petrillo, one of the most colorful of union leaders, was born in Chicago, in 1892. He attended Dante Elementary School for nine years but never got beyond the fourth grade. "They bounced me around," he complained. "One year I would be in the fourth grade and next year in the third. They drove me nuts! After nine years I give it up." Trumpet was his instrument and he played for many years in the Chicago Daily News band with what was described as "little audible improvement."

Petrillo joined the American Musicians Union Chicago local in 1906 and was elected president in 1914. He served in this position until 1917 when he was defeated, subsequently resigned from the AMU, and joined the Federation, Chicago local 10. Local 10 elected him vice president in 1919, and president in 1922. During his presidency of local 10 he was able to gain total union control over all Chicago hotels. This occurred in 1931 when, just prior to New Years Eve he announced there would be no music unless all hotels signed with the Federation. The hotels acquiesced and the Federation local 10 gained strength and dominance over the rival AMU. Petrillo finally swallowed up the AMU by waiving the initiation fee for AMU musicians wishing to join the Federation. Since his Federation local 10 had contracted with all the major hotels and clubs this offer was too good to pass up and from that point the AMU was little more than a name.

Petrillo's gaining control of the Chicago area was a significant factor in his successful bid for election to the National Executive Board of the Federation and by 1940 he had been elected president of the Federation. 1940 is an important date in the Federation as it was the beginning of a Petrillo led 27 month strike against the recording industry. The strike not only crippled the recording industry but had great impact on soloists and orchestras who depended upon income from recordings as part of their income. The recording industry was finally forced to agree to pay part of the royalties earned by individuals and orchestras directly into the Federation treasury. This money was used partly for pension funds and partly for a Music Performance Trust Fund. Performance Trust Funds were then and are now used to fund concerts and dance bands at no cost to the public. This was Petrillo's way of providing work for musicians who were no longer playing on a regular basis. He amassed the money both through the direct payment of royalties into the treasury and by levying a 1% work tax. In effect, he was taking money from the musicians who were playing on a steady professional basis and paying it out to those who were not. These arbitrary actions by Petrillo were a foreshadowing of the controversy and strife which erupted in 1956 and have yet to be resolved.

There is another major dynamic in this internal conflict. Prior to the advent of "canned" music ("canned" denoting recordings and film sound tracks) all music was provided by live performers. This meant there were many jobs available most of which were not capable of supporting an individual much less a family. Consequently, the musicians worked in other trades or professions and used their music jobs as supplemental income. Their jobs were more avocational (casual) than vocational (professional). At the same time there were highly skilled musicians playing steadily in the film, recording, symphony, opera, ballet, and soloist arenas. The conflict created by Petrillo levying a 1% tax against these professional musicians and then dispersing the funds to the casual players was heightened

by the inability of the professionals to do anything about the situation.

They were outnumbered by the casual players by 50 to 1 and could not win any battles at the ballot box. When Los Angeles local 47 attempted to break off from direct control of the Federation in 1956 they were prevented from doing so by Petrillo exercising his "special powers of the president" and expelling the local 47 vice-president and 13 members. These men then formed the Musicians Guild of American and over a period of several years developed support and finally won an NLRB jurisdictional election in the major movie studios. Petrillo retired in 1958 and was succeeded by Herman Kenin who sought to move the Federation a little more in line with the needs of the professional musicians who felt that they had a right to their full earnings. The Federation made some concessions in this direction. The Federation still took direct royalty payments and still charged work tax but not in as heavily handed a manner. In 1960, the Federation won back its jurisdiction in the film studios and in 1961 offered members of the Guild reinstatement in the Federation with all Guild members made whole for any fines paid. The Guild accepted and thus the conflict settled into an uneasy truce which is again surfacing.

The conflict is still cast along the same lines with the symphony, opera, ballet, and recording professionals seeking relief from what they feel is the disparate financial burden of belonging to the Federation. At this time there are approximately 200,000 members in the Federation and within the Federation there are 4200 symphony, opera, ballet, and recording musicians. These groups comprise the only professionals in the Federation as they are employed on long term contracts and work full time as performing musicians. In 1980 the Federation took action to increase work dues by 1% (1/2% went to the Federation) and to remove the dues cap of \$225.00 on dues paid. The removal of the cap plus the dues increase caused the dues to rise dramatically and re-kindled the representation conflict. For a specific example of the effects of this dues structure change the writer will use the current conflict between the Seattle Symphony Musicians (SS), the AFM Seattle Local 76, and the Federation. The SS, numbering 86 members is a minority part of the total union membership of 1460, and although the SS represent only 6% of the total membership, they, through the increased work dues, provide approximately 70% of the local 76 budget. The removal of the \$225.00 cap on dues and the 1% work tax caused the dues of a typical SS musician to jump from \$225.00 in 1980 to a minimum of \$774.00 in 1981. This is almost a 350% increase and it served to generate what has turned into a long term running conflict. The other end of the dues spectrum is the honor member who currently pays no dues and for \$2.10 a year maintains a \$1,500.00 death benefit policy yet has the same voting power as a SS musician paying as much as \$1,000.00 a year. There are 760 honor and life members in the local 76 out of a total of 1460 members. It appears to be impossible to solve an internal dues structure problem when the remedy would adversely affect over half the voting membership.

The initial action by the SS musicians was to appeal through their representative, the 1980 International Conference of Symphony and Opera Musicians (ICSOM) which is a sub-department of the Federation. The ICSOM represents 48 major orchestras in the United States and Canada. The delegates drafted a "Resolution of Resistance" to the increase but were denied by the International Executive Board (IEB) of the Federation. The IEB denial was final as there is no appeal process and total power resides in the presidency of the Federation. The SS and local 76 conflict is a microcosm of the ICSOM v. Federation conflict and the SS is in fact providing national leadership in the struggle for parity in dues. Following the rejection by the IEB of ICSOM's "Resolution of Resistance", the SS continued trying, through the ICSOM, to generate concern for the disparate dues structure but continued to be turned down at the national level. Finally on November 13, 1984, under the leadership of Randolph L. Baunton (RLB), a committee of the orchestra presented resolution #9-84 to the local 76 board of directors and requested a special meeting to take action. It reads in part:

THE BOARD OF DIRECTORS shall negotiate all Trade Agreements with the Seattle Symphony Orchestra, Inc. authorize the negotiating committee composed of and selected by the membership of the Seattle Symphony Players' Organization to negotiate in collaboration with Local 76 and/or other legal counsel all Trade Agreements with Seattle Symphony Orchestra, Seattle Opera Association, and Pacific Northwest Ballet. . . .

The resolution was signed by Marilyn Garner, Orchestra Committee Chairperson, Nancy Griffin, ICSOM National Secretary, Sandra Allen Local 76 (Symphony) Union Steward, David Forbes, Local 76 Sergeant at Arms (Board Member), Orchestra Committee Members Norma Durst, Stephen Fissel, Scott Wilson, and Seattle Symphony Musicians Randolph Baunton, Raymond Davis and Marilyn Uusitalo.

This resolution was followed a day later, November 14, 1984, by a letter to Chet Ramage, President of local 76, from RLB which stated: "The attached is a rough draft of a (NLRB) petition for decertification. My poll of the orchestra although incomplete is approximately 80% of the orchestra which is appreciably more than the 30% required." Local 76 sent resolution 9-84 on to the Federation and on November 29, 1984, Kenneth Shirk, secretary of local 76, received a reply from Marvin Howard, Assistant to the Federation President, which reads in part:

"Please be advised that the proposed amendment to "authorize the Negotiating Committee composed and selected by the membership of the Seattle Symphony Players' Organization to negotiate in collaboration with local 76 and/or other legal counsel all trade agreements with Seattle Symphony Orchestra, Seattle Opera Association, and Pacific Northwest Ballet" is out of order."

Article 13, Section 24 of the AFM Bylaw states in part: *"All members of the Federation by virtue of their membership, authorize the Federation and its locals to act as their exclusive bargaining representative with full and exclusive power to execute agreements with employers" ... "it is contrary to the Bylaws of the AFM for such a committee of players to usurp the authority of the AFM or any of its locals to negotiate and consummate a collective bargaining agreement."*

In turn, on the same date, Chet Ramage sent to all members two letters: One a single paragraph stating that the Federation found Resolution 9-84 in conflict with Federation By-laws and therefore out of order and since resolution was out of order there was no reason to hold a special meeting: The other a lengthy letter containing arguments for union participation and against decertification. This letter is known affectionately by the SS musicians as the "Mad Dog" letter because of a passage where Ramage states that without union collective bargaining rights and a union contract *"management could run roughshod over you. The way I see it, it would be like taking a dog that you've tied up and tormented for years, and one day turning it loose upon yourselves."*

On December 1, 1984, a letter over the signature of RLB was sent to the 48 member orchestras of ICSOM. In it appears the first generation of a splinter organization called Taxation with Adequate Responsible Representation (TARR) and RLB states that a group of SS musicians are considering decertification. He states clearly that TARR is not an anti-union group but is looking for a better way to get representation commensurate with their current dues structure. He goes on to state that ICSOM would be their first choice for representation but, *"failing that, an organization made up the same way with the same goals and objectives is to be considered."* And, *"with the roughly two million that we collectively pay into the Federation coffers annually, other affiliations are also possible."* He closes by asking to compare ideas and/or solutions to what appears to be a common problem.

December 7, 1984, a communication on TARR letterhead was sent by RLB to Victor Fuentealba, current Federation president, introducing himself and the TARR organization and describing the letters and actions that the orchestra committee and subsequently TARR had taken to date. He closes by asking for any thoughts or positive action on Fuentealba's part that would rectify the existing dues structure and prevailing attitudes of the local 76. Fuentealba's reply came in the form of dispatching Lew Waldeck, Assistant to the Federation president (Symphony Department), who met with local 76 and SS leadership. Nothing was resolved.

The next attempt at establishing a more proportional dues structure came in the form of a letter from Marilyn Garner, a member of the local 76 finance committee (and national secretary for ICSOM). It was dated January 30, 1985, addressed to the local 76 board of directors and asked questions as well as

proposing Resolution #1-85. Several of the questions were:

1. Should payment for over 50% of the local's expenses be provided by 6% of the membership?
2. Should more than half of local 76's membership (760 are life members) be exempt from paying some share of the ongoing cost to maintain the union?

Resolution #1-85 reads as follows:

PROPOSAL: To revise the dues structure of local 76.

PURPOSE: To give work dues relief to ALL members, especially to those who pay a disproportionate amount.

GOAL: To phase in a work dues reduction to 2% (1½% local) by 1987 or 1988.

PLAN:

1. September 1, 1985, begin 3/2 tier (2½/1½ local) which will be 3% on the first \$10,000.00 of scale and 2% on the amount over \$10,000.00. This reduction in work dues will cause a shortfall of between 6 and 10 thousand for Sept.-Dec. of 1985 and a shortfall of between 26 and 30 thousand for fiscal 1986.
2. To make up shortfall:
 1. Increase Active membership dues from \$50 to \$60 and drop the \$10 insurance assessment (there is enough interest from the Death Benefit Fund to pay the premiums) - this will generate \$7,000 (\$10 X 700 active members).
 2. Assess all members \$20 - This will generate \$29,200 (\$20 X 1460).
 3. Appoint a committee to investigate how income can best be generated from the properties we own, including sale and re-investment.
 4. Reexamine the Death Benefit Plan to find out if the \$21,000 interest could be put to more beneficial use for the members than presently provided by the \$1,500 benefit policy.

The resolution resulted in some negotiations but was finally defeated at a general meeting on April 9, 1985, by a vote of 61 against and 57 for.

A TARR letter dated February 11, 1985, over RLB's signature was sent to all SS musicians giving specific information on the decertification process and containing signature forms. About the same time the SS Players Organization formed a law firm search committee to identify and select appropriate legal counsel. On March 3, 1985, RLB requested the law firm of Dodd, Coney, and Bishop to act as fiduciary in regard to a sealed envelope containing decertification forms signed by over 80% of the SS. Bishop, of the above firm, agreed in writing on March 18, 1985.

On March 15, 1985, Victor Fuentealba, President of the Federation, traveled to Seattle to meet with (a committee of the SS musicians which was basically made of TARR members). He was asked many questions but the answers always came back to the fact that the SS musicians could not function as a self determining sub-entity of the Federation. He stated that the Federation would have to appoint officers in order to maintain "absolute control". He also stated that there cannot be separate organizations within a union without "ultimate control" resting with the Federation. Local boards have sole legal authority to negotiate contracts. Fuentealba also indicated that if the SS musicians decertified, the Federation would simply bring in another complete symphony orchestra. All in all, Fuentealba's visit did not solve any problems and perhaps even raised anxiety levels by implications of union actions in response to anti-union activities on the part of the SS musicians.

To forestall expulsion from the union for filing a decertification petition, RLB filed a letter, April 9, 1985, claiming status as a dues paying member only. Precedent for this type of membership is set forth by the United States Supreme Court in the NLRB v HERSHEY CHOCOLATE 89 LRRM 2126. The court refers to the status as a core member and it is the equivalent of an agency shop provision where the member pays the equivalent of dues as representation fees. The member is entitled to job protection

and security but is barred from participation in union meetings or union business which does not pertain directly to his employment status.

On May 11, 1985, RLB received a letter from Tom Hemphill of the San Francisco Symphony expressing similar concerns in relation to orchestra/union relationships. This was the beginning of a dialogue between the SS and the four orchestras of the San Francisco area which is still ongoing.

The Federation's concern over the continuing agitation in the Seattle local 76 is evidenced by the return of Lew Waldeck, Assistant to the Federation president, who met with the local 76 president Chet Ramage, SS musicians counsel Frank Dennis, and an orchestra committee consisting of Marilyn Garner, Scott Wilson, Steve Fissel, and RLB. The meeting took place on May 22, 1985, and produced the following "package" which was ratified that same day by the local 76 board of directors and contains the following provisions:

Beginning September 1, 1985, work dues will be reduced to 3%.
Beginning September 1, 1986, work dues will be reduced to 2½%. This is subject to a favorable vote of the membership on resolution #2-85.
Local 76 will allocate \$7,500 to the SS Players Organization in each negotiation year to be dispensed to the negotiating committee to cover expenses and time in negotiation.
Local 76 will assume all reasonable fees for negotiations and grievances, but not to exceed an hourly rate of \$100.00.
Local 76 will pay the players' ICSOM and AFM strike fund payments each year.
The symphony players will select their legal counsel for negotiations.
Local 76 will continue to exercise its right to representation on the negotiating committee and to have input on all "union" issues; i.e., those matters which may affect local 76 and/or Federation policy in general.

This package was referred to by the SS musicians as a "band aid fix" and while it temporarily took the edge off local problems it still did not solve the disparate dues burden of the SS musicians. The Federation requires a minimum 1% work dues plus a yearly dues required by the local. Of the 1%, ½% goes to the Federation and the other ½% stays in the local. Local 76, having a 4% work dues assessment is 3% higher than the Federation minimum and the SS musicians basic question is WHY? The "band aid fix" settlement breaks out like this for the 1985-87 contract:

Local 76 orchestra associated expenses:
ICSOM dues \$ 3,600.00
Strike Fund \$20,500.00
legal fees \$25,000.00
negotiating committee \$ 7,500.00
total costs \$56,300.00
SS musicians revenues to local 76:
total work dues \$143,000.00
NET TO FEDERATION/LOCAL \$86,650.00

The \$86,650 collected beyond the actual costs of negotiating and servicing the SS contract may be used in any manner such as to pay the salaries and benefits of the 3 salaried union employees and to help cover general operating expenses. Locals that do not enjoy the residency of a symphony orchestra have scaled down budgets and salaries. The TARR organization maintains that monies collected in excess of the amount necessary to negotiate and maintain the SS contracts are discriminatory and disparate as they are in excess of the dues structure paid by the rest of the local 76 membership.

Another issue of discrimination was raised on June 21, 1985, when RLB filed ULPs against local 76 and the Federation charging discriminatory practices in the local union rules concerning "import" players. "Import" players are those musicians hired from outside the local to fill a specific contract job. In this case three new players were hired by the SS. For a period of 3 years they were not allowed

to take any jobs for hire other than the one for which they were specifically hired. They were required to pay dues but not allowed to vote. The implications were that local 76 was not enforcing the policy consistently. On July 29, 1985, John Nelson, Regional Director of the NLRB Seattle, returned his findings, stating:

"As a result of the investigation, it appears that further proceedings are not warranted at this time, I am, therefore, refusing to issue Complaint in this matter. A written summary report of the basis for my conclusions is attached. . . . There is insufficient evidence to show that the AFM and its local 76 violated the Act as alleged in your charges. The Union rules that you find objectionable are not illegal on their face. Further, the rules were not applied in a discriminatory manner to ..."

While RLB's ULPs did not prevail they did serve to focus attention on what many felt was an unfairly administered union rule. Lacking sufficient evidence to prove discriminatory practices the NLRB is not legally concerned with the internal affairs of a union.

As a result of the "band aid fix" each SS musicians received, in the third week of June, 1985, a check for \$95. This was reimbursement for ICSOM dues and strike fund payments. The arrival of the refund checks was perhaps instrumental in generating the next level of player organization. The organization is titled: International Guild of Symphony, Opera and Ballet Musicians (IGSOBM) and a mailing under that letterhead was sent to all SS musicians on June 27, 1985. The document contains some important statements:

"The possibility exists that TARR played a small part in this settlement as did certain individuals and other organizations including The Weekly. Some of us within the orchestra feel that we reduced some of the symptoms, but that major problems still exist. To that end we have proceeded to form the International Guild of Symphony, Opera and Ballet Musicians (IGSOBM). "

OUR SHARED VISION is for existence without the oppressive nature and policies of the Federation even though President Fuentealba claims that oppression and control are the price of unionism. This vision will dictate our long range goals which include, but are not limited to the following:

"To treat each member with trust and dignity to the minimum extent that each dues paying member not only has a voice but a vote. "

"To keep an open door policy. "

"To offer an open forum including the presentation of opposing views through our newsletter. "

"To make every reasonable effort to effect change within the Federation consistent with our vision. If change is not forthcoming, then to offer all our resources up to and including representation. "

"To exist as a parallel organization to ICSOM with the standing offer for them to use us in areas where they are not otherwise permitted."

"(This is) a chance to join with a group of professional musicians who take their unionism seriously and are committed to effecting change within the Federation. Failing that then the formation of a viable alternative."

This letter to the SS musicians was followed by a national mailing to the 48 ICSOM member orchestras and both documents were over the signature of RLB, President of IGSOBM.

What does all this mean?

The advance of technology can probably be traced as a historic fundamental catalyst in the current conflict. From the time of the first introduction of mechanical or recorded music the Federation has

experienced a slow but steady erosion of the number of its members who actually work at the profession of providing music. However, the number of union members has not dropped in relation and consequently the burden of maintaining and operating the unions has fallen on the shoulders of the musicians who work long term contracts (more than 6 months). Musicians with long term contracts are symphony, opera, ballet, and recording employees and nationally they represent approximately 2% of the union membership while in local 76 they represent approximately 6%. However, these small percentages of musicians provide anywhere from 50% to 75% of the operating budgets of their respective organizations. In addition, a percentage of royalties and wages of the recording industry musicians is paid directly to the Federation into the Music Performance Trust Fund and is doled out again to unemployed musicians to play single service jobs which range from teen dances to parades to band concerts in the park. The Federation has no minimum musicianship entrance requirements so anyone who plays anything is eligible. As a consequence, there are many members who retain membership simply for the occasional Trust Fund job, and the death benefit insurance. The symphony, opera, ballet, and recording musicians object to the use of their dues and work tax money being used for what many call "porkbrelling".

The Federation functions very much like a mediaeval guild in that it seeks to control an industry by controlling the services of its members. For that reason, its constitution and by-laws are extremely restrictive in regard to rank and file membership having any control over the inner workings of the union. As fewer and fewer musicians are actually working on a long term basis they are being taxed more to provide the union with the funds to maintain its membership. The long term contract musicians are also the only ones whose pay may be directly subject to payroll deduction. Those casual musicians getting the occasional job are on the honor system to report and pay their work dues. This is not always done and allegedly there have even been union officers who have "forgotten" to report an occasional job.

The conflict in local 76 started with RLB asking some questions and has grown through the local TARR organization and matured into the national IGSOBM. The IGSOBM is still young and small but they have established contacts with all 48 ICSOM orchestras and have served in an advisory capacity with a similar conflict in the Milwaukee orchestra, and the four orchestras of San Francisco. The vice-president of IGSOBM is Tom Hemphill of the San Francisco Symphony who has just been elected by his orchestra to represent them at the ICSOM conference.

It is important to reiterate that RLB and the IGSOBM are not anti-union. The initial attempts at remedying the disparate dues structure were through the ICSOM organization which was supposedly created to provide a voice for the symphony, opera, and ballet musicians. Breaking away from the Federation would require fortitude as it would certainly lead to a battle royal. The Federation could not afford to lose the only members that make money.

The change process is a slow process in that key elements are trust in the leadership and thorough knowledge and acceptance of the motives and values of the change organization. RLB and the IGSOBM reflect these elements and if they are capable of sustaining the intensity of their convictions long enough they will achieve a remedy, whether it be internally in the Federation or externally through the formation of a new craft guild.

Terry Grove
June 29, 1986