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Hans Schwieger • see page 24

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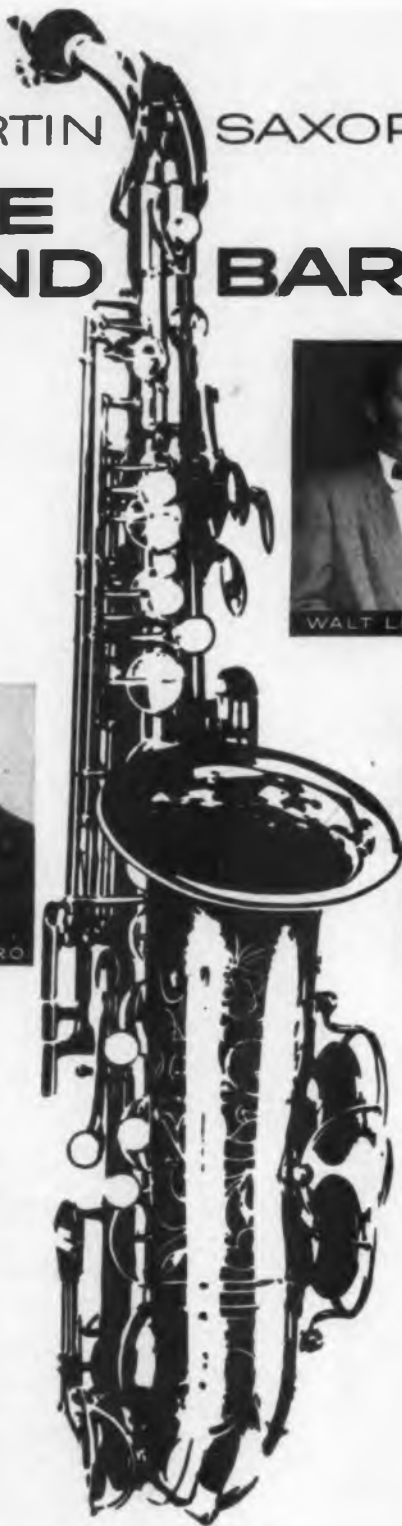
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MAY,

Following is the Report and Recommendations of Referee Arthur J. Goldberg who was appointed by President Petrillo at the direction of the International Executive Board to hear the charges of President te Groen and Financial Secretary G. R. Hennon of Local 47, Los Angeles, Calif., against certain members of that local.

ARTHUR J. GOLDBERG
ATTORNEY AND COUNSELOR

1001 CONNECTICUT AVENUE, WASHINGTON 6, D. C.

May 4, 1956

Mr. Leo Cluesmann, Secretary
American Federation of Musicians
220 Mt. Pleasant Avenue
Newark 4, New Jersey

In the matter of:

John te Groen and G. R. Hennon, Plaintiffs, vs. Uan Rasey, Ray Toland, Warren D. Baker, Cecil F. Read, John Clyman, William Ulyate, Earl Evans, Marshall Cram, Martin Berman, George Wald, William Atkinson, Vincent De Rosa, Jack Dumont, Defendants.

Dear Mr. Cluesmann:

My Report and Recommendations to the International Executive Board of the American Federation of Musicians is enclosed herewith.

I recommend, in accordance with a request made to me by the parties at the hearing, that copies of the enclosed report be furnished to them as promptly as possible.

Sincerely yours,

ARTHUR J. GOLDBERG (Sgd.)
Arthur J. Goldberg.

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In the Matter of

JOHN TE GROEN and G. R. HENNON,
Plaintiffs,

vs.

UAN RASEY, RAY TOLAND, WARREN D. BAKER, CECIL F. READ, JOHN CLYMAN, WILLIAM ULYATE, EARL EVANS, MARSHALL CRAM, MARTIN BERMAN, GEORGE WALD, WILLIAM ATKINSON, VINCENT DE ROSA, JACK DUMONT,

Defendants.

REPORT AND RECOMMENDATIONS OF
ARTHUR J. GOLDBERG, REFEREE.

This report is submitted by the undersigned Referee who was appointed by the

MAY, 1956

International President of the American Federation of Musicians pursuant to, the direction of the International Executive Board.

The authority of the Referee is set forth in the following excerpt from the minutes of the meeting of the International Executive Board of March 27, 1956.

"The International Secretary advised the Board that charges and amended charges had been filed by John te Groen and G. R. Hennon against William Atkinson, Vincent De Rosa, Martin Berman, George Wald, Marshall Cram, William Ulyate, Earl Evans, John Clyman, Cecil F. Read, Warren D. Baker, Ray Toland and Uan Rasey. The last day for filing answers to any of these charges is April 1, 1956. The Board was further informed that all persons against whom charges had been filed had been advised to be ready for trial not later than April 1, 1956. The Board discussed the procedure. It was pointed out that a large number of persons from the Los Angeles area were involved in these charges. While it would be more convenient for these persons to have the charges heard in Los Angeles, it would be inconvenient for the Board members to convene there. It was moved, seconded and unanimously voted that the International President is directed to appoint a referee who shall hold hearings in Los Angeles on April 1, 1956, or as soon thereafter as he may be able to, on the charges filed against William Atkinson, Vincent De Rosa, Martin Berman, George Wald, Marshall Cram, William Ulyate, Earl Evans, John Clyman, Cecil F. Read, Warren D. Baker, Ray Toland, and Uan Rasey, and said referee shall file with the International Secretary for transmission to the Board his report containing his findings and his recommendations as to the disposition of the charges. The International Secretary shall advise all persons who have filed charges and all persons against whom charges have been filed of the date, time and place of hearing."

In accordance with the direction in these minutes, President Petrillo appointed the undersigned as Referee by letter dated March 29, 1956.

The plaintiffs are John te Groen, President and Member of the Board of Directors of Local 47, and G. R. Hennon, Financial Secretary and Member of the Board of Directors of Local 47. The defendants are:

Uan Rasey, Member of the Board of Directors, Local 47.
Ray Toland, Member of the Board of Directors, Local 47.
Warren D. Baker, Member of the Board of Directors, Local 47.
Cecil F. Read, Vice-President and Member of the Board of Directors, Local 47.
John Clyman, Member of the Board of Directors, Local 47.

William Ulyate, Member of Local 47.
Earl Evans, Member of Local 47.
Marshall Cram, Member of Local 47.
Martin Berman, Member of Local 47.
George Wald, Member of Local 47.
William Atkinson, Member of the Board of Directors, Local 47.
Vincent De Rosa, Member of the Board of Directors, Local 47.
Jack Dumont, Member of the Board of Directors, Local 47.

Original charges were filed by te Groen with the International Executive Board on March 2, 1956, against Rasey, Toland, Baker, Read, Clyman, Ulyate, Evans and Cram. After due notice of the charges was received by the defendants from the International Secretary, Leo Cluesmann, answer was made to the original charges by these defendants on March 13, 1956.

On March 15, 1956, amended charges were filed with the International Executive Board by te Groen against the same defendants named in the original charges. The amended charges are as follows:

"AS A MEMBER OF THE AFM I HEREBY AMEND THE CHARGES HERETOFORE FILED MARCH 2, 1956, TO READ AS FOLLOWS: I CHARGE UAN RASEY, RAY TOLAND, WARREN BAKER, CECIL F. READ, JOHN CLYMAN, WILLIAM ULYATE, EARL EVANS AND MARSHALL CRAM, HEREINAFTER CALLED 'CHARGED MEMBERS': 1. IN VIOLATION OF ARTICLE 13, SECTION 1 OF THE AFM BY LAWS THE CHARGED MEMBERS PLACED OBSTACLES IN THE WAY OF THE SUCCESSFUL MAINTENANCE OF LOCAL 47 BY PLANNING, CONSPIRING AND ENGAGING IN CONCERTED ACTIONS WITH OTHERS TO OUST THE REGULARLY ELECTED OFFICERS OF THE LOCAL AND THEREBY DISRUPT IT, AND TO THAT END: ON FEBRUARY 27, 1956, 10:00 A. M. IN SECRET SESSION AND CONSPIRED UNLAWFULLY TO OUST THE OFFICERS OF LOCAL 47 AND FOR THAT PURPOSE PREPARED THE SPEECHES, RESOLUTIONS AND ACTION FOR THE REGULAR MEMBERSHIP MEETING OF FEBRUARY 27, 1956, AT 1:00 P. M., CONCEALING SUCH PLANS FROM THE OFFICERS OF LOCAL 47 AND THE GREAT BULK OF THE MEMBERSHIP OF LOCAL 47. (B) ON FEBRUARY 27, 1956, ON AND AFTER 1:25 P. M. BY MEANS OF THE PLANS AND PRE-ARRANGEMENTS DESCRIBED IN PARAGRAPH (A) AND THROUGH THEIR CONCERTED INFLUENCE, CONTROLLED THE MEETING OF LOCAL 47 AND EFFECTUATED AN ALLEGED SUSPENSION OF THE PRESIDENT OF LOCAL 47 CONTRARY TO THE LAWS OF LOCAL 47. (C) ON MARCH 1, 1956, THE INTERNATIONAL PRESIDENT DIRECTED AND ORDERED THAT PEND-

ING DETERMINATION OF JOHN TE GROEN'S APPEAL TO THE INTERNATIONAL EXECUTIVE BOARD, THE PURPORTED SUSPENSION OF JOHN TE GROEN AS PRESIDENT OF LOCAL 47, AFM BE STAYED AND THAT HE RETAIN HIS OFFICIAL ELECTED OFFICE AS PRESIDENT OF THAT LOCAL WITH FULL POWERS AND AS CHAIRMAN OF THE BOARD OF DIRECTORS. AFTER A COPY OF SUCH ORDER AND DIRECTION WAS SERVED UPON AND READ TO EACH OF THE CHARGED MEMBERS NAMED HEREIN, EACH OF THEM ATTENDED A MEETING ON MARCH 1, 1956, WHICH PURPORTED TO BE A MEETING OF THE BOARD OF DIRECTORS OF LOCAL 47 AND CLAIMED TO BE ATTENDING SUCH MEETING, ALTHOUGH HE KNEW THAT THE PRESIDENT OF LOCAL 47 HAD NOT CALLED SUCH A MEETING AND THAT NO DIRECTOR HAD REQUESTED SUCH PRESIDENT TO CALL A MEETING AND SUCH PRESIDENT HAD DECLARED THE MEETING TO BE NULL AND VOID. SUCH CONDUCT BY EACH OF THESE CHARGED MEMBERS CONSTITUTED A REFUSAL TO RECOGNIZE JOHN TE GROEN AS PRESIDENT OF LOCAL 47 AND AS CHAIRMAN OF ITS BOARD OF DIRECTORS. (D) IN FURTHERANCE OF SAID UNLAWFUL PLAN TO OUST THE PRESIDENT OF LOCAL 47 ARRANGED FOR A SPECIAL MEETING OF LOCAL 47 FOR MARCH 12, 1956, CONTRARY TO THE LAWS AND PROCEDURE OF LOCAL 47. (E) ON MARCH 9, 1956, DESPITE THE ORDER OF THE EXECUTIVE BOARD OF THE AFM CANCELLING SAID PROPOSED MEETING FOR MARCH 12, 1956, PROCEEDED AT A MEETING OF THE BOARD OF DIRECTORS OF LOCAL 47 TO DEFEY SAID ORDER AND TO MAKE ARRANGEMENTS FOR SAID MEETING OF MARCH 12, 1956. (F) CONDUCTED AND PARTICIPATED IN SAID MEETING OF MARCH 12, 1956, AND PROCEEDED UNLAWFULLY TO OUST SAID PRESIDENT DESPITE THE FACT THAT (1) SAID CHARGES WERE PRESENTED AT A SPECIAL MEETING OF LOCAL 47 INSTEAD OF A GENERAL MEETING OF SAID LOCAL AS REQUIRED BY ARTICLE 1, SECTION 16 OF THE BY-LAWS OF LOCAL 47. (2) SAID MEETING WAS IMPROPERLY CALLED SINCE THE NOTICE TO THE MEMBERS OF LOCAL 47 OF THE PURPORTED MEETING WAS NOT SENT IN COMPLIANCE WITH ARTICLE 1, SECTION 3, PARAGRAPH (D) OF THE BY-LAWS OF LOCAL 47 IN THAT THE RECORDING SECRETARY DID NOT NOTIFY THE MEMBERS OF SAID MEETING BUT INSTEAD THE MEETING WAS NOTICED BY UNSIGNED POSTCARDS SENT BY PERSONS UNKNOWN. (3) SAID OUSTER WAS OTHERWISE IN VIOLATION OF THE BY-LAWS OF LOCAL 47. (GD) IN FURTHERANCE OF SAID CONSPIRACY AND PLOT, THE CHARGED MEMBERS OPENLY INVITED THE LOSS OF THE CHARTER OF LOCAL 47 WHICH WOULD, OF COURSE, TERMINATE THE 'SUCCESSFUL MAINTENANCE OF' LOCAL 47. (2) IN DISREGARD OF ARTICLE 13, SECTION 1 OF THE AFM BY-LAWS CHARGED MEMBERS VIOLATED THE ORDERS AND

DIRECTIONS OF THE FEDERATION SPECIFICALLY A STAY ISSUED BY THE INTERNATIONAL PRESIDENT ON MARCH 1, 1956, ISSUED PURSUANT TO ARTICLE 8, SECTION 2. AND AN ORDER AND DIRECTION OF THE EXECUTIVE BOARD ON MARCH 9, 1956, ISSUED PURSUANT TO ARTICLE 1, SECTION 5-D, E AND F, AND ARTICLE 12, SECTION 6 AS SET FORTH IN PARAGRAPHS (C) AND (E) THE FIRST CHARGE ABOVE SET FORTH. 3. IN VIOLATION OF ARTICLE 12, SECTION 36 OF THE AFM BY-LAWS, THE CHARGED MEMBERS ADVOCATED DUAL UNIONISM. ALL OF THE ACTS HEREIN ABOVE DESCRIBED THE FIRST AND SECOND CHARGES WERE EXECUTED NOT ONLY TO PLACE OBSTACLES IN THE WAY OF THE SUCCESSFUL MAINTENANCE OF LOCAL 47 AND TO DEFEY THE ORDERS AND DIRECTIONS OF THE AFM, BUT ALSO TO SET UP A SEPARATE INDEPENDENT AND RIVAL ORGANIZATION OF AFM. THE CHARGED MEMBERS AND EACH OF THEM PARTICIPATED IN THE ATTEMPT TO ESTABLISH AN ORGANIZATION WHICH WAS INTENDED AND DESIGNED TO WREST FROM AFM ITS EXCLUSIVE RIGHT TO REPRESENT AND BARGAIN FOR MUSICIANS EMPLOYED IN THE MOTION PICTURE, THE RECORDING AND THE BROADCASTING INDUSTRIES. THE CHARGED MEMBERS AND EACH OF THEM HAVE BY ACT, DEED AND WORD OF MOUTH, ATTEMPTED TO BRING AFM INTO DISREPUTE AND TO SUBSTITUTE FOR IT A DUAL, RIVAL AND ANTAGONISTIC BARGAINING AGENT.

RESPECTFULLY SUBMITTED.

JOHN TE GROEN."

Due notice of the amended charges was sent to the named defendants by the International Secretary on March 16, 1956.

On March 15, 1956, charges were filed with the International Executive Board by G. R. Hennon against George Wald and Martin Berman. These charges are the same as the above quoted amended charges filed by te Groen except for the omission of paragraphs (C) and (E) of charge 1 and the omission of charge 2.

Hennon also filed charges with the International Executive Board against Vincent De Rosa and William Atkinson on March 15, 1956. These charges are the same as paragraphs (D), (E), (F) and (G) of charge 1 and charge 3 of the amended charges of te Groen, and there is also included the equivalent of charge 2 of the te Groen amended charges excluding, however, the alleged violation of the March 1, 1956, stay issued by the International President.

Notice of the Hennon charges was sent to the respective defendants by the International Secretary on March 16, 1956.

On March 26, 1956, a joint and several answer to the te Groen amended charges and to the Hennon charges was made by all of the foregoing defendants. In their answer the defendants denied the several allegations of the amended charges. Moreover, they denied that Section 1 of Article 13 of the American Federation of Musicians By-laws is valid or lawful: and challenged the validity of the alleged stay issued by President Petrillo on

March 1, 1956, and of the alleged order in direction of the International Executive Board referred to in charge 2 and of the provision regarding dual unionism contained in Article 12, Section 36 of the American Federation of Musicians By-laws. In addition, the answer contains the following demands:

"(5) I demand an actual trial and hearing on the amended charges and on the original charges, and I demand an opportunity to meet and examine all the proof which shall be submitted in support of the amended charges and original charges against me, and to confront and cross-examine John te Groen, whose name appears on the amended charges and the original charges, and to confront and cross-examine any and all witnesses against me in connection with the amended charges and original charges, and to confront and cross-examine all members, officers and employees of the American Federation of Musicians who acted in concert with, aided or abetted John te Groen in the making of the amended charges or original charges against me.

"(6) Since any violation alleged to have been committed occurred in the County of Los Angeles, and since all pertinent witnesses are in the County of Los Angeles, I demand that any such trial and hearing be held in the County of Los Angeles, so that I will have the opportunity to appear and defend myself and to present witnesses and proof in my defense; neither I nor my witnesses can go elsewhere for trial or hearing since we are employed in the County of Los Angeles, and since I could not afford the expense of such travel, hotels, per diem, loss of earnings and other expenses for me and my witnesses, the setting of any trial or hearing elsewhere would deprive me of the opportunity to defend myself.

"(7) I demand that I be given not less than ten (10) days' notice, in writing, of the actual time, date and place of said trial, so that my witnesses and I will have a reasonable opportunity to make necessary arrangements for our appearances and preparations at such trial.

"(8) I demand that the trial and hearing of the charges and the amended charges, and the defense, be held only before and conducted by an impartial tribunal, which is not biased or prejudiced against me, and which has not already prejudged me or the charges or the amended charges.

"Additionally, I specifically disqualify the following to try me, to wit: James C. Petrillo, Herman D. Kenin, W. M. Murdoch, Stanley Ballard, William Harris, Lee Repp, C. Bagley, Leo Cluesmann and I claim and charge that the foregoing persons have been and are biased and prejudiced against me and have prejudged me and the amended and original charges, and are not impartial.

"Additionally, I demand any trial and hearing be tried by the membership of Local 47 at a general meeting, or by an impartial Tribunal to be selected by Local 47 or the membership of Local 47, in whose jurisdiction the violations are alleged to have been committed."

Charges against Jack Dumont were filed with the International Executive Board by Hennon on March 28, 1956, as follows:

"I HEREBY PREFER CHARGES AGAINST JACK DUMONT UNDER ARTICLE

INTERNATIONAL MUSICIANS

Article 13, SECTION 1 OF THE BY-LAWS OF THE AMERICAN FEDERATION OF MUSICIANS IN THAT HE DID ON MARCH 9, 1956, IN A MEETING OF THE BOARD OF DIRECTORS OF THE LOCAL 47 OF WHICH HE IS A MEMBER, VOTE TO APPROVE THE ACTIONS OF A GENERAL MEMBERSHIP MEETING OF FEB. 27 IN ILLEGALLY SUSPENDING FROM OFFICE AS PRESIDENT JOHN TE GROEN AND IN THAT AT THE SAME MEETING OF MARCH 9, 1956, HE DID VOTE TO ORDER RECORDING SECRETARY MAURY PAUL TO DISOBEY AN ORDER OF A SUB-COMMITTEE OF THE INTERNATIONAL EXECUTIVE BOARD TO NOTIFY THE MEMBERSHIP THAT THE SUB-COMMITTEE HAD CANCELLED A SPECIAL GENERAL MEETING ILLEGALLY CALLED FOR MARCH 12, 1956, WHICH MEETING WAS AN EXTENSION OF AND CALLED FOR THE SAME PURPOSE AS THE MEETING OF FEB. 27, 1956, NAMELY, THAT OF REMOVING PRESIDENT TE GROEN FROM OFFICE, THE ALLEGED SUSPENSION OF TE GROEN HAVING BEEN STAYED BY ORDER OF THE PRESIDENT OF THE AMERICAN FEDERATION OF MUSICIANS. I FURTHER CHARGE THAT IN A MEETING OF THE BOARD OF DIRECTORS OF LOCAL 47 HELD MARCH 23, 1956, HE DID VOTE TO ILLEGALLY REMOVE JOHN TE GROEN FROM SALARY DUE TO HIS ALLEGED REMOVAL FROM OFFICE AT THE MARCH 12, 1956, SPECIAL GENERAL MEETING WHICH WAS HELD IN DEFIANCE OF THE INTERNATIONAL EXECUTIVE BOARD AND IN THAT AT THE SAME MEETING OF THE BOARD OF DIRECTORS HE DID VOTE TO ILLEGALLY PAY TO CECIL F. READ THE SALARY OF THE PRESIDENT OF LOCAL 47 AND DID ALSO VOTE FOR A RESOLUTION STATING THAT THE BOARD CONSIDERED THAT CECIL F. READ IS PRESIDENT OF LOCAL 47 BY SUCCESSION DUE TO TE GROEN'S ALLEGED REMOVAL FROM OFFICE AND IN VIOLATION OF A STAY OF THAT REMOVAL ISSUED BY THE PRESIDENT OF THE AMERICAN FEDERATION OF MUSICIANS. I CHARGE THAT IN ALL OF THE RESPECTS MENTIONED HEREIN JACK DUMONT IS GUILTY OF ADVOCATING AND PRACTICING DUAL UNIONISM AND HE IS FURTHER GUILTY OF VIOLATING AN ORDER DULY ISSUED OF THE SUB-COMMITTEE OF THE INTERNATIONAL EXECUTIVE BOARD AND OF VIOLATING THE CONSTITUTION AND BY-LAWS OF BOTH THE AMERICAN FEDERATION OF MUSICIANS AND OF LOCAL 47, AFM."

Notice of these charges was sent to Dumont by the International Secretary on March 29, 1956. Dumont's answer, duly filed, is dated April 4, 1956. It denies the several allegations in the charges, demands decision by an impartial tribunal, alleges disqualification of the International Executive Board and bias and prejudice against the defendant of the members of the International Executive Board. On March 28, 1956, the International Secretary notified the plaintiffs and all of the defendants except Dumont that trial on the charges was scheduled before the Referee on April 11, 1956, in Hollywood, California.

Notice of a change in the hearing date from April 11 to April 9 was sent to all parties by the International Secretary on April 2, 1956.

Trial before the Referee commenced on April 9, 1956, at the Hollywood Plaza Hotel, Hollywood, California. All plaintiffs and defendants, including Dumont, were present and Dumont agreed to have his case heard along with the cases of the other defendants, although, absent agreement, he would have been entitled to additional time under the American Federation of Musicians By-laws before commencement of the trial on the charges against him.

Plaintiffs were represented by attorneys Michael G. Luddy and Henry G. Bodkin, Jr.; defendants were represented by attorneys Harold A. Fendler, Robert N. Rissman and Harry J. Miller, and by Cecil F. Read, one of the defendants.

The trial lasted from April 9 to April 13, 1956. In addition to morning and afternoon sessions on each of these days, evening sessions were held on April 11, 12 and 13. The trial was attended by the plaintiffs, the defendants, the witnesses of the parties, and, to the limits of the hearing room, by interested members of Local 47.

All parties were afforded full opportunity to be heard and to present evidence bearing on the issues through their witnesses and exhibits. At the request of the defendants, certain individuals were directed by the Referee to appear as witnesses for adverse examination by counsel for defendants. As more fully set out below, an additional request by the defendants, repeated several times, that the Referee summon the members of the International Executive Board for adverse examination on the question of bias and prejudice was denied. The defendants were confronted with all the evidence against them and fully exercised their right to examine and cross examine witnesses. Counsel for both sides were permitted to make opening statements and closing arguments on the facts and the law.

In making his findings and recommendations, which appear below, the Referee has carefully weighed the evidence as disclosed in the transcript of the trial, and the exhibits, and has considered the applicable provisions of the Constitution and By-laws of the American Federation of Musicians and of Local 47.

During the hearings, many issues as to relevance, materiality or competence of testimony were raised. In making these findings, only the evidence which, in the Referee's opinion, is relevant, material and competent, has been considered. Disposition of any motions upon which ruling was reserved during the hearings is made in the following findings.

Upon the record in the case, and from his observation of the witnesses, the Referee makes the following findings and recommendations.

FINDINGS

1. Sequence of Events

a. Background.

The American Federation of Musicians of the United States and Canada (herein called the "Federation") is an international union consisting of local unions of musicians and the individual musicians who form such unions. The Federation is governed by a

Constitution and By-laws. The object of the Federation, as stated in Article II of its Constitution, is to unite all of its local unions and the individual musicians who are members for the "purpose of general protection and advancement of their interests and for the purpose of enforcing good faith and fair dealing, as well as consistency with union principles, in all cases involving or of interest to members and Local Unions of the Federation."

The affairs of the Federation are administered by its officers—a President, Vice-President, Secretary, Treasurer, and an Executive Committee of five members. Collectively, these officers, who are elected each year at the annual convention of the Federation, constitute its International Executive Board.

The Musicians' Mutual Protective Association, Local No. 47, A. F. of M., of Los Angeles, California (Hereafter called "Local 47" or "Local") is a local union chartered by the Federation with jurisdiction in Los Angeles and vicinity. Local 47 is governed by the constitution and by-laws of the Federation and by its own constitution and by-laws.

The object of Local 47, as stated in Article 42 of its constitution "is to unite the instrumental musicians of Los Angeles and vicinity for the better protection of their interests, to regulate prices and all business appertaining to the musical profession and to enforce good faith and fair dealing by and between members."

The affairs of Local 47 are administered by its officers—a President, Vice-President, Recording Secretary, Financial Secretary, three Trustees, and five Directors. All of these officers constitute the Board of Directors of Local 47. These officers are elected biennially at the general election of the local. Local 47 has a membership of approximately 15,000. The local's records indicate that in 1955 about 4,000 members earned over \$2,500 per year from the music business.

A number of the members of Local 47 are or were employed in the making of motion pictures and in the making of filmed television shows. In addition, some of the members of Local 47 are employed on live shows of TV networks and in the phonograph recording industry.

In accordance with its Constitution and By-laws, the Federation negotiates collective bargaining agreements with the major companies and networks in the various industries employing musicians. These agreements, which are negotiated by the International Executive Board, acting as a negotiating committee, are applicable to and binding on all locals whose members are employed by such companies and networks, and to all such members. Conditions and details not covered in these company-wide agreements negotiated by the Federation are covered by supplementary agreements which are negotiated locally by the locals.

Collective bargaining agreements with local companies and organizations employing musicians who are members of the Federation are negotiated directly by the local unions in whose jurisdiction such companies or organizations fall. In the case of Local 47, such agreements are negotiated with companies and organizations in the Los Angeles area by the Board of Directors of the local acting as the Negotiating Committee of the local.

The provisions of the Federation's By-laws dealing with collective bargaining agreements are set forth in Article 13, Section 36, which, in part, provides:

"The Federation, in entering into collective bargaining agreements, does so for the benefit of all members of the Federation and each member is bound by the terms of such collective bargaining agreements. A local of the Federation enters into collective bargaining agreements for its members and for Federation members who perform within the jurisdiction of the local."

One of the principal problems facing the Federation in recent history has been the displacement of "live" musicians by recorded music. This problem is not limited to the displacement of musicians who perform directly for the public, but also covers the displacement of "live" musicians in radio broadcasts, motion pictures and television. Over the years, the Federation has attempted to meet this problem by (1) requiring the use of live musicians wherever possible; (2) establishing a trust fund based on contributions by employers using recorded music. The purpose of this trust fund is to provide employment for those displaced by technological progress and to provide funds to promote performances of live music throughout this country.

The theory behind this is that the industries affected would pay the cost of this trust fund and that monies thus collected would go to those displaced by mechanical progress.

It would go far beyond the scopes of this proceeding to set forth the details and history of the trust funds. It is sufficient to state that payments to a trust fund are made under collective bargaining agreements with the Federation by recording companies, film companies, and other employers of musicians whose performance is to be reproduced.

The particular relationship of the trust fund to this case arises from the re-use in another form of performances originally recorded for use in a particular media, particularly the re-use of old motion pictures on television. With respect to film made directly for television, the musicians who perform are paid for their work with certain additional payments being made into a trust fund, as in the case of other recorded performance.

Originally, the Federation attempted to procure actual employment for musicians in connection with the use of movie film for television. Thus, in May, 1951, a provision was inserted in the Television Film Labor Agreement requiring the making of a new sound track using the same number of musicians previously employed in making the original sound track, whenever it was desired to re-use a theatrical film for television. This proved impractical, however, and in September, 1952, this restriction was lifted and provision was made for a payment of \$25, called a "rescoring fee," for each musician who made the original sound track on motion picture films released for television.

In 1955, however, the International Executive Board changed its policy with respect to these "rescoring fees" and resolved that they should be made to the trust fund instead of to the individual musicians who originally were employed to make the movie film. Appropriate changes were subsequently made in the applicable agreements.

This change in policy of the Federation did not meet with the approval of Local 47. On September 26, the local adopted resolutions asking that the decision be reviewed, authorizing Cecil F. Read, then a director, to prepare an appeal, retaining counsel if necessary, and asking for a hearing before the International Executive Board. These resolutions were forwarded to the President of the Federation who responded in a letter, dated October 7, 1955, which said in part as follows:

"The reasons for this policy are well known to you, and the officers of Local 47 are to be commended for their able and cogent expressions in opposition to this policy both before and after the decision of the International Executive Board. A review of these reasons, however, seems appropriate at this time.

"When motion pictures were produced under the collective agreements between the Hollywood producers and the Federation, the musicians employed in the making of those films were paid for their services. Since 1946, the Federation has secured in its collective agreement with these producers a covenant precluding the use of these motion pictures on television except after the negotiation of a new agreement with the Federation setting forth the terms on which the films might be released for television. This restriction was secured by the Federation for the benefit of all Federation members and not merely those who had been employed in the making of the films.

"Obviously, the Federation could have negotiated agreements releasing the films for television without any further payment from the producers. Instead, we have sought to benefit all of the Federation members as much as possible. Until June, 1955, our agreements relating to release of Hollywood films for television, required payments to the Music Performance Trust Fund and rescoring fees to the musicians who were employed in the original scoring. Between 1950 and 1955, some \$800,000 of such rescoring fees were paid to musicians who worked on the motion picture films when they were originally produced.

"In June of this year, the International Executive Board, after careful consideration of the situation, reached the conclusion that henceforth all of the moneys to be paid by producers for the right to convert Hollywood films into television films should be used for the benefit of all musicians, since these are the persons who are hurt by the continued use of the canned music embodied in the films.

"As I stated above, the officers of Local 47 opposed the new policy and expressed the view that the payments should continue to be made to the musicians who originally were employed in the making of these films which are now being released for television. The Executive Board, however, in the exercise of their best judgment, reached the conclusion outlined above."

No objection was raised, however, to having the local's viewpoint again presented to the Board by Read.

In January, 1956, Cecil Read, who by that time had been elected a vice-president of the local, presented the local's appeal to the International Executive Board in New York.

He presented not only oral argument but legal and economic briefs. These documents related not only to the "rescoring fees" for motion picture films but also to re-use payments where film originally made for television was reused, and the payments to the trust fund which, under the union's contract, were required to be paid at the time records or films were originally made.

The appeal argued that other unions representing creative artists (such as the actors', writers' and directors' guilds) have recognized the individual's rights to individual residual or re-use payments, that wage rates for the musicians employed in recording and in filmmaking had not increased proportionately to the cost of living or wage rates in other employment, and that the union's requirement of payments to the trust fund had the effect of decreasing employment opportunities by increasing the total cost of hiring recording musicians, and thus making it attractive to use imported sound track instead of live musicians. Furthermore, the appeal argued, one-half of all payments to the trust fund resulted from the work of Local 47's members, but only a small fraction of the benefits of the fund could be received by them. In addition, the appeal argued that the individual performers had a legal right to residual or re-use payments which the Federation, as bargaining agent, had a fiduciary duty to protect.

In summing up, the appeal argued:

"The Federation's present position of 'group' or 'contractual' rights in recorded services, established by contracts between the Federation and employers is a weak one. The legality of payments to the Trust Fund under this theory is being questioned by both the employers (record company stockholder suits) and recording musicians.

"The Federation under this theory has been unable to deal effectively or directly in any way with those employers in the entertainment and advertising industries who exploit 'recorded music' to their own benefit without bearing any of the legitimate cost of the music they sell, with the following results:

"1. Inadequate wage scales for recording musicians.

"2. Inadequate share in gross payments, salaries to musicians and payments to the Trust Fund combined, in relation to the gross and net incomes returned to those exploiting recorded music for commercial gain.

"3. Steadily diminishing work opportunities in the performing of music while industries based on musical performances and talent are growing at a fantastic rate.

"At this point it seems that the Federation has an alternative. The establishment of 'individual performance rights' and elimination of present Trust Fund policies which would strengthen the Federation's position legally, morally and economically.

"Legally by eliminating a 'cause for action' in the employer's suits, (record company suits under Taft-Hartley Act) and possible action by Federation members or their heirs who believe that they are being deprived of 'property rights.'

"Morally by taking a stand consistent with past Federation policies in regard to re-use, etc., consistent with the position of

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allied crafts, and consistent with basic common law and justice, 'that the laborer is worthy of his hire,' as opposed to the 'communist socialistic' theory that the group is entitled to the 'lion's share' of the individual's return for his services.

"Economically because a new approach based on the 'individual's rights' and the concerted efforts of our Federation, its members and other crafts and individuals involved, would give us a new and different opportunity to attack the evils of unrestricted and unpaid for 'recorded competition' at its source. Thus, providing for adequate wages and re-use payments for the musicians whose recorded talents make these industries possible, returning a fairer share of the advertising and entertainment dollar to the music profession; and elimination or lessening of the 'unfair' disadvantage that the live musician now faces in attempting to sell his services in competition with recorded series that have not been paid for."

Throughout, the appeal was couched in terms of conformity with the internal procedures of the Union and accepted union practice. Thus, the appeal said:

"Good union practice dictates that members having problems connected with their employment seek the solution thereof through the processes of the union.

"The Constitution and By-laws of the AFM require, in several specific particulars, the presentation of grievances through union procedures.

"If the Federation fails to act, or acts unfavorably to the positions set forth herein, any or all of those, upon whose behalf this presentation is made, will be free to proceed further in the protection of their rights as they may deem best, consistent with good union practice and in conformity with the law."

On February 16, 1956, Read was advised by the International Secretary of the action of the International Executive Board denying the requests of Local 47. The International Executive Board's reasons for denying these requests are stated in its minutes as follows:

"The entire matter is thoroughly discussed and it is found that the various requests have for their ultimate purpose, payments to the individual musicians who did the recording, instead of to the Trust Fund, and diverting the money now in the Fund to such musicians, thus resulting in the discontinuance of the Fund. This would mean that many musicians throughout the country would be deprived of the little employment made possible by the Fund and for which the recording industry acknowledges it owes an obligation.

"The only ones to benefit would be the recording musicians who are among the best paid members of the Federation and whose mechanical product is the principal reason for the wide-spread unemployment among our other members.

"The Music Performance Trust Fund was established to enhance the public appreciation of live music by furnishing free concerts to the general public and to reduce somewhat the loss of employment which came about as a result of the wide-spread use

of mechanical music. It has been of great benefit to many locals, in which the non-recording musicians of Local 47 also shared, and appreciated by many communities."

The appeal of Local 47 and the action of the International Executive Board on that appeal, set the background for the meeting of Local 47 on February 27, and, thus, for this proceeding. The Referee wishes to make it clear that he permitted evidence to be introduced at the hearing on the matters referred to in this section solely for the purpose of providing the background for the issues directly involved in the charges. There has been no investigation in this proceeding into the history or functioning of the trust fund or into the merits of the appeal of Local 47 with respect to the policy of the Federation with respect to the re-use of theatrical film, or other payments to the trust fund. The Referee makes no ruling or decision either with respect to the appeal, or as to the justice or injustice of the Federation's policies. The issues raised by the charges go to the actions of the defendants after the appeal was denied. The question is, in the words of the appeal itself, whether they were "consistent with good union practice and in conformity with the law."

With respect to the background matters herein set forth the Referee finds only that there was a decision of the International Executive Board as to the policy to be followed by the Federation with respect to the re-use of theatrical film, that an appeal was made by Local 47 to the Board from that decision, that the appeal was heard and denied, and that a general membership meeting of Local 47 was scheduled for February 27 at 1:00 P. M. to hear a report from Vice-President Read on the appeal.

b. The Steering Committee

A proper understanding of what took place at the membership meeting of Local 47 on February 27 requires that the actions of the so-called Steering Committee and the caucus which took place on the morning of February 27 at Larchmont Hall be set forth.

In addition to his official action as a director, and later as a vice-president, in presenting the appeal of Local 47, Read was the leader of a Steering Committee. This committee was first formed in connection with Read's candidacy in September, 1955, to fill the vacancy in the office of vice-president of Local 47, which had been caused by the resignation of Phil Fisher, the International Studio representative. It met, in Read's words, "to discuss certain problems we had in our local." The Steering Committee continued in existence after Read's election as vice-president. At no time, however, was it a formal or official committee of the local, and, indeed, its existence was known only to some of the members of the local.

The composition of the Steering Committee apparently was flexible. Certain members dropped out and others joined it in the period between September, 1955 and April, 1956. Attendance at its meetings varied from as few as five to as many as twenty to twenty-five.

Read acted as chairman of the Committee at several of its meetings and was its leader. In addition to Read, defendants Toland, Wald, Cram, Ulyate, Evans and Berman were regular active participants. Defendant Rasey became

active in the Committee shortly before February 27.

The actions subsequently taken both at the Larchmont Hall caucus on the morning of February 27 and the general membership meeting on that afternoon were planned at meetings of the Steering Committee and led by Read and other members of the committee. The plans formulated by the Committee were, in fact, carried out, and are, therefore, set forth later in this report.

The Committee was not simply a casual gathering of members sympathetic to certain policies. As indicated, it laid and executed detailed plans of action. Among other things, as Read later explained at the Larchmont Hall meeting, it engaged and consulted several counsel, each a specialist in various fields. The Committee prepared not only the specific resolutions which were to be presented to the membership meeting of February 27, but plotted the entire course of action which would be taken at these meetings.

At a meeting of the Steering Committee immediately prior to February 27, plans were made for a caucus of certain selected members of the local to be held on the morning of February 27. Approximately 300 members of the local were contacted by the Committee by telephone and invited to attend this caucus at Larchmont Hall. In addition, a procedure was worked out whereby 30 call captains were to be assigned to contact designated members of the local who, in turn, would be requested to contact other designated members for the purpose of obtaining a substantial attendance by those sympathetic to the views represented by the Steering Committee at the general membership meeting on the afternoon of February 27.

c. The Larchmont Hall Meeting

As scheduled by the Steering Committee, the caucus of selected members of Local 47 met in Larchmont Hall on February 27, 1956, at approximately 10:00 A. M. Approximately 100 of the 300 members invited by the Steering Committee appeared at the meeting. Defendants Read, Berman, Rasey, Ulyate, Cram and Evans were present and participated in the meeting.

The purpose of the meeting was to lay out the course of action proposed by the Steering Committee. As stated by Read, who chaired the meeting, the purpose was "to brief you people a little bit as to what's going to go on this afternoon so it won't come as a complete shock to you."

The plan, insofar as specified by Read and Evans, comprised the passage of a resolution which had been prepared by the Steering Committee, action against the officers of the local, and a speedy campaign to raise \$100,000 for the Musicians' Defense Fund established by the resolution. The resolution itself, although described and discussed, was not read to the meeting. There was no doubt, however, from the tenor of Read's remarks, that the passage of the resolution was only the opening move in a planned-for all-out fight against the Federation and its officers. Read began his speech to the caucus by defying the Federation and sketching briefly the further steps which would be taken after the Federation took the anticipated retaliatory steps.

Indeed, Read told the meeting that "basic-

ally . . . what we are fighting" is what he called the dictatorship of the Federation.

"So it comes right down to a simple thing, as to whether we are going to continue to submit to a dictatorship and the domination of a situation of this kind which is contrary to everything that anybody in this country has ever loved and fought for, or whether we are going to stand up and take action and pursue it through all available remedies, including the Courts and the Congress of the United States and public opinion until we get relief from this situation."

"The Trust Fund Appeal and the Trust Fund issues, the amounts of money that are involved are tremendous and considerable. The amount of employment that has been lost, the fact that we have not had the protection of our Union is of basic importance. But the only real issue is whether we are going to submit to a dictatorship or whether we are not. It's just as simple as that. Everything else is a side issue. Fighting the Trust Fund thing in court is the means, it's the tool by which to bring this thing out into the open. Fighting to protect our jobs before the National Labor Relations Board is important, will be the tool to bring this thing out into the open and break it, expose it to the light of day."

He then explained that "there is nothing we can do that would not put us in danger of expulsion from the Federation at this time" but that:

"If the musicians of this local have had enough, if they feel that they want to do something about it, they can—they can. We have every possibility of success on our side. They'll tell you all kinds of things—that the contracts are with the Federation, you have to be a member of that, the Federation, in order to work with it. This provision of the contract is illegal and will not stand up in court."

With this introduction, Read then proceeded to explain that, after making his report to the membership meeting on the appeal, he would present resolutions authorizing further action "in fact, all action necessary to protect our rights and property of this Union, including going to Court," and authorizing the creation of a defense fund.

He then reviewed the possibility that the officers would try to prevent the passage of the resolution by adjournment or rulings from the chair and assured his listeners that these could be overcome by an appeal to the membership present. If an attempt was made by "a representative of the Federation" to suspend him, or expel him, Read said, he would appeal to the meeting.

"They have no right to suspend or expel anyone summarily, and anyone here is entitled to written charges, a certain specified number of days in which to answer these charges, rebuttal, rehearing, and action, and they can't do that in one meeting. This is the law."

Read went on to explain what action was contemplated with respect to the officers of Local 47. He said:

"The same is true about the other officers. They still have a year to run in office. It's up to this membership whether they

want to keep them in office or not. There is no law that can be enforced anywhere that says you have to continue to be represented by people who do not represent you. You might have to pay them, if the law sustained a contract, but they'd have to sue to get the money. Either they represent this membership, and they so state and come out this afternoon, or we'll ask them to resign (applause). And if they don't resign, we'll suspend them this afternoon and impeach them next month (applause)."

Read added:

"The legal point involved here is, you do not have to prove malfeasance in office; all you have to prove is that these people no longer represent your thinking and represent what you want."

In answer to an apparent question as to why action could not be taken against the Federation's officers, he said:

"We work from our structure, we work from our structure. We can't—I mean, by the very same token the fact that Petrillo has strength is because the majority of the people in the Convention support him. So this is why we are going to have to go to court to sustain our rights in these things, and we are going to have to go all the way."

In answer to another question, Read adverted specifically to the possibility that the members present at the afternoon meeting would not approve of the fight planned against the Federation, and made it clear that, in that event, other plans had been prepared:

"If the majority sentiment at the membership meeting is in support of the Federation and the officers, or is governed by fear and kept from action, then that will control the meeting this afternoon. We have other plans which I am not at liberty to divulge at this time. We will have to take that step when we come to it."

Toward the conclusion of his main remarks Read instructed as follows: "I must caution you not to repeat anything that is said here this morning before we get into the meeting this afternoon. We do not want to tip anything off if we can help it."

In the course of explaining that it would be necessary to raise money to carry on the fight, Read stated, "What I am going to do is going to provoke, I believe, instant retaliation from the Federation." Read explained again that several prominent lawyers had been retained ready to protect the members of the Local against any such retaliation, and he added, "We are in a position to ask the National Labor Relations Board to certify us immediately as the bargaining agent."

In response to an apparent question as to what would happen to the funds and property of the Local during the planned fight, Read said:

"It takes time to get a court action on this, but included in the resolution to remove—any resolution to remove officers today will be a resolution to suspend them pending their removal from office at the next general meeting and to direct them at this time to turn over all records, keys, money, assets to the Vice-President of this Association and other people who will be named as caretakers until the next meeting."

In advising the members as to how to protect their rights on their jobs in the event the

Federation should take action against them, Read said:

"If in the event that the Federation should expel any sizeable group of musicians here, or take the local's charter away from it, *which, pray God they do, because that's the best thing that could happen to us*, then we would have to continue offering payments of dues . . ." (Emphasis added.)

In response to another question, Read again touched on Article 1, Section 1, of the Federation's By-laws, and said: "You are a hell of a lot safer on the outside fighting this thing than you are in it, as witness what's happened to your business."

Defendant Evans was introduced to the meeting to explain the mechanics of rounding up membership support and of collecting the necessary funds for the campaign. He advised that "We have set a call club up and you are all members. That is how you were notified of being here." He said that checks and receipts for collecting money would be passed out to all of the participants in the meeting, and he warned them not to "flash these at the membership meeting until Cecil gets through with his business. At that point you can start in. And after a while, in the next couple of days, we are going to get the entire—some 3,000 call club in line . . ."

Defendant Cram exhorted the participants at the close of the meeting to give and direct support and to contact as many members as possible to interest them in the campaign. Cram explained that Evans and defendant Ulyate were in charge of the money-raising campaign but Evans was the chairman.

At the end of the meeting, Read exhorted: "Get the checks to Earl Evans, to Uan Rasey, to Bill Ulyate, or to anybody that you know has been in this thing from the beginning."

d. *General Membership Meeting of February 27, 1956*

The general membership meeting which had been called for February 27, 1956, in order to hear Vice-President Read's report on the local's appeal to the International Executive Board regarding the Music Performance Trust Fund convened at 1:30 P. M.

Notice of this meeting had been given to the membership through publication in the official magazine of Local 47, "Overture." This notice stated the business to come before the meeting as follows:

"Vice-President Cecil F. Read will make a report to the meeting on his meeting with the International Executive Board, together with the results of his meeting, if he has received an answer to his representations at the time of the meeting."

Defendants Read, Dumont, Cram, Berman, Rasey, Ulyate, Toland, Wald and Evans were present and participating in this meeting. Those of the defendants who were officers or directors of the local sat on the stage. The meeting was chaired by President de Groen, who turned the microphone over to Cecil Read at the outset "to give his report on the meeting with the International Executive Board."

Read began by giving a lengthy report on his presentation of the local's appeal to the International Executive Board relating to the trust fund and other matters, and their denial of the appeal.

At this juncture in his report, Read put this question to the meeting:

"Now, what are we going to do? We can meekly submit to these injustices and let Petrillo and Company continue to rub our noses in the dirt, or we can act like free and fearless men and break the power of this immortal dictatorship with which we have been shackled.

"What can Local 47 do further within the Federation? Nothing. Not a damn thing. Anything we do now will subject us to expulsion from the Federation. As individuals, as a group or as a local. Appealing to the Convention or attempting to change By-laws and rulings of the International Board would be futile. Local 47 has ten votes in the Convention out of possibly 1,500 votes."

Read further contended that further action within the Convention was futile because under Article 1, Section 1, of the Federation's By-laws, "Mr. Petrillo has the power to overrule the Convention, change the By-laws, overrule the standing rules of the International Board."

Read informed the members that he was in constant consultation with a staff of the ablest lawyers in this country, and that they had counselled him as to the legal rights of the local and its membership in any movement that they might wish to undertake to attain their economic and other goals. He said, "It is their opinion and my conviction that there is only one thing to do and one way to do it."

Thereupon, Read presented for the consideration of the membership the resolutions which had been prepared by the Steering Committee and discussed at length at the private Larchmont Hall meeting that morning. These resolutions are as follows:

"Whereas this association, Local 47, has attempted to protect the rights and interests of its members through all channels within the Federation, including the resolution requesting a rehearing and review and an appeal from the decisions and rulings of the Federation with regard to trust fund policies, and

"Whereas such appeal or request has been presented and has been denied and any further action in this matter within the Federation is clearly futile, and

"Whereas the A. F. of M. has failed to properly represent the members of Local 47 as a bargaining agent, be it resolved

"That this association authorize and approve that all further actions be taken, including litigation and other procedures necessary to protect the rights and property of this association and its members, and

"Be it further resolved that this association authorize and approve the collection of a music defense fund to be under the supervision and direction of Messrs. Cecil Read, Uan Rasey and Earl Evans, and Messrs. Read, Ulyate, Rasey and Evans are authorized and empowered to take such action as is necessary to protect the rights of this association and its members."

It would be necessary, said Read, to raise immediately at least \$100,000 for the musicians' defense fund.

Reading the resolution in the light of the issues involved in the appeal to the International Executive Board, and the discussion both at the Larchmont Hall meeting that

morning and at the membership meeting itself, it is clear, and the Referee finds, that its purport and objective was an open revolt, outside of the framework of the Federation, against the Federation and its trust fund policies incorporated into collective bargaining agreements. Indeed, the proponents of the resolution made it quite clear that the resolution was a mandate to bring legal action not only against the trust fund but also to oust the Federation from its constitutional role as the collective bargaining representative of the members of the local.

This type of action, Read naturally recognized, would bring action by the Federation to protect the trust fund, the Federation's bargaining rights and the Federation's constitutional status in relationship to its chartered local. Most of the remainder of Read's speech was devoted to outlining the course of action which would then be pursued.

He discussed the job rights of the members under the Taft-Hartley Act and their economic strength because of their ability as musicians. He went on to say that:

"And, besides, we will immediately petition the National Labor Relations Board for certification as bargaining agent in all fields of recorded and filmed music.

"In the election to determine who is to be the bargaining agent, you, the people who are now working in the motion picture studio TV film, records and networks, are the only ones entitled to vote as to who is going to represent you. (Applause).

"And the card-holders in the Federation all over the country who have never worked in these fields, are not entitled to vote in these elections. You may be told that the present contracts have several years to run and you won't be able to change bargaining agents until these contracts expire. This is not true. I have been told by competent labor counsel that these contracts will not be a bar to new and different certification, and that this will be a matter for the NLRB and the courts to decide."

Read then analyzed the advantages that he asserted were in store for the local and members from such a move, and he highlighted the obtaining of the rights to bargain for their own contracts, in the following statement:

"What has Local 47 got to gain in a move of this kind? First of all, all bargaining done here and the contracts ratified by the membership, wages, working conditions, re-use payments determined by those involved instead of benefits set up for a nation-wide trust fund."

"The Federation has been grossly negligent in this respect and has deliberately represented the majority of non-professional card holders within the Federation instead of the professional musician."

At the conclusion of Read's report, te Groen took the floor in opposition to the resolutions. He cautioned the members against precipitate action, and he warned that the demand for court action contained in the first resolution could lead to revocation of the local's charter by the Federation. He distinguished between orderly internal opposition to the Federation's policies and open revolt as follows:

"Displeasure with Federation policies and attempts to persuade the Federation to change these policies is one thing, but open revolt is something else. And the Federation has By-laws under which it can quell an open revolt. And the calling of such revolt will have most unpleasant results on all of us assembled here today."

The local's legal counsel, Bagley (who is also a Vice-President of the Federation) pointed out that there were less than 2,000 members at the meeting. The remainder of the local's 16,000 members were completely unaware of the resolutions proposed by Read, Bagley said, since they had no notice that any such resolution might be presented to the meeting in the official notice that was printed in "Overture," which referred only to Read's report and to one other matter not germane to this subject. Bagley also warned the membership, as te Groen had done, of the danger to the local and to its right to retain its charter if the resolution were to be adopted. Read countered these warnings by saying the potential charter revocation is "an empty threat" since the Taft-Hartley law would be available to protect the jobs of the members. He then restated the view which he had already presented that withdrawal from the Federation would be the best course of action, in the following statement:

"I believe that the best thing that could happen to us would be for us to withdraw from the Federation. And I'll tell you why. Because under this immoral, illegal Article 1, Section 1, they claim they can do anything they want to. I believe that the best thing that could happen to us would be to have them expel us as a group."

"I think that if the Federation attempts to organize another local in this jurisdiction we will immediately, in fact, we will immediately, anyway, petition the National Labor Relations Board to hold an election to determine who is the bargaining agent in this jurisdiction."

President te Groen, following advice from legal counsel Bagley that it would be illegal to consider the resolution at this meeting because of lack of proper notice to the membership, stated that the resolution should be referred to the next general membership meeting, and he ruled further consideration of the resolution at this meeting out of order. The ruling of the chair was appealed to the membership, in accordance with the plans laid at the morning caucus, by defendant Herman, and the members present voted to overrule the chair. Thereupon, the resolutions were adopted.

Following adoption of the resolutions defendant Rasey raised an entirely new subject. In accordance with plans which had been laid in the Steering Committee meetings, he brought up the article in Daily Variety dealing with a resolution which had been adopted by delegates from 29 locals of the Federation at the then recent 18th Annual Conference of Locals from California, Arizona and Nevada. In this resolution the delegates unanimously supported continuance of the Music Performance Trust Funds and attacked the efforts of those who were seeking to destroy the funds. The delegates who represented Local 47 and

who signed this resolution were te Groen, Hennon, Hall, Kelly, and Shugart. Rasey accused these delegates of acting in direct opposition to the position adopted by the local in September, 1955, which sought by appeal within the Federation to recapture for the individual musicians the "rescoring fees" paid to the trust fund. Rasey concluded that they were therefore acting contrary to the will of the membership of the local.

Paul* explained that the resolution was improperly reported in Daily Variety and that the intent of the resolution was perfectly consistent with Local 47's position. He pointed out that the resolution was only aimed at those who by court suits and other means, were seeking the entire destruction of the trust funds, whereas the position of Local 47 at that time had always been that the trust funds were perfectly sound and the primary objection thereto was the re-negotiation of rescoring and other fees from musicians to the funds.

Rasey indicated dissatisfaction with Paul's explanation, and demanded the resignation of the local's delegates who signed the controversial resolution. The formal request of resignation, which had been prepared at the Steering Committee meeting follows:

"In view of what has been brought up here, the unusual action of our delegates, voting against the unanimous approval of our membership, I submit, Uan Rasey, that it is the sense of this meeting that the president, the recording secretary, the financial secretary and the public relations man of this local no longer truly represent the expressed will of this membership. Confidently, I say, I ask and I demand that at this very moment they resign."

Rasey's request was refused by Paul on the ground that he was a duly elected official of the local who could be removed only through the specific removal procedures provided for in the local's by-laws. te Groen and Hannon refused to resign on the same grounds.

Read disputed Paul's contention that he was not subject to summary removal. He cited a decision of the California Supreme Court which, he said, ruled that a membership meeting had the right summarily to remove officers who no longer represent them. He added:

"There is no question at this time of malfeasance or impeachment. There is only the question of removal from office pending final action to be taken at a special or regular meeting called for that purpose, of which the entire membership has to be notified five days in advance by mail."

Read then moved adoption of the resolution which had been planned by the Steering Committee and discussed at the morning caucus at Larchmont Hall:

"That John te Groen, Maury Paul and Bob Hennon be suspended from acting and from their office pending final decision at a special meeting to be called for that purpose two weeks from today at 11:00 o'clock at night."

"I should also like to include in this motion that the membership meeting instruct John te Groen, Maury Paul and Bob Hennon to turn over to Cecil Read, as vice-president, becoming acting president, to

Martin J. Berman, as temporary secretary, and to Earl Evans as temporary treasurer, the assets, the papers, the records and all other property of this association for their caretaking.

"And I would also like to have this membership instruct John te Groen and Maury Paul and Bob Hennon to sign a power of attorney turning over the responsibility to these three men for the caretaking of the assets of this organization."

Bagley and Phil Fisher, a member of the local and the International's studio representative, stated their opinion that Read's suspension resolution was entirely null and void because of the lack of any charges, trial and fair hearing and proper advance notice to the membership as required by the local's By-laws.

In justification of his position, Read retorted:

"But I am afraid that if they remain in office after what has happened here today, they will obey any orders sent out by James Petrillo or the Federation and will be put in a position of stopping, annulling and setting aside the will of this membership."

"And if there is a technicality about it, the will of the membership is final. And let them sue us in court about it later on."

Paul pleaded with the membership for a fair hearing in accordance with the local's By-laws before any suspension action was taken against him. Hennon, the Financial Secretary, pointed out that no matter what action the membership meeting might take against him, he would be in violation of his oath of office and trust if he were to relinquish any of the property and records in his custody without the requirements of the By-laws and due process first having been met in connection with action against him. Accordingly, he said that he would refuse to turn over the property and records held by him until appropriate procedures were followed. He also informed the meeting that he would refuse any requests by the Federation for such property and records unless the request were properly grounded under the Constitution and By-laws of the Federation.

At this stage, a compromise was suggested by defendant Berman whereby the officers would be replaced in Read's resolution, but would continue to perform their duties and receive their salaries, but would act under the supervision of the persons named in Read's resolution. Read proposed an alternative compromise under which te Groen would voluntarily suspend himself until formal charges might be brought against him and the other officers would retain the full powers of their offices.

Under this arrangement Read, of course, would succeed to the presidency for the period of te Groen's voluntary suspension. This compromise was refused by te Groen. Read then announced to the meeting that in a private conversation on the stage he had asked te Groen whether he would obey instructions from the Federation and President Petrillo if such instructions conflicted with the position of Local 47, and te Groen indicated that he would obey such instructions. Thereupon, Read moved "that John te Groen temporarily be suspended as president until such time as

formal charges can be prepared and presented under our By-laws by the membership."

Immediately, a question was asked from the floor: "What are the charges?" Read replied, in substance, that there were no charges, that there was no claim of malfeasance or anything of that sort. What they were trying to do, he said, was to prevent the officers from obeying any orders that might come from the Federation. That, Read said, was something which could not be risked.

Fisher repeated his prior advice that since the membership was not notified of any contemplated suspension action against te Groen, Read's last motion was illegal.

te Groen ruled Read's motion out of order, and Read appealed the ruling of the chair. te Groen was still nominally in the chair, but Read called for the "ayes" in favor of overruling the chair. He was drowned out by the audience, which apparently was in a state of turmoil. Then someone called for a standing vote and, after further discussion, Read attempted to take such a vote. But, at this point someone called for a secret ballot, and further turmoil ensued. At first Read said a secret ballot was not necessary on such a motion, but he acquiesced in it when Bagley said that the By-laws required a secret ballot when requested by any two members. Read then attempted to set in motion the procedure for a secret ballot by the distribution of ballot forms, but then abruptly interrupted it, because of the confusion. As Read later said "the meeting was pretty much in an uproar" and the circumstances were such that he could not conduct a secret ballot.

Read then put the question of overruling the chairman to a voice vote and declared it carried. This was immediately followed by a voice vote, again ruled by Read to have carried, suspending te Groen.

In answer to questions by the Referee at the hearing, Read testified that at the meeting "there was an air of general confusion at that time." As he said:

"At this time the meeting was pretty much in an uproar and it just did not seem possible that we could do anything other than to go ahead with the action that was necessary to be taken at that time, that I felt was necessary to be taken at that time to protect the local."

The printed checks payable to the Musicians Defense Fund, which had been prepared by the Steering Committee and discussed at the morning caucus, were then brought out in the open and distributed. Defendant Ulyate took the floor and appealed for contributions, announcing that he and Read, Evans and Rasey would be in charge of the fund.

The meeting was concluded with an appeal by Ulyate for contributions to the Musicians Defense Fund and announcement was made that Read, Ulyate, Rasey and Evans would be in charge of handling these funds. The meeting then adjourned.

e. Board of Directors Meeting of February 28, 1956

The next regular meeting of the local's Board of Directors was scheduled for February 28, the day after the membership meeting. Read called the meeting to order at 10:00 A. M., stating: "I am acting under the authority of the By-laws of Local 47, as vice-

(Continued on page thirty-six)

*Maury Paul, Recording Secretary, Local 47.

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● **JOSEPH PIZZO**, solo harpist of the Baltimore Symphony, was born in Viggiano, Italy. His early music studies were pursued under his father, a well-known harpist. Later he studied at the Royal Conservatory of Naples under Giovanni Caramiello. He first was engaged by the Opera Company in Naples, then, after other engagements, he became successively solo harpist with the Cape Town (Africa) Symphony, and the Johannesburg Symphony. On coming to America, he was solo harpist with the New York Symphony under Damrosch. He was subsequently associated with the Chicago Opera Company, the Cleveland Symphony, the Chautauqua Symphony, and the N.B.C. Symphony. Besides being solo harpist with the Baltimore Symphony, he is a faculty member of the Peabody Conservatory of Music. Mr. Pizzo is a collector of old harp compositions and anecdotes about harps.



● **NAOUM BLINDER**, concert master of the San Francisco Symphony, has literally spanned the world in his tours as concert violinist. Born in Lutzk, Russia, he had graduated from the Imperial Conservatory of Odessa (where he studied under Alexander Fiedeman) before he had completed the fourteenth year of his life. Then on to Manchester, England, and its Royal Academy of Music, where he was a pupil of Adolf Brodsky. From 1911 to 1920 he filled the post of professor of violin in the Imperial Conservatory of Odessa, and from 1920 to 1927 occupied the position of professor of the Moscow Conservatory. Then in 1921 the global journeys began with a tour of all Russia, when he was soloist with orchestras of Moscow, Leningrad, Odessa, Kiev and Charkoff. In 1926 he gave six concerts in Constantinople and one in Turkey. In 1928 Japan became his field of endeavors. After presenting concerts in all of the important Nipponese centers, he came to America via Honolulu. He made his debut in Carnegie Hall and recitals throughout the country until he became in 1932 first desk violinist of the San Francisco Symphony. He also established the San Francisco String Quartet in that city. As a teacher, Naoum Blinder has continued the success acquired in Europe. He numbers among his pupils Isaac Stern, and, more recently, David Abel.



● **DOROTHY ZIEGLER**, first trombone of the St. Louis Symphony since the Fall of 1944, comes by her choice of career naturally. Her father led an all-girl band in Muscatine, Iowa (her birthplace), and whenever he needed an instrumentalist of any variety, young Dorothy was there to oblige—on trombone, bassoon, and French horn—this although her first musical training came on piano and violin. At fourteen she won the Iowa State high school competition for pianists. A year later she was winner in both the trombone and bassoon divisions.

Miss Ziegler won scholarships first to the National Music Camp, then to the Eastman School of Music. She was the youngest member

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of the All-American Youth Orchestra with which Leopold Stokowski toured South America. Before coming to St. Louis to assume her present post she spent two summers at the Berkshire Music Festival and a season with the National Symphony Orchestra in Washington, D. C.

Since taking up permanent residence in St. Louis, Miss Ziegler has spent two summer seasons as pianist with the Chautauqua (New York) Symphony and another as first trombonist of the Hollywood Bowl Symphony. She has received her master of music degree, in piano, from the University of Southern California and spent one summer in France as a student of the noted concert pianists Robert and Gaby Casadesus. She has appeared both as piano and trombone soloist and recitalist in St. Louis, has been active with operatic organizations, and recently capped her busy schedule by doing work in music therapy at the state mental institution.

● **JOHN WUMMER**, solo flutist with the New York Philharmonic Symphony, comes of a distinguished line of musicians. His father played both trumpet and trombone, and his paternal great-grandfather, Hans Herrlein, achieved fame in Europe as a choral conductor and organist. Pennsylvania-born, John studied violin at the age of nine, later adding piano and theory. At fifteen, he decided that the flute was his instrument, and spent the next three years as a pupil of Andre Maquarre, a member of the Boston Symphony. Later he studied with Georges Barrere.



With his appointment as solo flute of the Detroit Symphony under Ossip Gabrilowitsch in 1924, John Wummer's orchestral career began. Toscanini called him to the NBC Symphony in 1937, and the New York Philharmonic-Symphony appointed him to his post in 1942. He has been heard as soloist many times since.

In great demand as a chamber music player, Mr. Wummer has appeared with many groups in America and Europe, notably the Prades Casals Festival. He owns three flutes for concert work, of gold, silver and platinum. The gold instrument is best for general use, he thinks. He also has several old flutes he plays for fun. Another hobby is collecting old manuscripts and rare editions of flute music.



● **MARTIN ZWICK**, solo clarinetist with the Utah Symphony Orchestra under Maurice Abravanel since 1949, studied with Simeon Bellison of the New York Philharmonic; Daniel Bonade of the Curtis Institute and Juilliard School of Music and Andre Vacellier of the Opera Comique and Concerts Colonne Orchestra in Paris, France. Born in New York, Mr. Zwick, had four seasons training in the National Orchestral Association under Leon Barzin, received a "License de Concert" on graduation from the Ecole Normale de Musique in Paris and the degree of Bachelor of Fine Arts in Music from the University of Utah. He toured with the All-American Youth Orchestra for two seasons under Leopold Stokowski and has played with the Hollywood Bowl Symphony Orchestra, the Werner Janssen Symphony Orchestra, the Ojai Festival Orchestra under Thor Johnson and the Los Angeles Philharmonic Orchestra under Alfred Wallenstein.

ation from the Ecole Normale de Musique in Paris and the degree of Bachelor of Fine Arts in Music from the University of Utah. He toured with the All-American Youth Orchestra for two seasons under Leopold Stokowski and has played with the Hollywood Bowl Symphony Orchestra, the Werner Janssen Symphony Orchestra, the Ojai Festival Orchestra under Thor Johnson and the Los Angeles Philharmonic Orchestra under Alfred Wallenstein.

● **JOHN W. MACK**, first desk oboe of the New Orleans Philharmonic, was a pupil of the famous Marcel Tabuteau and uses the oboe Tabuteau used in the Casals Festival of 1950. He himself has played at the Casals Festivals at both Prades and Perpignan. He was born in Somerville, New Jersey, in 1927, graduated from Juilliard School of Music and Curtis Institute. He has also played with the National Orchestral Association and the Sadler's Wells Ballet Orchestra. His hobbies are reed making and home machine shop work.



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MUSICIAN IN SPRING

*The day's at the morn and the lark's on the wing;
It's time to get out that old banjo and sing—
Oh, the heck! Look at that! It's minus a string!
I'll manage somehow on those that remain.
Let's give them a taste of the cowboy's refrain—
There goes that telephone ringing again!
"You can't make your lesson? Your fingers are sore
From trying to screen the front windows and door?
Too bad! But why didn't you call up before?"
So that lesson is lost! Now what was the song?
I can't find the music. What else can go wrong!
The pegs stick with dampness—Oh, let's play ping-pong!*

—Ted Agrimont,
Local 40, Baltimore, Md.

Charles Keller, president of Local 135, Reading, Pennsylvania, gives some practical advice in his column. "The President's Score," in that local's bulletin, *The Major Chord*: "The big outdoor season will soon be in full swing again," he writes. "Picnics, festivals, summer concerts, dancing under the stars. Some are paid for by organizations, some by the city government appropriation, and some by the Trust Funds of the Recording Industry. A large amount of money is earned by our musicians during this season, more than enough to make all of us realize that it is a very important time of the year. Musicians should never treat their engagements lightly. Some of our members are of the opinion that on a warm summer evening it is appropriate to wear a sport shirt with short sleeves, open at the neck and no tie. We have seen others wearing long sleeve shirts and having the sleeves rolled up to the elbows. This is not a healthy situation for the music business. When we take a twenty minute intermission, moreover, it should be exactly that and not even one minute longer. At the time, these things may seem trivial, but in the long run, they are of the utmost importance to our organization.

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and restricted we may bungle our great opportunity to contribute on a large scale to the peace and happiness of the world. We sincerely urge every one of you to conform to the uniform of your respective group and that you abide by all the rules and regulations."

It was a big day for both Raymond A. Schirch and William Wied when Local 144, Holyoke, Massachusetts, recently held their fifty-fifth annual banquet at Toto's Restaurant in that town. On that occasion these two outstanding officers—the former recording secretary for thirty-eight years and the latter financial secretary for thirty-six—were presented by President Charles Wall with bronze engraved walnut plaques. Mrs. Helen Downing Ezold, vice-president of Local 144, was chairman of the event which was attended by Mayor Edwin Seibland and his wife of Holyoke, as well as by 400 members and guests.

May both Schirch and Wied have many more years of usefulness!

Four locals have their birthdays this month. On May 4, Local 144, Holyoke, Massachusetts, will be fifty-five years old. On May 25, three locals will reach this happy anniversary: Local 141 Worcester, Massachusetts; Local 146 Lorain and Elyria, Ohio; and Local 147, Dallas, Texas.

Happy Birthdays to you!

Harold Hummer, who served as secretary of Local 237, Dover, for several years in the mid-twenties and has been a member of the Federation for over twenty-five years, writes us, "I should like to read a little something about my musical doings in the *International Musician* while I am still on earth. A flowery obituary just doesn't appeal to me!" Well here goes, then: Brother Hummer was employed as pianist and organist in moving picture theatres in Pennsylvania and New Jersey for fifteen years; he has composed some seven marches, fox-trots and such; and he was among the first to broadcast. The broadcasting stint took place when he was leader at the Lyric Theatre in Summit, New Jersey. He took the orchestra to Newark, New Jersey, and on Flag Day, June 14, 1922, played a half-hour over WOR... How's that, Harold?

Local 11, Louisville, Kentucky, has a young lady member with the astonishing name of Ola Miracle. But what is still more astonishing are her accomplishments. Ola, in her early twenties, is married (she is Mrs. S. J. Collins in her wifely role) and has a three-year-old named Stephen Foster Collins who plays piano and accordion. She has also been for four years a practicing lawyer, with her offices in The Louisville Trust Building. Moreover, she plays regularly

with different bands and as solo accordionist. This is the astonishing "triple life" of this accomplished "Miracle" of Local 111!

*If you have a million friends
You have none to spare
But if you have one enemy
He'll turn up everywhere.*

—From George W. Snyder's column in "The Major Chord," the bulletin of Local 135, Reading, Pennsylvania.

Dan Tetzlaff, our trumpet columnist, received a letter from his friend Ivor L. Clifford, last month, which he kindly passed on to us. Clifford, who is second trumpet of the Durban (South Africa) Symphony Orchestra, writes, "Among my many activities here, I am conductor of the Municipal Bantu Brass Band—twenty-six Zulus—and I find it most interesting. I have to teach and train them all from scratch, but they are really keen. We gave a concert last week at one of their Location Halls, which seats about 850. Every man who enters the hall is immediately searched by two of their own Zulu Police for

such instruments of battle as knives, daggers, bicycle chains or clubs—which are used freely in settling any heated argument. On the evening of our concert one was stabbed and thrown out of a third floor window. However, all this appears to be a part of their normal way of life (or death!)."

Much luck to you, Ivor, with your Zulus, but please don't invite us over for a concert!

Accordionists are famous for their versatility, but here is one who filled an unusual engagement indeed. Recently the members of the Joint Committee on State Administration in Massachusetts chipped in and paid accordionist Mabel Biagini to play works that were up for possible choices as the official state song. She played through three songs each bearing the title "Massachusetts," one entitled "All Hail Massachusetts," and one already published as "The Song of the Berkshire Hills." The committee is still trying to decide which is best.

March 29 was "orchid night" at the Rochester Philharmonic. All newly

signed up members on the subscription series received an orchid especially flown from Hawaii for the occasion.

Local 5, Detroit, Michigan, relays to us through *The Keynote*, their official publication, that Del Delbridge, Jr. saw the following statement in a recent issue of *Look*, by author Shannon Fife, "Diplomats should emulate musicians in never conducting foreign overtures without knowing the score."

An orchestra arranger, wanting to get together with a fellow musician, wrote him the following note: "Luncheon at the same place—key of C." His friend was there—at one sharp.

From *Official Bulletin*, Local 153, San Jose.

The San Diego Sound Post in its "Sharps and Flats" column lays us flat with this one, from the pen of Vic Spies: "It seems that a young boy of Chinese and Mexican ancestry lived by Donzelli Point, California. A light-house, known as Donzelli Light, is located at the Point. The boy's parents were named Mr. and Mrs. See, and



Gene Beecher

they christened him Jose Kanu—which makes him Jose Kanu See by the Donzelli Light. Hmmm."

Vic Buynak, of Local 4, Cleveland, Ohio, tells us that a good old-fashioned re-union party was held recently at Gene Beecher's home for members and ex-members of various Beecher orchestras.

(Continued on the following page.)



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Over Federation Field

(Continued from preceding page)

Chet Arthur, secretary of Local 399, Asbury Park, New Jersey, has happy news for us in the announcement that Julius Katchen, a member of that local and one of our well-known pianists, is returning from his European tour with his bride. He and Arlette Patoux were married in Paris, France, on April 10. Since 1948 Mr. Katchen has made extensive concert tours throughout the United States, Asia, South Africa, Australia, New Zealand, and South America in recital and with leading world orchestras. The couple have not yet made plans where they will reside. However, it is a safe guess that Mr. Katchen will now have a touring companion.



Julius Katchen

A scientist in Lucknow, India, claims that plants have an ear for music, that they grow faster when "entertained" by playing or singing. He is treating sugar cane, tapioca, sweet potatoes and other plants to soothing music, with good results, he says.

—Reuters Dispatch.

So much is made of conductors nowadays, that the following little skit has its point. It's refreshing to learn that someone is willing to put a good word in for the lowly instrumentalist in the orchestra. Because he belongs "in the ranks" the writer of the following, a member of Local 77, Philadelphia, wants to remain anonymous.

*Of all things to make music on,
The strangest is the slim baton:*

*No reeds it has, no strings, no keys,
Yet out come bursting symphonies.*

*It makes the music swell and sink so—
(Or is it that we only think so?)*

*It scintillates, displays a passion,
Or grinds effects in modern fashion:*

*I wonder how a little stick
Can turn out anything so slick!*

*Or if, by any rules or laws,
It should receive the whole applause!*

*I have a hunch, sometimes, don't you?
The orchestra does something, too!*

Huntsmen found a bell in the stomach of a leopard shot near Dambulla, Ceylon. A villager claimed it. He said it had hung round the neck of one of his cows which disappeared.

—Reuters Dispatch.

Somehow this reminds us of the music that gets lodged on disks. However, it isn't so easy to claim one's own in the latter case.

Musical unions trace back to at least ten centuries. With the opening of the tenth century and the rise of cities came the spread of craft guilds, and, with the beginning of the thirteenth century, organizations of minstrels and instrumentalists. The "Nicholas Brotherhood" (a musicians' guild) was formed in Vienna in 1288 and soon after the "Company of Trumpeters" in Lucca; then in 1331 the *confrerie de St. Julien des Menetriers* (the Brotherhood of Pipers and Fiddlers) came to birth in Paris. This organization even boasted a hospital for ailing members! Fees were rigidly fixed for the members of these

various "unions" and their rights within their district protected. The organizations' weaknesses were, first, their mutually competitive spirit, the members of one group not allowing those of another to render musical service in their district, and, second, their discriminatory attitude in regard to membership, this privilege being often hereditary and as hard to obtain as is now a seat in the Stock Exchange.

Harry Bigley, in his column, "Cadenzas" in the *Pittsburgh Musician*, relates, "When the Greatest Show on Earth, the Ringling Brothers Circus, left Sarasota in April and embarked on its 1956 tour, one of the show's all-time fixtures remained behind in retirement. Merle Evans, the musical director for more years than most of us can remember." He goes on to say, "The management didn't have to look far to find Merle's logical successor as Izzy Cervone, a member of Local 60, Pittsburgh, Pennsylvania, has been anything but a stranger to the circus world through the years. Mr. Cervone has a definite job cut out for him and that is to give the show a new look in music which for the most part involves instrumentation. The new band calls for five trumpets, three trombones, five reeds including baritone saxophone, bassman to double on horn and strings, two drummers, one to play bass drum and cymbals and the snareman to carry full trap equipment such as one finds on the musical comedy shows today. This is certainly modernizing the circus band completely, and that seems to be the general idea."

Joseph F. Pizzitola, a member of Local 144, Holyoke, Massachusetts, for over forty years, and leader of the Plectro-Accordion Symphony which he organized in 1928, has been invited to take his group to London to play for the Banjo, Mandolin and Guitar Guild of England. Mr. Pizzitola has played banjo in the Springfield Symphony under the late Dr. Alexander Leslie and with the Second Regiment Band under Lt. Charles B. Farnam. He is a past president of the American Guild of Fretted Instruments and a former member of the board of directors of Local 144. He has been instrumental throughout his career in the teaching of over 3,000 music students, and at present continues this work, with studios in Holyoke, Springfield, and Northampton, Massachusetts. *A pleasant journey to you, Brother Pizzitola!*

(Continued on page thirty-four)

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Symphony and Opera

RENEWALS Conductor Henry Denecke has just had his contract renewed with the Cedar Rapids (Iowa) Symphony. This will be his fourth season there . . . Enrique Jorda's contract as conductor of the San Francisco Symphony has been renewed for three years . . . George Barati, conductor of the Honolulu Symphony, now ending his sixth year with the group, has been signed for another two years.

SEASON'S CLOSE The Duluth Symphony (Herman Herz conductor) closed its season April 20, with an all-Sibelius concert, honoring that composer's ninety-ninth year . . . Jacques Singer closed the season of the Indianapolis Symphony Orchestra March 25 "with an exclamation mark, not a period," according to a local critic . . . Leon Fleisher was the piano soloist with the New Jersey Symphony at the closing concert of its season April 24 . . . The Worcester (Massachusetts) Youth Orchestra presented the closing concert of this season—its ninth since making its debut under Harry Levenson's direction—on March 9. The critics described the concert as "solid, impressive and worthy."

PREMIERES World premiere of a new symphony by Paul Creston, commissioned by the National Symphony for its twenty-fifth anniversary season, was a feature of the April 4 concert of that orchestra under Howard Mitchell . . . A work composed by Teo Macero was performed April 21 by the Columbia University Orchestra in New York City under the baton of Howard Shanet. It was "Concerto for Jazz Combo with Student Orchestra" and had been commissioned by this group . . . The New York premiere of *The School for Wives* by the Swiss composer, Rolf Liebermann, was presented by the New York City Opera Company on April 11 during its Spring season . . . Leopold Stokowski, gave the first American performance of the Carl Orff choral work, *The Triumph of Afrodite*, at the April 2 concert of the Houston Symphony . . . The Louisville Orchestra, under the direction of Robert Whitney, has been awarding commissions to outstanding composers throughout the world since 1948, and has presented 113 world premiere performances of these new works. All of the commissioned works are given at least three subsequent performances by the orchestra and are then recorded and released under a special subscription record series plan. Recent composers to receive commissions have been Colin McPhee, Niels Viggo Bentzon, Roger Goeb, Herbert Elwell and Klaus Egge . . . The Hartt Opera-Theater in Hartford, Connecticut, produced two world premieres in a double-billed performance early in the current month. *Miranda and the Dark Young Man* by Elie Siegmeister was premiered along with Arnold Franchetti's *Game of Cards*.

CURTAIN CALLS The New York City Opera Company which closed its three-week spring season April 18, included Walton's *Troilus and Cressida* among its special events . . . American opera groups from all over the United States met in mid-March in New York to discuss problems of their craft. The Central Opera Service, as it is called, put on a full day of "do-it-yourself" demonstrations of opera production techniques and devices, as well as a two-day conference. Boris Goldovsky of the New England Opera Theatre demonstrated the use of the microphone and loud speaker as aids to musical and acting ensembles, and Tibor Kozma of the Metropolitan Opera, with the aid of four young singers, examined the merits of various English translations of opera. These were only a few of the offerings of the three well-packed days . . . Clarence Cameron White's opera, *Ouanga*, on a Haitian theme, will be presented by the National Negro Company at the Metropolitan Opera House in New York City on May 27.

SEASON 1956-57 In its fifty-fourth season the Minneapolis Symphony will present two choral works: the Verdi Requiem and the world premiere of a composition by the orchestra's conductor, Antal Dorati: *The Way of the Cross* . . . The Griffith Music Foundation of Newark, New Jersey, has rounded up a series of famous symphonic groups for its 1956-57 season: the Vienna Philharmonic on December 4; the Boston Symphony on

(Continued on page twenty-six)

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Hans Schwieger

The podium Schwieger is intense. In preparing a concert, he marks the scores painstakingly. When occasion warrants, he gives separate section rehearsals. He rehearses with the whole group four, five times. A fervent worker, he explains each step meticulously to his men. Through a sort of acrobatic mesmerism he draws the various elements of the orchestra into a concerted pattern. Every motion has meaning; every direction is pertinent.

Schwieger's podium work is also dramatic. Perhaps this is why, on "purely orchestral" nights of the Kansas City Philharmonic, of which he is permanent conductor, the seats of the Music Hall are as full as when a soloist has been engaged. They have taken to calling these nights "conductor concerts." They send in letters asking for more such concerts when they can view the orchestra "as a musical instrument without the fanfare surrounding soloists."

An instance of Schwieger's thoroughness occurred in 1947 when he was developing Fort Wayne's Philharmonic Orchestra. He presented Gabriel Pierné's *Children's Crusade* which has a score so complex that it is seldom given even by major orchestras. For this project, he had to deal with, besides this (at the time) semi-amateur orchestra, an adult chorus of more than 200, a children's chorus of more than 180 and soloists. With the limited budget, only one full rehearsal was possible.

The Indefatigable

So one day Schwieger would go to a grade school, the next to a factory, the next to a ladies' club, the next to the church of an Amish Colony in nearby Berne, coaching to as near perfection as isolated group practice permitted, children, teachers, factory workers, salesmen, engineers, bank clerks, housewives. Every page of music of every single instrumentalist he marked for fingerings, for positions, for up- and down-bowings (in the strings), for *crescendos* and *diminuendos*, for tempo variations. Then he would tell them, "Go home and practice." Later he got them

together by sections and went from one room to another listening, to the strings for awhile, then to the woodwinds and the brasses, criticizing, explaining, clarifying. Then, on April 28, 1947, he sweated through the one rehearsal allowed him, fitting the mosaic together with infinite care. At the concert the next two nights the audience in sold-out Quimby Hall rose as one man and cheered.

Far from being elated with this reaction, Schwieger told reporters, when they asked him was he satisfied, "No! But I'll do it better another time. If not here, in another city!"

Early Trials

The mixture of professional thoroughness and youthful exuberance which is Mr. Schwieger on the podium—the drive, the confidence, the ability to instill faith and to generate energy—are qualities formed through a series of life struggles guaranteed either to bring out the best in a man or to subdue him completely. Up to the age of twenty-five his could have been the life of any promising conductor. Born in Cologne in 1906, he was reared by an aunt, since his mother died when he was three and a half years old. He began the study of music at five and pursued it ardently even in the face of his father's opposition. One surprising item: he traveled all over Germany as a boy soprano, taking the "female" lead in Haydn's *Der Apotheke*. He remembers enjoying especially the curtain calls at the end when he could remove his wig and take the bows in his real character.

There were certain trying episodes of his early life—the scene, for instance, when his father tore to bits concert tickets the boy had purchased, furious at his son's persistence in following music. It only made Hans stouter in his purpose. Attending a Wagnerian opera—*Tristan*, it was—with his aunt when he was twelve, he conceived the notion of how grand it would be to conduct one's own composition—as Wagner did! A composer-conductor—that was what he would be! As soon as he got home he started right in composing little pieces, all of which have since been lost to fame. The ambition to become a conductor, however, persisted.

Now came his matriculation at the University of Cologne in line with his father's wish that he study law, and his graduating instead

with a degree in philosophy. There came his engagement to Elsbeth Bloemendal, daughter of a Dutch Jew, head of a manufacturing concern in Cologne. There came his matriculation at nineteen at the University in Bonn to study for his doctorate in philosophy; his meeting there, at a Beethoven Festival with Erich Kleiber, then conductor of the Berlin State Opera. This brought about a sudden pushing back of boundaries. To his joy, Kleiber invited him to come to Berlin as his assistant at the State Opera House. He held the post for two and a half years.

Successively thereafter he was appointed, first, as conductor in the opera house in Cassel and then at the opera house in Augsburg. In the latter city was produced for the first time, under his conductorship, the Augsburg Festival Play, *Am Roten Tor (At the Red Gate)* which utilizes the wall and portals of that ancient city as stage sets.

At the age of twenty-five, he got his "lucky break." He was chosen out of 135 candidates—many older and better known than he—for the job of Director of Opera and Symphony in Mainz. He became also director of the Mainz Choral Society, one of the more important choirs in Germany.

Now he was so sure of his future that he married Elsbeth Bloemendal. Certain contingencies were nevertheless to be faced: her Jewish descent and Hitler's coming into power about that same time.

As Schwieger had expected, he was summoned before the city authorities—in his position he was a civic employee—to establish his "racial purity." This accomplished to their satisfaction, he was yet not to be left in peace. In what seemed to be casual conversations, he caught mysterious references, and was the recipient of anonymous warnings. Finally



came his abrupt dismissal from his conductorships in Mainz.

Now for two and a half years Schwiieger was without a regular job. Isolated guest engagements were only stopgaps. Furtwangler, for one, tried to help him with a guest conductorship of the Berlin Philharmonic. But finally even the guest conductorships stopped. At the last one—he was directing an orchestra at Krefeld—a mutter in the audience rose to a rhythmic howl. The police filed in and formed a cordon through which Schwiieger passed to the street to safety.

It was not long after this that his wife told him she would divorce him—for the sake of his career—and that they would be reunited only when the persecution was at an end. Shortly thereafter she disappeared, leaving a note saying she was going to Holland, would have arrived in that country before he had read her message. For two years thereafter he could communicate with her only through friends.

There were no jobs even outside of Germany for him now.

Escape by Stages

In 1936—by then the Nazis had become fairly tolerant of him though his attitude toward them had worked in reverse—Schwiieger got the job as General Music Director of Opera and Concerts in Danzig. (It was then the Free State of Danzig, without Nazi control.) Then, in 1937, he was offered a three-year contract to succeed Leo Blech as leading conductor of the Berlin State Opera House. While he was pondering his answer, he received an offer to conduct in Japan. Elsbeth, hearing of it, too, managed to get through the message: "By all means accept the Japanese offer."

Now the plot becomes even more movie-like.

Schwiieger, leaving most of his belongings and practically all of his money behind, to make it appear as though he were only off on a concert tour, started for Japan. After six months' time there—"Always the thought obsessed me, 'How do I get to the United States!'"—He had made enough money teaching at the Ueno Academy in Tokyo and conducting the Imperial Orchestra to get him to America. The United States Consul in Tokyo expedited matters, and, on March 4, 1938, as a young man of thirty-two, he ar-

rived in California. He had no prospects, but he had a boundless sense of freedom.

Hard Road to Citizenship

After miles of red tape and months of waiting in New York City, he got Elsbeth over and, as soon as the necessary legalities were gone through, they remarried, in New York's City Hall. Then the couple went to Columbia, South Carolina, where he had rounded up a job as choral director and where, as music director of the Columbia Music Festivals, he organized the Southern Symphony Orchestra and directed the Symphony Orchestral School.

In course of time the couple bought themselves a house in Columbia and began to breathe easier. It was too soon to relax, though. Came December 7, 1941, and Pearl Harbor. Overnight Schwiieger, as a German newly come to this country—and via Japan!—was listed as suspect—was interned. For 401 days he remained in custody. His wife found work as an assistant manager of a resort hotel in Georgia. Finally, through the intercession of friends, his case was reviewed, and the charges found false. On his release, he hurried to rejoin his wife. After a rest period in Savannah they moved to New York. Then, on July 5, 1944—it was still wartime—he became an American citizen.

It was something for this fate-dogged maestro to be a full-fledged American and to be walking along Fifth Avenue with his wife of a sunny day in July. For such a special occasion, they would have to have a special celebration!

The celebration never came off. As they stopped at a friend's apartment on their way home to plan it, Schwiieger's wife suddenly threw up her hands. "Oh, my head!" she cried out—and slumped to the floor. In five minutes she was dead—a victim of a heretofore unsuspected brain tumor.

Olga Samaroff Stokowski, that guiding star to so many young musicians, led the dazed Schwiieger away to her New York apartment. Later she took him to spend a recuperatory month at her summer home in Connecticut. Returned to New York, Schwiieger joined the staff of the New York City Center of Music and Art. In the Fall of 1944 he became conductor of the Fort Wayne Philharmonic.

Citizens of Fort Wayne still remember how avidly Schwiieger took up his task there, how it became for him the way back. They remember how he wrestled to make the orchestra a workable, proficient unit. They remember to what an astonishing degree he succeeded. They felt from the start, though, that his tenure would be brief. He had other fields to conquer.

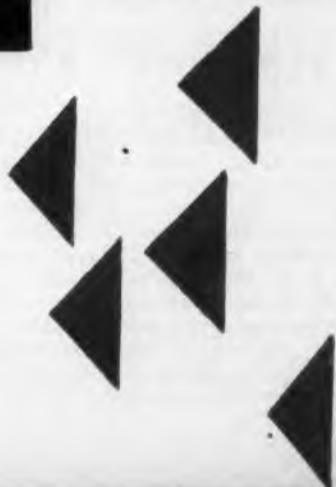
Schwiieger was not to leave Fort Wayne, however, without realizing in a very personal way his desire for fuller Americanization: in 1947 he married a Fort Wayne girl, an alumna of the University of Michigan, Mary Fitzpatrick Shields.

Meanwhile he had become one of this country's and Europe's regularly heard guest conductors. In the late 1940's he had appeared with the NBC Symphony Orchestra for three successive seasons, with the New York Philharmonic-Symphony at the Lewisohn Stadium series two summers, with the Chicago Orchestra in Grant Park and in Orchestra Hall. He had returned for guest-conductorships in Germany, appearing twice in the Spring of 1950 on the podium of the Berlin Philharmonic.

Then, in 1948, he became conductor of the Kansas City Philharmonic Orchestra.

This orchestra, it would appear, is one cut out for Mr. Schwiieger. It, too, has weathered economic squalls, passed through wars, recessions and political upheavals; experienced money drouths and climatic changes in popularity.

Its history traces back to 1938 when a committee composed of members of Local 34 met to consider giving a pair of concerts, as a "feeler" and stimulator to the people of Kansas City. After six weeks of rehearsals (with no pay) under the leadership of Arnold Volpe,



sixty members of the local played two concerts to a large audience at the old Convention Hall. The following year Karl Krueger, in Chicago at the time, read the newspaper reports, returned to Kansas City, which is his home town, and paid a call on the president of the Chamber of Commerce. So successful was the interview that this civic body voted a fund for the orchestra. As concerts got under way, further sponsors materialized. When in 1943 Krueger left to mount the Detroit podium, Efrem Kurtz took over. On the latter's departure five years later, the baton went to Mr. Schwieger.

Choral Enterprise

Schwieger hasn't been one to let down either the orchestra or the community. In 1949 he started the Philharmonic Chorus because he feels "it is just as important to hear the great choral works as it is to hear the symphonies and that the linking of the two great media is natural and essential for complete musical expression."

This choral organization was the basis for the next step, namely, to present opera with its full accoutrements. By 1952, Schwieger had given Kansas City an opera festival—one which has become an annual Spring affair performing works like *Traviata*, *Butterfly*, *Bohème* and *Faust*, and *The Marriage of Figaro*.

In March, 1954, he launched—on the invitation of NBC—the first nation-wide broad-

cast of grand opera ever made from any stage other than the Metropolitan in New York City—and with such stars taking part as Albanese, Hayward and Cassel.

Other developments in the broadcasting world: on the invitation of the State Department, Kansas City saluted France by broadcasting a performance to Strasbourg in February, 1952; Japan by broadcasting to Osaka in 1953, this latter, according to the State Department report, heard by some 15,000,000 people; and Germany by broadcasting to Munich in 1954.

Schwieger, moreover, has a broadcast called "The Composer's Workshop," in which each week a composition is analyzed, with the motifs, the instrumental lines brought out with an explanatory narrative. He also has had a televised program for children, a musical quiz.

The regular winter orchestral schedule is a full one, since he directs his eighty-member orchestra seventy-four times in twenty weeks.

Opera and Festival

In the Spring two operas are presented in the 2,500-seat Music Hall. Schwieger's Summers are also full. In 1955, for instance, he directed the Aspen Music Festival—led the Aspen Festival Orchestra in ten concerts and planned and arranged twenty other concerts. Immediately after the close of the Aspen Festival he flew to Europe for guest engagements

in Zürich, Munich and Berlin. And this Summer immediately after having completed his Kansas City season, he flew off to Germany where he has accepted the offer as general music director of the city of Nürnberg. This puts Mr. Schwieger in the unique position of combining two important musical posts, that is, enjoying his regular position as Kansas City's conductor during the winter season (with emphasis on his concert activities), and of being Nürnberg's general music director during the other part of the year (with emphasis on his opera activities).

The Year-round Conductor

Mr. Schwieger is delighted with this dual music directorship because it gives him an all-year-round outlet for his talents.

In spite of this hyper-activity, the years that Schwieger has spent in Kansas City are without a doubt the most serene as well as the most productive of his life. He and his wife have bought a home there. His co-citizen friends know him as an alive and zestful person, endlessly intrigued by human relationships, highly interested in civic doings. They note his absorption in politics, in current events. His outstanding characteristic, they agree, is his youthfulness of spirit—an attribute which points to the future rather than to the past. This, combined with his experience of men and his exceptional abilities, should take him far indeed.—*Hope Stoddard*.



The Kansas City Philharmonic

SYMPHONY AND OPERA

(Continued from page twenty-three)

January 10; the Philadelphia Orchestra on March 4 and April 9 . . . The Corpus Christi (Texas) Symphony Society, of which Jacques Singer is the musical director, will present the St. Matthew Passion complete . . . Guest conductors of the Chicago Symphony will be Sir Thomas Beecham, Karl Böhm, George Szell and Bruno Walter. The orchestra's regular conductor is Fritz Reiner . . . Eugene Ormandy, conductor of the Philadelphia Orchestra, and Charles Munch, conductor of the Boston Symphony, will conduct each other's orchestra next season for a pair of concerts . . . Guest conductors of the Rochester Philharmonic will be Pierre Monteux, Jose Iturbi, Max Rudolf, Victor Alessandro, Thomas Schippers, Fernando Previtali and Guy Fraser

Harrison. Once again the Buffalo Philharmonic under Josef Krips will appear as guest orchestra in Rochester . . . For the first time in the annals of symphonic enterprise, one orchestra is presenting two other orchestras plus a ballet company as a part of its regular subscription series. The "hiring" orchestra is the National Symphony and the two engaged, the Philadelphia Orchestra and the Boston Symphony . . . Guest conductors with the University of Miami Orchestra next season will be Andre Kostelanetz, Howard Hanson and James Christian Pfohl . . . The American Symphony Orchestra League's 1956 Music Critics Workshop will be held in Cleveland from October 5 to 7.

BEETHOVEN'S NINTH

George Szell led the Cleveland Orchestra, the Cleveland Orchestra Chorus, and four soloists in three performances of Beethoven's Ninth Symphony on April 19, 21 and 22 . . . Arthur Zack conducted the Rockford (Illinois) Symphony in a performance of the same work at a concert in that city in March.

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CLOSING CHORD

PAUL WOLFE

Paul Wolfe, president of Local 655, Miami, Florida, died of a heart attack enroute to a local hospital on March 1. He was born in Hampton, South Carolina, on March 24, 1907.

Prior to his career as an official of Local 655, Mr. Wolfe was leader of his own orchestra which appeared in the various local cafes of that era and with several musical tab shows produced locally for road tours through the South.

He was a life member of Local 655, having completed twenty-five years of membership in good standing in December, 1952. He served as business representative from January, 1940, until September, 1951, with the exception of a thirteen-month period in military service (1943-1944). He was elected president of the local September, 1951, following the death of Roy Singer, and was a delegate to the 1942, 1946, 1948, 1949, 1950, 1951, 1952, 1953, 1954, and 1955 Conventions of the Federation.

He will be remembered particularly for his staunch support of live music throughout that locality. A short description of his work in this capacity was given in the "Over Federation Field" department on page twenty-three of the April issue.

ARCHIBALD W. THORPE

Archibald W. Thorpe, past president of Local 416, Hornell, New York, passed away on February 22 after a brief illness. He was seventy-seven years of age.

Born in Irvine, Pennsylvania, Mr. Thorpe came to Hornell thirty years ago. He had been connected with the Hornellville Hillbillies, a dance band, for more than twenty years. He had served as president of Local 416 for twelve years, retiring a year ago.

CLINTON E. BYERS

Clinton E. Byers, widely known violinist and for many years president of Local 87, Danbury, Connecticut, died on February 21 at his home. He was in his fifty-seventh year.

Brother Byers, a native of Bethel, Connecticut, had lived in Danbury since childhood. He took an early interest in music and be-

gan teaching his own classes when he was seventeen. He became a member of Local 87 on January 6, 1917. He had been a delegate to the Conventions of the Federation for several years, the last one in June of 1955.

For years he conducted his own dance band and was orchestra leader at the Empress and Palace theaters.

WILBUR TOMMY CREWS

Wilbur Tommy Crews, secretary of Local 538, Baton Rouge, Louisiana, and one of the organizers and charter members, passed away on March 21. Prior to his election as secretary, January 9, 1944, he served on the board of directors and held office of president several



Wilbur Tommy Crews

times. He was born December 22, 1905, in Clinton, Mississippi, and came to Baton Rouge in 1930.

One of Mr. Crews' outstanding contributions to his local's development was his fight against free service bands which jeopardized the employment of musicians during the war.

He played in numerous bands and had led his own orchestra since July, 1947.

Mr. Crews was the first member of Local 538 to attend a Convention of the Federation. He represented the local at the Chicago Convention in 1944, and had been a delegate to every Convention since.

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VIEWES AND REVIEWS

By SOL BABITZ

THE MOST VALUABLE BOWING EXERCISE

I consider the "fast-slow stroke" the most valuable bowing exercise because of the many things it teaches which can be learned in no other way. It teaches control of large arm movements and thereby control of the large fast stroke. By means of this control it makes possible a more expressive tone production in this stroke through control of dynamic contrast. The development of this control has a good effect on the general control of all types of strokes—on bowing in general.

The basis of this stroke is the lightning-fast full bow *martele* described in this column some months ago. (This description may be found on page nineteen of my collected articles.) For those who do not have this detailed description I shall give a brief resume of this stroke before describing the fast-slow stroke.

The following exercise is played with full bows—each stroke played at lightning speed and a pause separating the strokes:



The bow must be held motionless after each stroke and care must be taken that there be no unsteadiness or bouncing during the stroke, particularly on the down stroke. The pressure on the bow during the stroke should be at a minimum, all volume being derived from the speed of the bow. It should be played both with and without a staccato attack at the beginning. One cause of bouncing may be insufficient upper arm motion and lack of feeling that the upper arm is swinging the stroke. Figure 1 shows how the upper arm is raised with each raising of the lower arm.



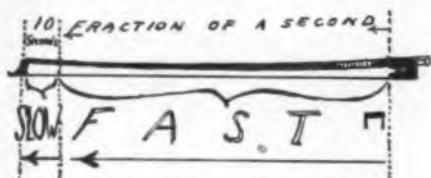
Figure 2 shows how insufficient upper arm motion causes the upper arm to be too low in relation to the hand at the end of the up-stroke.

INTERNATIONAL MUSICIAN

This full arm swing is best employed in the whole bow and similar large motions. It is out of place in small strokes, contrary to the opinion of many so-called advanced teachers.

The Fast-Slow Stroke

When control of the lightning-fast *martele* is attained one is ready for the fast-slow stroke. This is done by playing the fast stroke *not* for a full bow but for about nine-tenths of the bow and playing the last two inches or so as slowly as possible. One thus plays the fast part of the bow as *fast* as possible and the slow part as *slow* and as soft as possible, the fast stroke lasting about a quarter of a second and the slow part about ten seconds:



At first it is necessary to practice stopping the bow at the end of the fast stroke before proceeding with the slow part; afterward one should proceed from the fast into the slow without pause, shortening the time of the slow part to one or two seconds.

After gaining control of this stroke it should be practiced in the following ways:

1. Without staccato but with perfectly smooth connection of strokes.
2. Using one-third of the bow for the whole stroke but maintaining the same ratio of slow to fast. This is practiced in all parts of the bow.
3. Varying the ratio of slow to fast so that half of the bow is fast, the other half slow, two-thirds fast, one-third slow.
4. Applying these variants to shorter strokes in all parts of the bow.

Musical Applications

It will be found that this fast-slow stroke creates an accent in *detaché* playing—an accent based *not* on staccato but on a *forte-diminuendo* effect. This type of natural accent is the violin's best imitation of the vocal articulated "la la" effect—and if the violin is to imitate the voice, here is the vocal *detaché par excellence*.

It can be used to advantage in places like the opening of the Saint-Saëns Concerto where a grandiose effect is aided by the short *diminuendos* following strong non-scratching accents.

Shorter fast-slow strokes can be used in the eighth notes of eighteenth century *allegros* such as Vivaldi and Bach concertos, longer strokes for the quarter notes. The amount of accent and speed may be varied, of course, to fit the expression of the music. The following measures of the Mendelssohn Concerto are also made more expressive with the fast-slow bow. Without this stroke the entire expression depends upon the vibrato alone which is already overworked in the longer notes. Dynamic expression must always come to the aid of vibrato to make it more potent.



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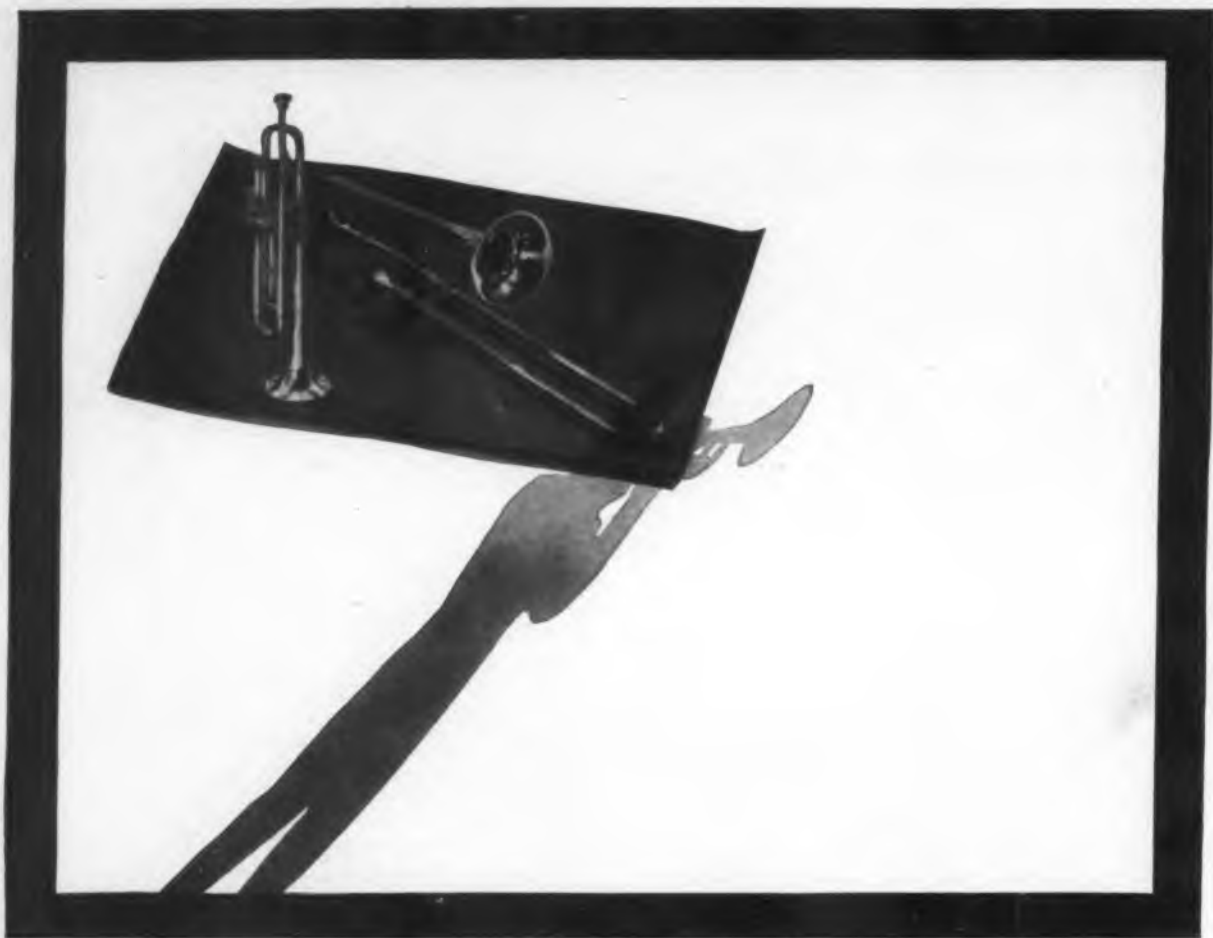
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IT'S IN THE NEWS!

★★ A new concert duo made its debut in New York City on April 25. It consists of John Corigliano, concert master of the New York Philharmonic-Symphony for the past thirteen years, and Heida Hermanns, German-American pianist.

★★ An inter-American music center has been established in Washington, D. C. Jesus Duron of Mexico City has been chosen as president of the center, and Gilbert Chase, director of the School of Music of the University of Oklahoma, as its vice-president. The second vice-president will be Aurelio de la Vega of the Cuban National Cultural Institute, and the secretary, Roque Cordero, executive director of the National Institute of Music in Panama. The purpose is to carry on long range inter-American projects in the field of music.

★★ Harold Blumenfeld has been awarded a national composition prize by the Midland Music Foundation: a \$2,000 award, which enables him to spend a year in Europe, where he is composing an opera.

★★ Two rare violins, one an Amati, dated 1761, and the other a Stradivarius-type instrument dated 1723, have been presented to the Philadelphia Orchestra. They were owned by the late Miss Frances Anne Wister.

★★ Alan Shulman, vice-chairman of the board of directors of the Symphony of the Air, took time off from his administrative duties to complete a new composition for Cello Octet. The Suite Miniature was given its first performance in Los Angeles on April 15.

★★ The Friends of Harvey Gaul, Inc., announce that, according to the judges' decision, there were no winners for the 1955 composition. In the current year, a prize of \$300 will be awarded for an Anthem with piano and organ accompaniment or a cappella, not

to exceed ten minutes, and a prize of \$100 for the best composition for two harps with or without any combination of instruments. This prize is limited to the Tri-state area, Pennsylvania, West Virginia and Ohio. For further information address: The Friends of Harvey Gaul Contest, Mrs. David V. Murdoch, Chairman, 315 Shady Avenue, Pittsburgh 6, Pennsylvania.

★★ Radie Britain's "Prelude to a Drama" was performed by the U. S. Air Force Symphony, Col. George Howard conducting, over a national hook-up March 1st. This composition was also included on the all-American programs on the U. S. Air Force European tour.

★★ In commemoration of the Mozart bicentennial, the Springfield (Massachusetts) Sinfonietta, under the direction of Maurice Freedman, presented a Baroque and Mozart concert on April 15 at the Museum of Fine Arts Auditorium of that city. The musicians were provided through a grant from the Music Performance Trust Funds of the recording industries, obtained with the cooperation of Local 171, Springfield.

★★ Sherman Frank has been re-engaged as musical director for the Atlanta (Georgia) Municipal Theatre this coming Summer. The presentations will be *The King and I*, *Naughty Marietta*, *Brigadoon*, *High Button Shoes*, *Kismet* and *South Pacific*. The season runs from July 9 to August 18.

★★ Eddy Brown, violinist, and Lyda Betti-Brown, opera singer and teacher of voice, have been appointed to the post of "Coordinators of Artistic Activities" on the faculty of the recently merged College of Music of Cincinnati and Cincinnati Conservatory of Music.

★★ As a climax to his April 13 concert in Carnegie Recital Hall, April 13, cellist Harry Wimmer presented a revival of Victor Herbert's dramatic Cello-Concerto No. 2 in E minor.



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Send advance information for this column to the International Musician, 39 Division St., Newark 2, N. J.

EAST

Charlie Koch and his Carolinians are now playing in the main dining room of the Masonic Club in Jersey City, N. J. . . . Eddie Gee and his Combo have been featured at the Cochranes Cocktail Lounge in Hillside, N. J., since January, 1955. The group has Eddie Gee on drums, Jerry Donnelly on the piano, Nick Sabittelli on trumpet, and Jimmy Drake on bass.

The Binky Dee Trio (Binky Dee, Jacque Miller and Mike Korch) opened in mid-April at the Embassy Club, Binghamton, N. Y. . . . The Sonny Dunham

Quintet are back for a return engagement at the Cabana in Bayville, Long Island, N. Y. The group features Sonny Dunham on trumpet and trombone, Don Sitterly on sax, Danny Tucci on bass, Danny Hurd on the keyboard, and Frank Lizzo on drums . . . The Danny Martin Orchestra is appearing at the Club Jericho in Mineola, Long Island . . . Paul Jouard and his Orchestra return to the Lake Placid Club, Essex County, N. Y., on May 19 for the eighth consecutive year to play a twenty-six-week season . . . Al Postal has been signed for the ninth consecutive Summer by the Toro Hill Lodge in Monroe, N. Y., to the capacity of musical and entertainment director.

The Joe Jay Trio (Joe Jay, sax, clarinet and vocals; Milt Shaw, drums and vocals; and John Crosson, piano and Hammond organ) are at Alexander's in Morrisville, Pa.

Lou Vaillancourt and his Orchestra are in their fifth year at the Newport (R. I.) Naval Base Officers' Club. The group includes Lou Vaillancourt, Bill Harris, Ray Noguiera, Bill Sousa, George Rothmayer, Jim Patti and Gene Toro.

Herb Pomeroy presents the

fifteen-piece modern Jazz Workshop Band at the Stable in Boston, Mass., twice weekly. Jackie Byard, featured nightly at the keys as a single, also doubles as composer, arranger and solo jazz tenor with the Jazz Workshop Band.

MIDWEST

Lou Dals Band has been playing at the Brass Rail in Waukegan, Ill., every Friday, Saturday and Sunday for over four years. The boys have been together for nine years . . . Don Hoy and his Orchestra opened May 11 for the sixth consecutive season at the Riviera Ballroom, Riverview Park, Des Moines, Iowa.

Del Rezek and Orchestra, specializing in polka and popular music, perform for clubs, dances, and weddings in and around the Youngstown, Ohio, vicinity. The members include Del Rezek, leader and accordion; Jack Warner, drums; Steve Vulcanick, bass; Dick Warner, guitar and banjo; Augie Simone, tenor sax . . . Fred A. Lybarger is rounding out his first year at the Boots and Saddle Lounge in Bucyrus, Ohio . . . The Merritones are in their ninth year at the Village

Square Lounge in Cleveland, Ohio . . . The Tune Twisters (Ed Pastva, Ed Boesken, Paul Norwood and Bob Nichols) are in their third year at the Pink Owl Lounge in the same city.

Johnny Davis Orchestra is holding forth at Buddy Beek's Supper Club in Milwaukee, Wis. . . . Carmen Cavallaro has been pencilled into the Congress Hotel in St. Louis, Mo., beginning May 7 for a two-weeker.

CHICAGO

Count Basie is booked for a two-week stand at the Blue Note beginning May 23 . . . Chuck Foster's date at the Aragon Ballroom lasts until June 17.

SOUTH

The Three Jacks (Bill Abrenethy, piano; James Calomeris, sax; and Joe Burch, drums) are signed for another one-year contract at the Wheel Bar in Colmar Manor, Md. They also play Sunday afternoon sessions at the Redskin Lounge in D. C., where they are appearing for their nineteenth month.

The Eddie Makins Trio is working throughout the Fort Lauderdale and South Florida area . . . Charlie Carroll (piano

INTERNATIONAL MUSICIAN

Where They Are Playing

and songs) is in his fifth month at the Miami Springs Villas in Miami Springs, Fla. . . . Alvina Benson and her Charms, an all girl instrumental and entertaining trio which includes Alvina Benson, Doris Altier and Jackie Raye, are at the Belaire Hotel's Tropicana Lounge in Miami Beach, Fla. . . . The O'Brien and Evans Duo opened April 24 at the Officers' Club, Pensacola Naval Air Force Base, Pensacola, Fla.

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ANNUAL MEETING OF SOUTHERN CONFERENCE OF LOCALS

The annual meeting of the Southern Conference of Locals will be held on Saturday and Sunday, June 9-10, 1956, in the Belvedere Room of the Traymore Hotel, Atlantic City, N. J. Opening session Saturday, June 9, at 2:00 P. M. All Southern locals are invited to attend.
 STEVE E. GRUNHART, Sec.-Treas., P. O. Box 507, Shreveport 85, La.

WANTED TO LOCATE

Richard R. De Gray, former member of Local 369, Las Vegas, Nev., and Local 6, San Francisco, Calif. Anyone knowing his whereabouts is asked to communicate directly with Mr. Steve Rady, Treasurer, Local 369, A. F. of M., P. O. Box 1445, Las Vegas, Nev.

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Over Federation Field

(Continued from page twenty-two)

Local 144, Sioux Falls, celebrated its fiftieth anniversary at Labor Temple in that city with a rip-roaring party: dancing, cards, and a buffet lunch. Guests included members of the South Dakota State Federation of Labor and the Sioux Falls Trades and Labor Assembly. Charter members present included Ray G. Hoyt (who wrote the first letter to former President Weber re the possibility of securing a charter); William G. Wagner, who was the local's first treasurer and who is still a member of the municipal band, playing French horn, and Ray G. Pruner, at present a member of the board of directors of the local and a drummer in the band.

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Binghamton, N. Y., Local 380—Nelson C. Dunham, Sr.
Boston, Mass., Local 9—John Leslie Cabill.
Chicago, Ill., Local 10—Arthur W. Lutz, August P. Klein, Kenneth W. Griffin, David Parke Mullett, Wm. H. Eis, Henry Mowschine.

Detroit, Mich., Local 5—Harry Akroyd, Joseph Marshall, Geo. E. McGowan.
Fall River, Mass., Local 216—Leo B. Shoob.
Fairbanks, Alaska, Local 481—John Boswell.
Houston, Texas, Local 65—Ben T. Christian.
Huntsville, Ont., Can., Local 682—George C. Mosbaugh.
Indianapolis, Ind., Local 3—Harry Brown, Eldon Schellschmidt.
Kansas City, Mo., Local 34—Robert J. Williams, Emil C. Roge, Dr. W. H. S. Shoush, P. J. Parisi.
Long Beach, Calif., Local 353—John J. Richards, Forest D. Clymer.
Los Angeles, Calif., Local 47—Nat Young.
Milwaukee, Wis., Local 8—Emily Joyce Fromm, Frank Mueller, Jr.

Miami, Fla., Local 655—James Edwin Mixon, Paul Wolfe, Anthony Torre.
Minneapolis, Minn., Local 73—Irvin B. Wickner.
Montreal, Quebec, Can., Local 406—Erwin Marcus, John James Hineson.
Miami, Fla., Local 655—John J. Leonard, John C. Lina.
Milwaukee, Wis., Local 8—Carl Thorne.
New Brunswick, N. J., Local 204—Anthony Torre, Alexander Friesz, Geo. F. Lindenmann.
New Haven, Conn., Local 234—Louis W. Bykowski.
Newark, N. J., Local 16—Anthony Torre.
Omaha, Neb., Local 70—Oscar E. Weinstein.
Pittsburgh, Pa., Local 60—Jerome M. Kaminisky, Francis Achilles Rago, Vincent (Danny) Nirella.

Providence, R. I., Local 198—Lucie A. DiMeglio.
St. Louis, Mo., Local 2—John Hartl.
Springfield, Mass., Local 171—Harry G. Coates, Romeo Girard.
St. Paul, Minn., Local 30—Archib. C. Redlack.
Tulsa, Okla., Local 94—Betty Rombaugh, Howard O. Tallman.
Worcester, Mass., Local 143—Alexander S. Buczek.
Mechanicville, N. Y., Local 318—Fred Amodeo.
New York, N. Y., Local 802—James Buddy Payne, Anthony Sacino, Dominick Salata, Lucien A. Lentz, Henrietta L. McLane, August D. Mead, C. J. (Curby) Alexander, Victor Zaidran, Michael Wdowiak, Dando Drutt, Thos. W. Barnes, William L. Hendel, Pierre (Capt.) De Caillaux, Angelo De Stefano, Louis Lockett, Sol Patchook, Helmut Nagel, Paul Nechamkus, Fiant Turek, Arthur H. Gibbs, Joseph D'Augustine, Thomas Borsa.



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Suspensions, Expulsions, Erasures, Terminations

SUSPENSIONS

Binghamton, N. Y., Local 380—John Pisto, George Hicken, Alfred Szymaniak, Robert Kocik, Grant Rockwell.
Boston, Mass., Local 9—Manuel Agritha, Angelo Alabiso, John D. Alessi, Sari Ambrose, Charles Andreopoulos, George Andrews, James Athens, Benedict Aucoin, Rico Aut, Anthony Bellacosa, Leon Biganes, Herman Vuon Binn, Nicholas Pierce Blish, Jr., Roman S. Bopus, Ruber Bruff, Robert S. Brown, Joseph S. Capobianco, John A. Carter, Helen Carvotta, Alfred L. Centrelli, John W. Coffey, Jr., Christy Colard, Philip Puget Cooper, Charles Corleto, Anthony Costa, Buddy Courtney, Patrick Cuccio, John P. Cunningham, Robert Cutting.
Anthony J. DaCunta, Joseph DaCunta, Jr., Sydney P. Davis, Dianne R. Dawn, Florence Del Tufo, George S. DeMatta, Peter J. DiCarlo, Angelo DiTullio, Raymond Dorey, Hippolyte Drogghens, Benjamin Drootin, Edward J. Duma, I. Edia Epifano, Fred W. Flint, Albert T. Forest, Thomas A. Furtado, Richard George, Hercules Gortelis, Nicholas Georgenes, Paul D. Gillis, Martin M. Goldman, Anna Gombosi, Al Gomez, Robert Gordon, Ely Greer, George J. Guilbault, Alan Hackel, Manning Hamilton, John N. Harbo, Harry Harnett, Stephen Harrington, Andrew McEars Heath, Jr., Leo Hebert, Joseph Heller, John W. Henderson, Jessie Heuser, George Horwood, Wm. Joyce, Hugh F. Kelleher, Bernard King, Paul G. Kinsella, Leo Kovar, Henry Kulik, Arthur Vincent LaRaja, Jr., Lawrence Malatesta, Arthur Marathas, Royal Marsh, Roger S. Mason, Joseph Mastercuisio, Nye S. Mayhew, S. Mazzocci, Wm. McFaden, Walter A. McKenna, John F. Meara, Norman Michaelson, Wm. J. Mitchell, Louis F. Mucci, James V. Munda, Nina Murdock, Albert Navarro, Murray Nichols, Wm. C. Nordstrom, Stanley Olefsky, Raymond E. Olivari, Ernest T. Pacific, Salvatore Paratore, Charles Petremont, Don A. Polvere, Wilma Pratt, Franklin Benzulli, Carl Rodinsky, George Rogers, Charles C. Romanello, Louis Ruggiero, James W. Russell, Eugene H. Ryder, Bill St. Claire, Frederick G. Sanborn, Norma Sapp, Oscar Short, Berica Shulman, Leonard Shulman, Richard Simonds, John C. Slater, Roy Sosen, George J. Spada, Stanley Spector, Vincent Speranza, Edward F. Sullivan, Lars Svensson, Zigmund Talent, Louie Tobin, Ricardo C. Tolentino, Arthur O. Torquet, Charles Trainovitch, Ernest Valva, Adolph Vanselli, Joseph Vento, Clarence J. Walsh, Paul Wilson, George T. Wein, James A. White, Charles Wolke, John Zarick, Charles A. Zumstein.
Danville, Ill., Local 90—Jack McDuffy (McBull).

Report of Arthur J. Goldberg Concerning Local 47, Los Angeles, California

(Continued from page sixteen)

president empowered to take over the duties of the president in the event of absence, suspension, removal or other inability to act."

The local's legal counsel, Bagley, stated his position, as he had stated it at the general membership meeting the day before, that the action suspending te Groen as president of the local was invalid. te Groen then said that while he was willing to stand trial for malfeasance, he felt that he should be permitted to preside over this meeting since his suspension was illegal and any action against him ought to await a proper trial.

Read reiterated his position in support of the action taken and te Groen and Bagley left the room.

The meeting then proceeded to discuss the filing of formal charges against te Groen, Paul and Hennon and the calling of a special meeting of the membership at midnight on March 12, 1956, to decide the as yet unprepared and unfiled such charges. In the course of this discussion Read said:

"I would prefer that they would resign, but they have taken this position. I have no desire, as you know, to bring any charges against John te Groen, Maury Paul and Bob Hennon, but I feel we have no choice. Either the people who represent this local and are responsible for the best interests and welfare of this membership have to be—who are willing to stand up and fight and challenge Mr. Petrillo even at the risk of being thrown out of the union, having the local thrown out, they have to be in charge of the affairs here.

"Now, if this is the will of the membership, this is what happens. If it is not the will of the membership or if they get scared out, then there will have to be other steps taken. And we are not in a position to talk about that now."

After additional discussion, the Board adopted the motion that the special meeting be called.

The open meeting of the Board was adjourned until 1:00 P. M. A closed session of the Board followed at which another Board meeting was scheduled for March 1, 1956.

f. *President Petrillo's March 1 Stay Order and the Board of Directors Meeting of March 1.*

The meeting assembled at 9:15 P. M. Defendants who were present at this meeting were Read, Baker, Clyman, Toland, and Rasey.

After the group met, te Groen made the following statement:

"Gentlemen, I would like to make a statement at this time. I wish to advise all of you gentlemen present as follows:

"The vice-president may only call a board meeting in the event of the death, removal from office, disqualification or resignation of the president. I refer you to Article 1, Section 2, of the By-laws. I have not resigned, been disqualified, I am certainly not dead, and I have not been legally removed from office. It is clear that my purported suspension is unauthorized. This so-called assembly was not called by me, nor have

any directors given me written notice that they wish a meeting of the Board to be called for this evening.

"Under these circumstances, I further advise you that any actions taken by you in connection with the administration of the affairs of Local 47 at this purported meeting are and will be illegal, null and void, and are taken entirely at the risk of those who persist in doing so and who participate therein.

"I further place you on notice that this afternoon I received the following telegram, I have been advised, which has also been sent each of you."

The telegram referred to by te Groen was an order from President Petrillo staying the suspension of te Groen. An identical telegram was addressed to each member of the Board and delivered to those present. The text of the telegram is as follows:

"JOHN TE GROEN ON MARCH 1ST, 1956, FILED AN APPEAL WITH THE INTERNATIONAL EXECUTIVE BOARD FROM THE ACTION OF A MEETING OF LOCAL 47 HELD ON FEBRUARY 27, 1956, SUSPENDING HIM FROM OFFICE AS PRESIDENT OF LOCAL 47 AND FROM THE SUBSEQUENT ACTIONS OF THE BOARD OF DIRECTORS OF LOCAL 47 TAKEN AT MEETINGS WHICH HE DID NOT CHAIR AND MAY NOT BE PERMITTED TO CHAIR. HIS APPEAL TO THE INTERNATIONAL EXECUTIVE BOARD ASSERTS THAT A CERTAIN MEETING OF FEBRUARY 27, 1956, WAS IMPROPERLY PACKED, THAT ITS EFFORT TO SUSPEND HIM WAS WITHOUT AUTHORITY, THAT THE MEMBERS WERE UNLAWFULLY DEPRIVED OF THEIR RIGHT TO SECRET BALLOT IN VOTING ON THE INTENDED SUSPENSION AND THAT THERE WAS AN UNLAWFUL FAILURE TO PRESENT CHARGES AND TO GIVE ADEQUATE NOTICE THEREOF. IN CONNECTION WITH SAID APPEAL MR. TE GROEN HAS REQUESTED THE PRESIDENT TO EXERCISE HIS POWERS UNDER SECTION 2, ARTICLE 8, OF THE AMERICAN FEDERATION OF MUSICIANS BY-LAWS TO GRANT A STAY PENDING APPEAL UPON CAREFUL CONSIDERATION THE PRESIDENT OF THE AFM HEREBY GRANTS THE APPLICATION AND ORDERS THAT PENDING THE DISPOSITION OF THE APPEAL THE SUSPENSION IS STAYED AND ALL ACTIONS TAKEN BY THE BOARD OF DIRECTORS OF LOCAL 47 SINCE FEBRUARY 27, 1956, AT MEETINGS NOT CHAIRED BY MR. TE GROEN ARE STAYED AND IT IS FURTHER ORDERED THAT PENDING SAID APPEAL MR. TE GROEN SHALL CONTINUE IN HIS OFFICIAL ELECTED POSITION AS PRESIDENT OF LOCAL 47 WITH THE FULL POWERS OF THAT OFFICE AS CHAIRMAN OF THE BOARD OF DIRECTORS OF THAT LOCAL.

JAMES C. PETRILLO, PRESIDENT
AMERICAN FEDERATION OF
MUSICIANS"

Read commented on this telegram, after consultation with his attorneys, as follows:

"Let the record show that the order of Mr. Petrillo which I have received by telegram in the past 15 minutes is invalid and that he cannot stop the regularly-constituted meetings of this local and of this Board of Directors under the will of the membership of this local, which is clearly expressed."

At approximately 9:45 te Groen and Hennon withdrew from the meeting room. This left the Board without a quorum. Read then suggested that an attempt be made, under Section 5(h) of the local's By-laws to appoint any members available to the Board for purposes of said meeting only. However, no member of the local was found to be available and the proceedings therefore were adjourned for lack of a quorum.

g. *Arrangements for Special General Membership Meeting of March 12 to Consider Charges Against te Groen.*

After the receipt of the stay order from the International President and the failure of the Board of Directors to meet for lack of a quorum on March 1, Read and others among the defendants caused a petition, prepared by their counsel, to be circulated among the membership calling for a special general meeting of the members of Local 47 at midnight of March 12 to hear and act upon charges against te Groen and requesting his removal from office. This meeting was the meeting which had been called by the Board of Directors on February 28, but it was felt that the Petrillo stay made it advisable to call the meeting by petition as under Article 11, Section 3, of the local By-laws.

The petition, signed by over 300 members of Local 47, was filed on March 5, 1956. It had been circulated among the members prior to the filing of the formal charges against te Groen, since the charges were not served upon te Groen until March 5, 1956. The charges, which the Referee does not pass upon are as follows:

"The following charges are hereby made and directed against Mr. John te Groen, as grounds for and justifying his removal as President of the Musicians' Mutual Protective Association, Local 47, American Federation of Musicians, which charges shall be answered in writing within five days after service of the same upon John te Groen, and which charges and answer thereto shall be submitted to a general meeting of this Association specially called for this purpose. Said charges are as follows:

"(1) That said John te Groen has been guilty of improper conduct in office, in that he has failed and refused to accept the policies endorsed by the general membership of this Association in the protection of its best interests.

"(2) That on February 27, 1956, during a general membership meeting, said John te Groen demonstrated his disloyalty to the membership of this Association and to the better protection of their interests by stating that in any contest or issue in which

this Association has taken or will take one position and James Caesar Petrillo an adverse position, that said John te Groen will obey the instructions and directions of Petrillo.

"(3) That said John te Groen is subservient to and dominated by his personal loyalty to James Caesar Petrillo individually and as President of the American Federation of Musicians, and has openly affirmed his willingness to follow the instructions and directions of Petrillo and the Federation, although such instructions or directions are directly contrary to the wishes, desires and instructions of the general membership of this Association, and to the general policies endorsed by this Association.

"(4) That said John te Groen has openly assumed a position inconsistent with his duty and loyalty to this Association and to the obligations of his office as President thereof in each of the respects stated herein.

"(5) That said John te Groen by his conduct and statements has indicated that he no longer is competent and qualified to continue to act as the President of the Association, in that he is not sympathetic to nor in accord with the aims and objectives of the Association and the desires of its membership.

"(6) John te Groen is guilty of improper conduct in office in that he has made, caused to be made, and approved untrue statements about the general membership and the general meeting at which he was temporarily suspended, in that he has wrongfully and improperly informed the Federation and James Caesar Petrillo that the general membership meeting of February 27, 1956, 'was improperly packed' and that his temporary suspension was the result thereof, whereas in truth and in fact, said John te Groen well knows that he has lost the confidence of the great majority of the members of Local 47 and that his temporary suspension pending formal removal proceedings was voted by reason thereof.

"(7) That John te Groen has been guilty of misconduct in office in attempting to paralyze the activities of the Board of Directors of this Association and in improperly preventing the discharge of their duties and obligations to this Association, in that on March 1, 1956, John te Groen wrongfully threatened members of the Board with disciplinary action including expulsion, if they proceeded in the discharge of their duties as members of the Board of Directors in holding or purporting to hold a special meeting of the Board duly scheduled for hearing on that date.

"Signed, Uan Rasey, Marshall Cram, Earl Evans, William Ulyate."

Also on March 5, 1956, an unsigned postcard was mailed to the entire membership of Local 47 announcing the special membership meeting for March 12 to consider the charges against te Groen. This mailing was ordered by Read because, according to him, Recording Secretary Paul was not in town when arrangements for the meeting were being made. No efforts were made by Read or the other defendants to locate Paul by telephone either while he was out of town or when he returned home on March 2. Under the local's By-laws, of course, the Recording Secretary is the au-

thorized and responsible officer for mailing out all official notices of meetings.

h. International Executive Board Committee.

Following the suspension of te Groen at the February 27 general membership meeting, and te Groen's appeal therefrom to the International Executive Board, the Board, at a special meeting in Chicago, Illinois, on March 1, 1956, established a committee of five members of the Board whose authority is set forth in the following excerpt from the minutes of the meeting of the Board:

"The Secretary informed the Board that he had received a telegram dated March 1, 1956, from John te Groen stating that a packed meeting had purported to suspend him from office as President of Local 47, that prior to this meeting a caucus had been held at which his suspension was plotted and the packing of the meeting was discussed, that a special effort had been made to get an unrepresentative group of the membership to pack the meeting and unlawfully dictate its predetermined results. The telegram further stated that the suspension was unauthorized, that no charges were presented and no notice of the proposed action had been given to the membership, that he was unlawfully deprived of the chair and that the members were unlawfully deprived of the chair and that the members were unlawfully denied the right to a secret ballot in voting on the suspension. Mr. te Groen appealed from the purported suspension and has applied to the International Executive Board to invoke its powers under Section 6, of Article 12, of the A. F. of M. By-laws.

"After extended discussion, it was moved, seconded and unanimously voted to direct the International President to appoint a committee of five members of the International Executive Board which is vested with the full power of the International Executive Board under the Constitution and By-laws, three members of said committee constituting a quorum with full power to act as the committee and to direct said committee to hear the appeal of Mr. John te Groen dated March 1, 1956, and to direct said committee to proceed to investigate the allegations of Mr. John te Groen relating to the packing of the meeting of Local 47, and relating to the actions taken at said meeting, and to direct said committee to take all actions which it deems advisable and which the Board itself could take, and to authorize the chairman of said committee, who shall be designated by the International President, to issue summonses to appear before said committee to be examined, to testify and to produce papers.

"The International President thereupon appointed Executive Officers Kenin, Murdoch, Ballard, Harris and Repp as members of said committee, Executive Officer Kenin to be chairman."

The committee held several days of hearings in Los Angeles. On March 9, 1956, it addressed a letter to "Musicians' Mutual Protective Association, Local No. 47, AFM, Attention: Maury Paul, Secretary," ordering and directing that the charges against te Groen shall not be further pressed until completion of its investigation and that the special membership meeting called for March 12, 1956,

be cancelled by order of the Executive Board of the A. F. of M. The text of the committee's letter is as follows:

"The Executive Board of the American Federation of Musicians of the United States and Canada, by its duly designated Committee has begun an investigation of allegations challenging the legality of the conduct and action of the general meeting of Local 47, A. F. of M., held February 27, 1956. It has been alleged that said meeting was packed and that the resolution suspending John te Groen from office as President of Local 47 was improper and, hence, ineffectual, for the additional reasons that appropriate charges were not presented, that notice of such charges was not given to the membership, and that those present at the meeting were denied the right to a secret ballot in voting on the resolution of suspension, all in violation of the By-laws of Local 47.

"Pursuant to said challenged resolution of suspension, charges have been filed against John te Groen and a special meeting to hear and act upon such charges has allegedly been called for March 12, 1956. The Committee of the Executive Board of the A. F. of M. find that the further processing of said charges against John te Groen at this time and that the holding of said meeting would interfere with its authorized investigation of the above-described allegation respecting the conduct and action of the general meeting of February 27, 1956. Accordingly, to preserve its jurisdiction and in fulfillment of its obligation and in its exercise of its powers prescribed by the Constitution and By-laws of the A. F. of M., the Committee of the Executive Board hereby orders and directs that pending the completion of said investigation and the announcement and enforcement of such decision as it may reach thereon, the charges against John te Groen shall not be further processed.

"It is further directed,

"1. That the meeting allegedly called for March 12, 1956, is hereby cancelled and that the membership of Local 47 be forthwith advised by official communication from Local 47 that the meeting of March 12, 1956, is cancelled by order of the Executive Board of the A. F. of M.

"2. That any membership meeting called for the same or similar purposes as that of the meeting allegedly called for March 12, 1956, be postponed until the completion of the Executive Board's investigation.

"3. That John te Groen not reply to the charges against him until the completion of the Executive Board's investigation."

"Signed by Herman D. Kenin, Stanley Ballard, W. Murdoch, William J. Harris, and Lee Repp. Dated March 9, 1956, Los Angeles, Calif."

i. Board of Directors Meeting of March 9, 1956.

Defendants Read, Atkinson, Baker, Clyman, De Rosa, Dumont, Rasey and Toland were present at this meeting. President te Groen served as chairman.

At the start of the afternoon session of the meeting, Secretary Paul announced that he had been served with the letter from the In-

ternational Executive Board committee, referred to in subsection h above, just before noon. Paul proceeded to read the letter to all those present. Paul also reported to the Board that, in accordance with the instructions in the Committee's letter cancelling the March 12 meeting, he had proceeded to order a mailing to the membership calling off that meeting.

A motion was made by Read "that this Board of Directors go on record again as commending the membership of Local 47 for calling a special meeting, and that there is no authority for calling off this meeting, and that if Mr. Paul sends out a notice to the membership cancelling this meeting, he is doing so on his own authority as directed by the Committee of the International Executive Board and this notice to cancel has not been authorized by this Board of Directors.

Paul stated that as, under his oath of office, he was required to abide by the Constitution and By-laws of both the local and the Federation he had no alternative but to honor an order from an International Executive Board Committee. Defendant De Rosa expressed a desire to attempt to find out from the Committee itself under what authority the Committee purported to act in issuing its order cancelling the March 12 meeting. However, no action was taken on his suggestion. Read's motion was adopted by the Board with only Paul and Hennon voting in opposition.

A motion then was adopted ordering Paul to proceed with the preparation of secret ballots to be used in the voting on the charges against te Groen at the March 12 meeting. Paul and Hennon voted in opposition to this motion. Paul, in addition to stating his original objection that the meeting was illegally called in the first place, also stated that the call for the meeting must be deemed null and void in the light of the Committee's letter ordering cancellation of the meeting.

The Board also adopted a motion instructing Hennon to prepare the necessary membership list for the conduct of the secret ballot election and to employ whatever personnel was necessary for this purpose. Paul also opposed this motion.

A resolution was also adopted "ordering and directing Maury Paul not to send out a mailing to the membership at this time cancelling this meeting." Paul and Hennon voted "No" on this resolution.

j. *The General Membership Meeting of March 12, 1956.*

As we have stated above, the Board of Directors of Local 47 voted to disregard the order and direction of the International Executive Board, acting through its Committee, cancelling the special membership meeting which had been called to consider charges against te Groen. Accordingly, the meeting took place as scheduled, commencing at 11:59 P. M., March 12, 1956.

Defendants Read, Baker, Clyman, Atkinson, Toland, Dumont, Rasey, De Rosa, Ulyate, Wald, Evans and Cram were present at this meeting. Defendant Berman was absent. te Groen, Paul and Hennon absented themselves from this meeting inasmuch as it had been ordered cancelled by the Executive Board of the Federation.

The charges against te Groen, which were signed by defendants Rasey, Cram, Evans and Ulyate, were read by Rasey. They are set forth in full in a prior section of this report.

Several speakers addressed the membership in support of the resolution, including Clyman, Ulyate, Baker and Toland.

In response to questions regarding the post-card which had been sent out to the entire membership by Paul cancelling the meeting under the direction of the International Executive Board, Read informed the membership that at the March 9 meeting, the local's Board of Directors, had reaffirmed its previous position in favor of proceeding with the meeting and had instructed and directed Paul not to send out the cancellation notice.

The vote on the resolution calling for te Groen's removal was conducted by means of a secret ballot which contained the following questions: "Shall John te Groen be removed from office as President of this Association? And shall charges be sustained for removal of John te Groen from the said office as President?"

While the ballots were being tallied Read read to the membership a lengthy letter which he had sent to a friend of his in another city giving the entire history of the local's dispute with the Federation. In the course of this letter, Read informed his friend that the local's Board of Directors had voted 9-2 to defy the order of Petrillo's committee and to go ahead with the March 12 meeting.

The vote on te Groen's removal was 1,535 in favor and 51 opposed. The meeting was adjourned after this vote was announced.

k. *Events subsequent to March 12.*

Promptly after the meeting of March 12, te Groen filed an appeal, as provided for in the Constitution of the Federation, from the action of the meeting in removing him from office. The appeal alleged that the meeting was improperly conducted, that he was improperly tried and that the purported charges did not state adequate ground for removal from office. In conjunction with his appeal te Groen requested a stay of the local's action pending the appeal. This stay was granted on March 13 and reads in part as follows:

"I hereby grant to John te Groen pending the determination of his appeal to the International Executive Board to a stay of the alleged action of the purported membership meeting of Local 47 removing Mr. te Groen from the office of president of that local. I further direct that Mr. te Groen shall remain as President of Local 47 and as Chairman of its Board of Directors with full powers in both capacities until the determination of said appeal by the International Executive Board. Copies of this telegram have been sent to each officer and each member of the Board of Directors. You are directed to notify all other members of Local 47 who may be affected by this action.

"James C. Petrillo, President,
American Federation of Musicians."

The amended charges in this proceeding against all of the defendants except Dumont were filed on March 15, 1956. The charges against Dumont were filed on March 28, 1956.

The Referee permitted evidence to be introduced as to meetings held and acts occurring subsequent to March 15 but has considered this evidence only with reference to the charges against Dumont. The Referee reserved ruling as to the competency of this evidence with respect to the other complaints

and now rules this evidence to be inadmissible as to them. The facts with reference to events subsequent to March 15 will be dealt with, insofar as they are relevant to the charges against Dumont, in disposing of those charges below.

2. Basic Governing Principles

As must be apparent, the underlying controversy which lies at the root of this matter is an economic one. The defendants are the leaders of a group in Local 47 who believe that the collective bargaining policies of the Federation have deprived them of individual economic advantages to which they think they are entitled. The Federation, on the other hand, is committed to a policy based upon the Federation's view of the interests of the musicians as a whole, particularly those who are or may become unemployed as a result of the modern trend toward mechanical reproduction of music.

Although this particular problem is, to some extent at least, unique to the musicians' union, it is not an unusual kind of problem. Indeed, almost every union at some stage must balance the interests of various groups among the employees whom it represents in determining the allocation of benefits that can be negotiated by the union. Illustrations come easily to hand. A union which foregoes part of a wage increase in order to obtain pension coverage or increases for those already retired makes a decision to divert part of the total economic return which can be obtained as a result of the work performed by the employees to creating benefits for the age who are no longer employed, and who, indeed, often are no longer members of the union. Almost every fringe benefit varies in its impact upon various groups of employees. Insurance and sick benefits, by their very nature, are contributions to the welfare of those who are disabled or who die, made by all of the employees, including those who are healthy. In the negotiation of seniority plans in industrial plants, judgments must be made as to the relative employment rights of persons who have worked in a given plant for a number of years and others who have workers in a particular department for a number of years. This kind of problem is particularly serious where plants are merged or where one plant of a group in a single bargaining unit is closed down and efforts are made to integrate the employees into the other plants.

A similar problem is presented every time a union must decide whether a total wage increase is to be spread over all of the employees, on an across-the-board basis, or whether a portion of the total increase is to be used to give larger increases to skilled workers.

In all of these instances, as here, a union must balance, as best it can, the interests of the various groups which make up its membership. There is no easy path to follow and no simple rule which will provide an answer satisfactory to all.

But these problems must be solved, and answers must be given, by any labor union. Those answers should be given, and the rules laid down, after the most careful consideration of the equities of the various groups involved and through the process established by the union's structure for the making of such decisions.

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Necessarily, when such decisions are made, there may be those who feel that they have not received their proper share of the benefits negotiated by the union. It is necessary to remember that in many cases the benefits being divided would not have been available at all were it not for the fact that the union represents the strength of all. But, notwithstanding this fact, it would surely be a perversion of the basic principles upon which the trade union movement rests to find that mere complaints and efforts, within its framework, to change the policy of the union should be the subject for discipline within the union. Only through the process of constant reappraisal and review which follows from the expression of varying points of view, can the union as a whole be sure that the balance of interests which it is making is just and equitable.

But, just as surely, every union, and indeed every organization, must insist upon compliance with the reasonable rules which govern its structure in the processing of these complaints, and in the pursuit of the efforts to change its policy. If the organization provides procedures by which the grievances of the individual group may be heard and considered, it is a fundamental obligation of the group to pursue those procedures in presenting their point of view. The correctness of this concept was illustrated in this case by the action of Local 47 in presenting its appeal to the International Executive Board. The difficulty is that the defendants in this case did not continue to pursue the course which they had begun. There was available to the local, as there is in almost every union, the right to appeal to the ultimate governing body of the union—the Convention. This procedure the defendants did not utilize, and in failing to utilize it, and in clearly demonstrating that they did not propose to do so, they violated one of the fundamental principles upon which all trade union organization must rest—the requirement that those with grievances against the organization utilize the remedies provided within the organization for the pursuit of such grievances.

Instead of utilizing the further internal procedures of the international union, the defendants here undertook to begin a direct fight against the international union outside of its framework. My specific findings as to the extent to which the actions of the individuals violated the Constitution and By-laws of the Federation will be set forth below. Here I think it appropriate to set forth the underlying principles which must underlie analysis of the specific charges.

The first of these principles is that the Federation, like any other organization, is entitled to require of its members that they comply with its reasonable rules. No organization can survive unless it imposes such a requirement as a condition of membership.

Sometimes these established rules may seem unjust, just as many of the rules established by government may, at times, seem unjust. To those who believe there is injustice there is always the opportunity to work for revision. No democratic organization, and no democratic government, should attempt to require, as the price of membership or citizenship, the suppression of movement toward change. But every organization, and indeed every government, must insist that change be accomplished through the orderly processes provided for in

its constitution and must require obedience to its own rules and regulations until those rules and regulations are changed.

Defendants do not seem to understand this simple concept. They argue that insofar as they may have violated the rules of the organization, such violation was dictated by the "will of the membership" and that, therefore, it would be unjust and undemocratic to require compliance with those rules.

There are many answers to such an argument. The obvious one, which I have already given, is that a voluntary organization has the right to require compliance with its rules as a condition of membership. But I am not satisfied to leave it at that. Our American unions are part of a movement dedicated to the ideals of our democratic society and I would have difficulty in making a decision in good conscience that individuals were guilty of violating undemocratic rules that are offensive to those ideals.

Much has been made, in this dispute, of the provisions of Article 1, Section 1, of the By-laws of the Federation. I put this aside immediately. Whatever my feelings with respect to that provision and whatever my powers might be if it were invoked, the fact is that it has not been invoked and I have not been charged with determining whether the defendants violated Article 1, Section 1, or any order or rule issued pursuant to Article 1, Section 1.

The rules and By-laws of the Federation which the defendants are charged with violating give me no such difficulty. Indeed, they represent, to me, the essence of orderly democratic trade union procedure. The specific provisions of the By-laws which the defendants are charged with violating are Article 12, Section 36; Article 13, Section 1.

Article 13, Section 1, is the provision of broadest application. It provides:

"It shall be considered a violation and an act contrary to the principles and declarations as set forth in Article 2 of the Constitution if a member in any way places obstacles in the way of the successful maintenance of a local or violates any law, order or direction, resolution or rule of the Federation. A member found guilty of a violation under this section shall be fined by the International Executive Board a sum of not less than \$10.00 nor more than \$5,000.00 or be expelled from the Federation."

With the specific provision concerning placing obstacles in the way of successful maintenance of a local union there can be no difficulty. No one, I think, can successfully argue that a voluntary organization does not have the right to require of its members that they refrain from deliberately obstructing its subordinate bodies. Article 13, Section 1, also contains a general provision embodying the concept of compliance with the rules, orders and regulations of the Federation, and hence requires further inquiry as to the nature of the specific orders, rules and regulations which it is charged that the defendants violated.

The only specific charge which I have sustained and which is based upon this second part of Article 13, Section 1, is the charge that the defendants violated the order directing Local 47 not to proceed with and to cancel the membership meeting of March 12, 1956. Whether this order was within the authority of

the subcommittee of the International Executive Board, under the Constitution and By-laws of the Federation, will be discussed below. But the defendants seem to contend that even if the order was within the authority of the subcommittee, and was properly and appropriately issued under the Constitution and By-laws of the Federation, basic principles of democracy gave the local the right to ignore it. The Constitution of the United States, they assert, guarantees the right of free speech and the right of free assembly. Any order preventing a meeting of Local 47, therefore, must be void because contrary to the "will of the membership" and contrary to the Constitution of the United States.

This contention confuses the rights of individuals as citizens with the rules which must be established by any organization to regulate its internal procedures. Of course, the Constitution of the United States guarantees the right of assembly and the right of free speech. The order with respect to the meeting of March 12 could not and did not purport to prevent any of the members of Local 47 as individual citizens from exercising their rights to speak freely or to assemble freely. The order was an order directed to Local 47 and its officials directing them not to hold an official meeting of the local. If this order was within the competence of the body issuing it and was appropriately issued under the circumstances, nothing in the Constitution of the United States or in the principles of democracy gave the local or its officers the right to ignore it. Court orders directing the officers of a corporation not to hold a stockholders meeting or directing other bodies not to take official action are familiar enough to establish this proposition. To put the matter in terms of the concepts previously stated, an organization has the right to establish the rules and procedures by which it will operate as an organization. Neither the supposed "will of the membership" or constitutional rights of free speech or assembly are relevant in determining whether individuals have violated the organization's own rules in conducting its affairs.

What I have already said disposes, I think, of any basic objections with respect to the validity of Article 8, Section 2, which provides for the issuance of stays pending appeal. The concept that the "will of the membership," no matter how or when expressed can override the rights of individuals and the orderly process of internal trade union government is contrary to elementary principles of union organization.

This would be easily seen if it were the "will of the membership" that an individual be expelled from the union, without hearing, notice or charges, contrary to its own rules, because he disagreed with the view of the majority on a policy question. The very rights which the defendants seek to assert would surely be frustrated if the arbitrary decision of the majority, without regard to the rules of the organization, could be enforced in this manner.

Precisely to protect against such arbitrary and lawless action, trade union rules normally provide, as Local 47's By-laws do, for notice and hearing, and protect both members and officers against punitive action without these elements of due process. Sometimes, however,

these procedural protections at the local level are not sufficient and in the Federation and many other unions, as in the courts, an appeal procedure is provided so that those who feel that they have been unjustly tried or convicted at the local level can seek redress from the international union. Such appeals are provided for under Article 8 of the By-laws of the Federation. And, as an incident of such appeals, stays are provided for in Section 2, of this article in appropriate cases.

No argument can reasonably be made, I think, that stays properly issued under such provision are offensive to the notions of democracy because they may prevent the immediate expression of the "will of the membership." If it is claimed that the "will of the membership" in a particular instance does violence to the rights of individuals or to the orderly processes of the organization, it is certainly appropriate for the international officers to be given the power to issue a stay so that that question can be determined in the proper way without the prejudice to the rights of the parties which might be the result if no stay were issued.

There remains only, of the provisions of the By-laws of the Federation here involved, Article 12, Section 36. I do not think that any serious question can be raised as to the justice and propriety of this section, which provides, among other things that "advocacy of dual unionism . . . shall constitute sufficient and proper grounds for expulsion." Advocacy of dual unionism is advocacy of the organization of a rival organization to perform the same function as the Federation. Musicians no doubt have the right as citizens and individuals to urge and to work for the organization of a different union to replace the American Federation of Musicians. But the Federation has no obligation to retain them in membership if they seek to exercise that right. Just so, a citizen has the right to work for the Democratic Party or the Republican Party. But the Democratic Party has no obligation to retain in its membership persons who advocate its replacement in office by the Republican Party.

This simple truth is the basis for the almost universal provision in union constitutions under which dual unionism—that is organization or participation in activities designed to supplant the particular union with another—is regarded as one of the most serious offenses against the union and a basis for expulsion.

3. Analysis of the Charges

The basic charges against the defendants are that, in violation of the Constitution and By-laws of the American Federation of Musicians:

(a) They conspired to and did illegally oust President te Groen from office in Local 47 on February 27;

(b) They defied the March 1 stay order of the International President staying te Groen's suspension and the March 9 order and direction of the International Executive Board cancelling the March 12 meeting called for te Groen's removal;

(c) They openly invited the loss of the charter of Local 47;

(d) They advocated dual unionism.

With respect to each of these basic charges two questions are presented: (1) Whether the charge is true and (2) whether, if true, it con-

stitutes a violation of the Constitution and By-laws of the Federation.

These questions will be dealt with with respect to each of the foregoing basic charges.

a. Ouster of te Groen.

To recapitulate the evidence discussed in detail above, plans for te Groen's ouster were first laid at meetings of the Steering Committee preceding the February 27 general membership meeting. As already found, defendant Read acted as chairman of this committee and was its leader. In addition to Read, at least the defendants Toland, Wald, Cram, Ulyate, Berman, Evans and Rasey were active participants.

The plans developed at the Steering Committee meetings were explained in full at the Larchmont Hall caucus meeting which was called to develop support for the various plans of the Steering Committee, including the ouster of te Groen, which were to be presented at the February 27 general membership meeting. It is significant that the plans of the Steering Committee and the explanation thereof at the Larchmont Hall meeting were carefully guarded from the vast majority of the membership, and specific instructions were given at the Larchmont Hall meeting to keep the plans secret until they were revealed at the afternoon general meeting, which had been called solely for the purpose of hearing Read's report on his appeal to the International Executive Board. As already found, defendant Read chaired and defendants Berman, Rasey, Ulyate, Cram and Evans participated in the Larchmont Hall meeting.

At the general meeting Rasey, without prior notice demanded te Groen's resignation on account of his support for the resolution (hereinafter called the "C.A.N. resolution") unanimously adopted by 29 Federation locals from California, Arizona and Nevada supporting the Music Performance Trust Funds. Rasey's action was in accordance with the prior plans laid by the Steering Committee. When Paul explained that Rasey's analysis of the C.A.N. resolution was based on an erroneous report of this resolution in *Daily Variety*, Read followed up with his resolution for te Groen's suspension based, not on te Groen's C.A.N. resolution position, but on the suddenly evolved ground of te Groen's private statement to Read at the meeting that he would adhere to the orders and policies of the Federation as required by its Constitution and By-laws despite the possibility of conflict with a position taken by Local 47. When te Groen ruled this resolution out of order, Read appealed the ruling to the membership and, taking the chair himself, put the question to a voice vote despite a request that a secret ballot be conducted. He then conducted a voice vote on the resolution itself.

As already found, in addition to Read and Rasey, defendants Cram and Evans participated in this general meeting actively in the actions connected with the ouster. Defendants Dumont and Toland sat on the stage as directors. Defendants Berman, Ulyate and Wald were present.

On the basis of the above, I find that defendants Read, Rasey, Cram, Ulyate, Berman and Evans did conspire to and did engage in concerted actions to oust te Groen on February 27, 1956. I find that while there is some evidence on the record as to the participation of Toland and Wald, it is not sufficient to

warrant a finding against them. I find no evidence in this connection with respect to defendants Baker, Clyman, Atkinson or De Rosa.

There remains the question of whether the actions of the defendants Read, Rasey, Cram, Ulyate, Berman and Evans were illegal under the By-laws of Local 47, and, if so, were a violation of the Federation's By-laws.

Sections 14 and 16 of Article 1 of the By-laws of Local 47 provide as follows:

"Sec. 14. Any officer of this Association found guilty of neglect of duty or improper conduct in office or disobeying an order of the Board of Directors, shall be suspended, fined, suspended from office, or otherwise disciplined."

"Sec. 16. Charges of a nature justifying removal from office may be presented against any officer of this Association. Such charges must be in writing and must be presented at a general meeting of the Association, all members having been notified that such action is to be taken, and at such meeting, if the charges are sustained, by a two-thirds vote of the members present, such accused officer shall be removed from office."

It is clear that the ouster of te Groen was illegal under these provisions. te Groen was suspended from office without prior notice to him or to the membership, without charges and without a hearing, pursuant to a plan made at a secret caucus. The local's by-laws calling for a secret ballot were disregarded. The vote suspending him was conducted under conditions of utter confusion and amid uproar.

The defendants who purportedly were revolting against alleged dictatorial practices on the part of the Federation and its officials denied to te Groen the basic democratic rights which he, as the duly elected president, was clearly entitled to under the local's by-laws and every precept of democratic trade union government. The defendants claimed these very rights in this proceeding, and they, of course, are entitled to and have been accorded these rights. Yet they seek to justify the denial of these same rights to te Groen on the theory that in ousting te Groen without these protections, they were carrying out the "will of the membership."

This argument, which in another form is that the end justifies the means, is without merit. The theory of due process as laid down in the local's own constitution, deriving, as it does, from the heritage of due process in our Federal and State Constitutions, protects any member or officer against discipline by even a majority of the membership without observance of orderly and fair procedures. Moreover, the suspension of te Groen here was effected under conditions which make it impossible to determine whether the majority will was really effected. The membership of 16,000 was not notified of the action, which was planned at a secret caucus. The voting itself was irregularly conducted. This was not proper action taken at a meeting of a local union democratically held and properly conducted.

To sanction such a meeting, where the basic law of the organization itself is flouted, would be to stamp approval on anarchy rather than to support democratic trade union government and practices.

they aid members on unemployment compensation, tax and other matters.

Clearly, the successful maintenance of Local 47 would be impaired by the illegal ouster, during their term of office, of elected officers charged with carrying out such fundamental activities of the local.

I do not mean to imply by the above that the mistaken removal of an officer following a good faith attempt to comply with the local's by-laws and accord due process would constitute a violation of Article 13, Section 1, of the Federation's By-laws. But that is not the case here. Here, I find a deliberate and wilful conspiracy to suspend te Groen, not for any neglect of duty or other proper charge, but because he would not agree in advance to lead the local in defiance of the lawful regulations of the Federation. A local cannot be successfully maintained as a local of the Federation in defiance of the Federation's Constitution and By-laws, or outside of the Federation. And by suspending te Groen for this reason, and in this way, these defendants were clearly placing "obstacles in the way of the successful maintenance" of Local 47 as a local of the American Federation of Musicians.

b. *The Defiance of the Stay Order of the International President and the Order and Direction of the International Executive Board.*

The defendants Read, Rasey, Toland, Baker, Clyman, Ulyate, Evans and Cram are charged with having defied the stay order of International President Petrillo dated March 1, 1956, staying the summary suspension of te Groen by the February 27 general meeting and continuing him in office pending the disposition of his appeal by the International Executive Board.

The same defendants, and defendants De Rosa, Atkinson and Dumont, are charged with having defied the order and direction of the International Executive Board, dated March 9, 1956, cancelling the March 12 special general membership meeting which had been called to consider the formal removal charges against te Groen.

The Referee will deal with each of these charges in order.

(i) *The Stay Order of the International President.*

The International President issued his stay order on March 1, 1956, and the charge is that this stay was violated by the named defendants' actions at the March 1 meeting of the Board of Directors of Local 47.

The defendants contend that the stay was illegal. In addition, they claim that even if it be assumed that the stay was legal, nevertheless they are not guilty of the charge because they complied with it.

President Petrillo's stay was issued under Article 8, Section 2, of the Federation's By-laws. Section 2 authorizes the International President to issue stays of judgments in connection with appeals referred to in Section 1 of Article 8. Section 1 provides, in part, as follows:

"An appeal can be made to the International Executive Board from any decision of whatever kind of a local or any other authority."

Section 2 provides:

"In the event of an appeal to the International Executive Board or to a Conven-

tion the appellant may request a stay of judgment from the International President, who shall decide whether or not the appellant is entitled to same. If the request for stay of judgment is denied, then the appellant must deposit the amount of any fine placed, or any claim allowed, or in lieu thereof a satisfactory bond with the local, if the appeal is concerning a violation of a local law by a local member, or with the International Treasurer, if the appeal is concerning a violation of, or governed by Federation laws. If the appeal is upheld, then the deposit shall be returned to the appellant."

The defendants argue that the stay is illegal on the ground that only a "stay of judgment" is authorized under Section 2 and they interpret "judgment" to refer only to the imposition of fines. They claim that a suspension of an officer is not a "judgment" against him.

They reach this result by construing the special provisions of Section 2 relating to fines, which apply only when a request for a stay of a fine is denied, as placing a limitation on the types of judgments for which stays may be granted.

However, it is plain that no such limitation may be read into Section 2. The purpose of requiring deposit of the fine or a satisfactory bond when a stay of a fine is denied is to assure the local involved or the Federation that the fine will be paid in the event the appeal is denied. No such protection of the interest of the local or the Federation is required when a request for a stay of a suspension or expulsion is denied since, absent the stay, the suspension or expulsion is in effect during the appeal.

As concerns situations which merit the granting of a stay of a fine, the By-laws do not require any security pending appeal. Likewise, the By-laws do not require any security pending appeal in situations which merit the granting of a stay of a suspension or expulsion.

Hence the Referee concludes that the special provision relating to denial of stays of fines does not limit the scope of "judgments" which may be stayed. The correctness of this conclusion becomes further evident from the defendants' own views on the logical extension of their position.

Thus, the defendants do not go so far as to say that the International President would not have authority to stay an expulsion as distinguished from the suspension of an officer. They do not take the position that since an expulsion is not a judgment in the nature of a fine, the stay powers of the President therefore are not applicable. The contention of the defendants, therefore, must fall of its own weight. Clearly, an expulsion is as much a judgment, indeed more so, against the affected individual as a fine, and so, too, a suspension of an officer is a judgment against the affected individual within the meaning of Section 2. The loss of the office and the salary attached thereto and the adjudication of guilt necessarily implied constitute a considerable penalty against any officer who is suspended.

When Section 2 is read together with Section 1, as it must be, the fallacy of defendants' argument becomes even more patent. Section 1 provides for an appeal "from any decision" of whatever kind of a local" and Section 2

Defendants contend that the requirements of due process do not apply to te Groen's suspension. They contend that the requirements of filing charges in writing on a defendant, presentation of the charges at a general meeting of the Association and proper advance notice to the membership, are applicable only to "removal from office" under Section 16 and do not apply to suspension action taken under Section 14. They claim that summary action of suspension is permissible under Section 14 since no procedure for such action is specified in that section. They seem to admit, however, that no summary action under Section 14 would be proper in the event the action called for is a fine rather than a suspension, although they advance no satisfactory reasons for any such distinction under the language of Section 14, which covers fines and other disciplinary action, as well as suspensions.

The answer to the defendants' contention is quite obvious. It is a familiar rule of law that the local's by-laws, like any document, must be read as a whole. Reading Sections 14 and 16 together, as they must be read, the due process requirements of Section 16 are clearly applicable to any action desired to be taken under Section 14.

Moreover, even if the provisions of Section 16 were held not to be technically applicable to Section 14, Section 14 itself permits suspension or fine or other discipline only after an officer is "found guilty" of neglect of duty or improper conduct in office." This, in itself, I believe implies that the finding of guilt is preceded by procedural due process. But surely, at the very least, it requires some sort of finding of guilt of neglect of duty or improper conduct. And the evidence here is clear that the defendants conspired to suspend te Groen from office without even making a charge that he was guilty.

Accordingly, the Referee finds that the last named defendants "effectuated an alleged suspension of the President of Local 47 contrary to the laws of Local 47."

There remains the question of whether these defendants' actions constituted a violation of the By-laws of the Federation.

Article 13, Section 1, of the Federation's By-laws makes it a violation of the Constitution "if a member in any way places obstacles in the way of the successful maintenance of a local . . ." I find that these defendants' plans and acts did constitute a violation of Article 13, Section 1.

Officers of Local 47 are elected for two years, and for this period the membership reasonably is entitled to expect that there will be stability in the administration of the affairs of the local, absent any violation of the local's constitution and by-laws by these elected officers, for which violations ample remedies are provided in the by-laws. A member elected to an office in the local must forego his business as a musician. The full time officers exercise functions which are basic to the operation and maintenance of Local 47. They are responsible for the organizing activities of the local. They supervise the local's business agents who help to administer its contracts. They conduct the housekeeping and business affairs of the local, including the credit union and death and other benefits, and

*Emphasis added.

*Emphasis added.

clearly is designed to apply the stay power of the President in the event of an appeal from any such decision to the International Executive Board or to a Convention.

There is another important consideration. If the defendants had a good faith doubt as to the validity of the stay, it was incumbent upon them, in conformance with sound trade union principles and sound principles of government, to request an interpretation from the International Executive Board as to the scope of the stay powers of the International President under Article 8, Section 2. It is common practice for attorneys to seek interpretations of stay orders issued by courts and the defendants certainly should have resorted to this elementary procedure, particularly since the International Executive Board is empowered, under Article 1, Sections 5D and 5G, to have general supervision over all matters and questions relating to the Federation or any of its members or any local.

It is evident, therefore, that there is no merit in the defense now asserted that the defendants were entitled to ignore the stay because it was not authorized by Article 8, Section 2 of the Federation's By-laws.

However, we must consider now whether the stay order was violated by defendants. When President te Groen, Financial Secretary Hennon and Secretary Paul walked out of the purported meeting of the Board of Directors on March 1, 1956, after President te Groen had declared any such meeting illegal on the basis of President Petrillo's stay, the remaining members of the Board of Directors were insufficient to constitute a quorum. Nevertheless, it is quite apparent that the defendants Read, Baker, Clyman, Toland, and Rasey, who remained, were prepared to violate the stay and proceed with the meeting. In furtherance of this intent, they attempted to round up any member of the local who, under the By-laws of the local, might be specially sworn in as a member of the Board of Directors in order to make up a quorum. Being unable to locate any such member, the defendants decided to abandon their efforts to go on with a Board meeting and adjourned.

While it is perfectly clear that the above-named defendants attempted to hold a meeting in defiance of the stay order, the fact is that no meeting actually was held and the stay order could not, therefore, be violated.

As to defendants Ulyate, Evans and Cram, they were not members of the Board, were not shown to be present, and can not therefore be held to have either intended or committed a violation of the stay order.

(ii) *The Order and Direction of the International Executive Board*

On March 1, 1956, the International Executive Board established a committee of five Board members to hear the appeal of te Groen from his summary suspension at the February 27 general membership meeting and to investigate his allegations relating to that meeting and the actions taken there. The motion of the International Executive Board establishing this committee vested it "with the full power of the International Executive Board under the Constitution and By-laws." The Board also directed the committee "to take all actions which it deems advisable and which the Board itself could take."

While te Groen's appeal was pending before this committee, removal charges were filed against him on March 5 and a special general meeting of the local was called for March 12 by petition of over 300 members to consider these charges.

On March 9, the committee issued an order and direction addressed to Local 47 which ordered the removal charges against te Groen held in abeyance, cancelled the scheduled general meeting of March 12, and ordered that the membership of Local 47 be advised of the cancellation of this meeting by the Executive Board of the Federation.

The order was served on the defendants Read, Atkinson, Baker, Clyman, De Rosa, Dumont, Rasey, and Toland while they were attending a meeting of the Board of Directors of Local 47 on March 9. The Board of Directors disregarded De Rosa's suggestion for seeking clarification of the order and direction from the committee and thereupon adopted a resolution proclaiming that "there is no authority for calling off this meeting." The Board also ordered Paul to proceed with the preparation of secret ballots for the March 12 meeting, instructed Hennon to prepare the necessary membership lists for the secret ballot election, and ordered Paul not to send out a notice of cancellation of the March 12 meeting as required by the order and direction of the committee. All of the defendants present at this meeting, named above, voted in favor of these actions.

There can be no question from the foregoing summary of the actions taken by the defendants at the March 9 Board of Directors meeting that they deliberately defied the order and direction of the committee of the International Executive Board.

The defendants urge, however, that the committee's order and direction was invalid because:

- (1) The committee, not being the full Executive Board, did not have the power to issue any such order and direction because its authority was limited to investigation of the matters alleged in te Groen's appeal: and
- (2) The Federation has no power to cancel a meeting duly called by the membership of a local.

I find these contentions to be without merit. It is clear, first, that the International Executive Board has authority under Section 5H and 5G of Article 1 of the Federation's By-laws to delegate its powers to a subcommittee of the Board. Second, it is equally clear that the Executive Board did delegate to the committee all of the power and authority of the Board to deal with all matters relating to the dispute within Local 47, including, but not limited to, the te Groen appeal and the allegations relating to the packing of the meeting of Local 47 on February 27 and to the actions taken at the meeting. Defendants' attempt to construe this delegation of authority to the committee in an extremely limited way, narrowing it to investigation into the te Groen allegations of the holding of a packed meeting by Local 47 and nothing else.

That this was not the limit of the committee's authority is clear from the text of the resolution by which it was appointed, which I have already set forth. As stated in that resolution, the Board voted: (1) To direct

the International President to appoint a committee of five members of the Board which is vested with the full power of the Board under the Constitution and By-laws; (2) to direct the committee to hear the te Groen appeal; (3) to direct the committee to investigate the allegations concerning the packing of the meeting of Local 47, and (4) to direct the committee to take all actions which it deems advisable and which the Board itself could take.

It is obvious from the foregoing that the committee was vested with the full authority of the Executive Board to investigate and deal with the dispute which had occurred within Local 47 and that there is no substance to the claim that its stay order was not within the scope of its powers if the Executive Board itself had such powers.

The question then is whether the Executive Board would have had the power itself to order cancellation of the March 12 meeting. In the face of the serious charges made by te Groen in his appeal to the International Executive Board—charges that te Groen was railroaded out of office without charges or notice by means of a secret group having packed the February 27 general meeting and in violation of the local's by-laws—it was entirely reasonable for the Executive Board to have concluded that pending its complete investigation into te Groen's allegations and determination of te Groen's appeal, the status quo should be preserved until the Executive Board could have time to unravel all of the facts surrounding this obviously volatile situation, and to order whatever remedial actions might have been required under the circumstances, including cancellation of the March 12 meeting originally called by the resolution removing the officers proposed by Read at the February 27 meeting which the committee was investigating.

As to the power of the Board to take such action under Sections 5G and 5H of Article 1 of the Federation's By-laws there cannot be the slightest doubt. Even in the absence of such broad powers, however, I would hold that the power to issue a stay of the meeting of March 12, 1956, would be a necessary incident to the power to hear appeals and to exercise general supervision over the affairs of locals which is inherent in any governing body of an international union.

The power of the executive body of a trade union to hear an appeal is not limited simply to the power to affirm or reverse what was done by the local. It may call for the exercise by the international of its general supervisory powers so that the situation disclosed by the appeal may properly be dealt with and the interests of the International union protected.

Certainly it was the right, duty and obligation of the International Executive Board to apprise the entire Local 47 membership of 16,000 as to the truth or falsity of the charges contained in te Groen's appeal before the Local 47 membership acted on the subsequent removal charges against te Groen. Certainly also the entire membership had a right to expect it would be enlightened as to the plans and schemes of the Steering Committee to carry on an all-out fight against the Federation and to oust te Groen, and to do this by means of secret maneuvers and careful selec-

of Local 47 in violation of Article 13, Section 1 of the Federation's By-laws.

The evidence bearing on this charge has already been set forth and will not be repeated here. From this evidence and from the testimony which was presented before me, I find that the deliberate decision not to pursue the remedy of appeal to the Convention on the trust fund question, the passage of the resolutions at the meeting of February 27, the ouster of te Groen, the intended defiance of the March 1 stay order, and the defiance of the March 9 stay order were all actions taken in pursuance of a plan to provoke the Federation into revoking the charter of Local 47.

It is clear that the entire sequence of events here came about as a result of a decision by a small group within the local to convert the opposition to the Federation's trust fund policies from a controversy within the Federation's framework to a direct attack on the Federation itself. And this decision was not to make the fight against the Federation a fight of individuals but an official act of Local 47.

It could not reasonably be anticipated that Local 47 could carry on this program directed against the Federation and still remain a part of the Federation. But it was apparently decided by this group that this fight should not be initiated by an outright secession movement. Whether this decision resulted from fear that the local would not vote for secession from the Federation, or from their desire to create a favorable public opinion, I do not know. It is clear, however, that it was decided to take action which, in Read's words, would provoke immediate retaliatory action by the Federation.

Read himself left no doubt about the matter when, in outlining the proposed course of action at the Larchmont Hall caucus, he said that he prayed God that as a result of the action planned by the group for the membership meeting the Federation would revoke the local's charter. "The best thing that could happen to us," he later told the membership meeting of February 27, "would be to have them expel us as a group."

It is true that all of the defendants except Read denied on the stand that they openly invited the loss of the local charter. But, in the light of the testimony as a whole, I cannot credit their denials. It does not seem credible to me that an individual could engage in a deliberate plot to induce his local union to fight the international union of which it is a part in the courts, to oust the duly elected officers because they might obey the international's orders, and to defy the orders of the international when they were issued, and yet not be held to invite the loss of the local's charter from the international. Certainly, the defendants Read and Rasey, whom I have found guilty of participating in planning and executing the ouster of te Groen, and whom I have found subsequently openly defied the order and direction of the Executive Board, must have intended the logical consequences of their acts. These defendants I find also guilty, therefore, of openly inviting the loss of the charter of Local 47 and therefore obstructing the successful maintenance of Local 47, in violation of Article 13, Section 1 of the Federation's By-laws. As to the defendants who participated in some, but

not all, of these acts, while I am convinced that perhaps all of them also understood what they were doing, nevertheless, in keeping with my desire to grant to the defendants the benefit of any doubt, I am finding not guilty of this charge.

d. Advocacy of Dual Unionism

All of the defendants are charged with advocating dual unionism in violation of Article 12, Section 36 of the Federation's By-laws. As I have said, this is one of the most serious charges that can be leveled against a trade unionist.

I believe that it is clear, and I find that the defendant Read openly advocated dual unionism. He did so at the caucus meeting at the Larchmont Hall caucus and the general membership meeting on February 27. Thus, at the Larchmont Hall caucus, Read said:

"We are in a position to ask the National Labor Relations Board to certify us immediately as a bargaining agent."

He also said:

"If in the event that the Federation should expel any sizeable group of musicians here, or take the local's charter away from it, which pray God they do, because that is the best thing that could happen to us, then we would have to continue offering payments of dues and taxes until such time as any new organization was certified as a bargaining agent."

At the membership meeting, after castigating the leadership of the Federation, Read said: "What can Local 47 do further within the Federation? Nothing. Not a damn thing." In addition, Read stated, "We will immediately petition the National Labor Relations Board for certification as bargaining agent in all fields of recorded and filmed music," and Read went on to explain the great advantages which he asserted would accrue when the local obtained rights to bargain its own contracts.

Warnings by te Groen and Bagley that adoption of the resolutions introduced by Read might lead to revocation of the Local 47 charter by the Federation were derided and minimized by Read in these words:

"I believe that the best thing that could happen to us would be for us to withdraw from the Federation."

He left no doubt, in his remarks, that the course of action which he planned and advocated involved the creation of a separate bargaining unit for Local 47 outside of the Federation and in opposition to it, and an election campaign to certify the local instead of the Federation under the National Labor Relations Act.

This is dual unionism. Read's objective could not be achieved in any other manner than by establishing a union dual to the Federation.

With respect to the other defendants charged with dual unionism, I find that while they supported Read in his plans and actions towards dual unionism, that there is a reasonable doubt as to whether they fully understood the implications of his plans and actions, and because of the serious nature of the charge and my desire to accord them the

tion of a portion of the membership to come to the general membership meeting. In the absence of such disclosure the meeting of March 12 might afford the form of due process without the substance.

Finally, it was clearly the right and the duty of the International Executive Board, in the light of the obvious turmoil and confusion in the local, and the serious charges that were being made, to conclude its investigation without further action being taken at meetings of the local to deal with the matters being investigated.

Defendants argue that the International Executive Board had no authority to cancel the meeting because it was the "will of the membership" that it be held and that their right to hold the meeting was guaranteed by the Constitution of the United States.

I have already dealt with this argument. As I have said, the will of the membership in a democratic trade union, as in any democratic organization or government, may be exercised only within the framework of the structure and laws of the parent body.

This fundamental principle is expressly incorporated in Article 12, Section 1 of the Federation's By-laws, which provides:

"Locals are required to adopt as part of their local Constitution and By-laws a provision to the effect that the Constitution and By-laws of said local is subject and subordinate to the Constitution, By-laws and amendments thereto of the Federation, and providing further that wherever conflict or discrepancy appears between the Constitution and By-laws of the local and the Constitution, By-laws and amendments thereto of the Federation, the latter shall prevail."

This provision, of course, is binding on the directors of Local 47. Under this provision the Board of Directors, as the leaders and responsible officers of the local, were obligated to obey the order and direction of the International Executive Board, which I have found was a valid order and direction under the Federation's Constitution and By-laws.

Accordingly, I find that defendants Read, Atkinson, Baker, Clyman, De Rosa, Dumont, Rasey, and Toland, by their actions at the meeting of March 9 violated a valid order and direction of the International Executive Board.

This violation constitutes, without more, a violation of the provisions of Article 13, Section 1 of the Federation's By-laws as a violation of a "law, order, or direction, resolution or rule of the Federation."

It is also charged that this violation of the stay order, along with other actions, constituted the placing of obstacles in the way of the successful maintenance of Local 47 under other language in Article 13, Section 1. In view of my other findings, I find this charge merely cumulative and hence predicate no findings of guilt upon it.

I find that the defendants Ulyate, Evans and Cram not guilty of the charge of violating the March 9 stay order.

c. Inviting the Loss of the Local 47 Charter

All of the defendants except Dumont are charged with openly inviting the loss of the charter of Local 47, which it is charged, would terminate the successful maintenance

benefits of any doubts, I find these defendants not guilty of advocating dual unionism.

e. Other Charges and Defenses

(i) All of the defendants except De Rosa, Atkinson and Dumont are charged with having met in secret session on the morning of February 27, 1956, and having "conspired unlawfully to oust the officers of Local 47 and for that purpose prepared the speeches, resolutions and action for the regular membership meeting of February 27, 1956, at 1:00 P. M., concealing such plans from the officers of Local 47 and the great bulk of the membership of Local 47." This charge relates to the Larchmont Hall caucus which we have seen was a private session of about 100 members carefully selected and personally invited by the members of the Steering Committee to prepare them for actions which were planned by the Steering Committee for the general membership that afternoon.

Defendants contend that the Larchmont Hall meeting was nothing more than a caucus of certain members of the local who desired to coordinate a campaign to achieve modifications of the Federation's trust fund policies. I recognize that there are circumstances when it may be appropriate for a portion of the membership of a trade union to meet or caucus prior to a general meeting in order to prepare their course of action on subjects properly coming before that general meeting. Essential to the legitimacy of such caucuses, however, is the opportunity of all interested members to mobilize their own caucuses on the questions to come before the general meeting. Here, however, neither the officers nor the bulk of the membership of Local 47 knew that the course of action planned at the Larchmont Hall caucus was even to be considered at the general meeting, which was supposed only to hear Read's report on his appeal to the International Executive Board. The primary purpose of the caucus was to disclose to a limited and sympathetic group the plans for the summary and illegal ouster of the local's officers and the other actions to be proposed at the meeting, all of which they intend to spring suddenly upon the unprepared and unwarned officers and members at the general meeting. Caucusing to arrange such plans, when considered in relation to their effectuation at the general membership meeting, constitutes the placing of obstacles in the way of the successful maintenance of the local in violation of Article 13, Section 1 of the Federation's By-laws. A caucus to achieve an unlawful end cannot be justified any more than the commission of the offenses which constitute the unlawful end can be justified.

Accordingly, I find that the defendants Read, Rasey, Ulyate, Berman, Evans and Cram are guilty of violating Article 13, Section 1 by their actions and participation at the illegal Larchmont Hall caucus.

I have found that the defendants Wald, Clyman, Baker and Toland did not participate in the illegal Larchmont Hall caucus and accordingly I find them not guilty of this charge.

(ii) Certain defendants are charged with having "arranged for a special meeting of Local 47 for March 12, 1956, contrary to the laws and procedure of Local 47."

Standing alone, this allegation is too broad and general to support any finding in the absence of additional specification. No such specification was offered, either prior to or at the hearing, and no evidence tendered which can properly be related to this allegation. I therefore dismiss this allegation.

(iii) Certain defendants are charged with having unlawfully ousted te Groen at the March 12, 1956, general meeting in that: (1) the charges against te Groen were presented at a special instead of a general meeting of the local as required by Article 1, Section 16 of the local's By-laws; (2) the membership was improperly notified of this meeting, since the notice was not sent in compliance with Article 1, Section 3 (d) of the local's By-laws; and (3) the ouster was "otherwise in violation of the By-laws of Local 47."

There is no merit in the allegation that the March 12 meeting was improper because it was a special membership meeting of the local. A special meeting of the membership is a general meeting of the local just as a regular monthly membership meeting is a general meeting of the local. This meeting, therefore, was a general meeting of the membership within the meaning of Article 1, Section 16 of the local's By-laws.

As concerns the alleged impropriety of the notice of the meeting sent to the membership, Article 1, Section 3 (d), provides that the Recording Secretary shall be responsible for notifying members of all regular and special meetings of the Association. The postcard notice for the March 12 meeting was sent out without any signature and without the knowledge or authority of the Recording Secretary. The sending of an anonymous postcard notice for a membership meeting is certainly not good practice. And there was no showing that the Recording Secretary, if contacted, would not have authorized the mailing of notices in his name. Even if, as the defendants claim, he was not available when the cards were printed, he was available before they were mailed and certainly should have been informed of the action taken.

However, in view of the other findings herein relating to these same defendants, I do not feel that it is necessary to predicate a finding of guilt on this particular incident.

The allegation that the ouster "was otherwise in violation of the By-laws of Local 47" I find to be too broad and vague, in light of the lack of evidence or specification on the record, and I therefore dismiss this allegation.

(iv) Defendant Dumont is charged with having voted at a meeting of the Board of Directors of Local 47 on March 23, 1956, to remove the president's salary from te Groen and transfer it to Read, and to consider Read as the President by succession despite the International President's stay of te Groen's March 12 removal.

There is no evidence in the record of any such action taken by Dumont at a meeting of the Board of Directors on the specified date of March 23, 1956. Apparently, the date alleged was in error, but in the absence of any move on the part of the plaintiffs to correct this error and in the absence of any evidence explaining this error, the Referee finds that there is no evidence on which this charge may be sustained, and it is dismissed.

(v) Defendants, in their answers, raised the defense that the International Executive Board

should be disqualified from deciding the charges on the ground of bias and prejudice against the defendants. At the trial, the defendants requested that the International Executive Board members be produced for questioning as to bias and prejudice.

I ruled against this request at the hearing and hereby reaffirm my ruling for the same reasons discussed at the hearing.

(vi) Defendants, in their answers, challenged the validity of Article 12, Section 36 and Article 13, Section 1, of the Federation's By-laws. However, no argument or reasons were put forth by the defendants in support of this defense.

As is evident from the foregoing findings, the Referee is of the view that these provisions of the By-laws are lawful and valid and he so finds.

Accordingly this defense of the defendants is denied.

4. Concluding Findings

In light of the above findings, I hereby conclude with respect to each defendant as follows:

a. Read is found guilty under charge 1, paragraphs A, B and G, that portion of charge 2 dealing with the order and direction of the Executive Board, and charge 3 of te Groen's amended charges.*

b. Rasey is found guilty under charge 1, paragraphs A, B and G, and that portion of charge 2 dealing with the order and direction of the Executive Board, of te Groen's amended charges.

c. Toland is found guilty under that portion of charge 2 dealing with the order and direction of the Executive Board of te Groen's amended charges.

d. Baker is found guilty under that portion of charge 2 dealing with the order and direction of the Executive Board of te Groen's amended charges.

e. Clyman is found guilty under that portion of charge 2 dealing with the order and direction of the Executive Board of te Groen's amended charges.

f. Ulyate is found guilty under charge 1, paragraphs A and B of te Groen's amended charges.

g. Evans is found guilty under charge 1, paragraphs A and B of te Groen's amended charges.

h. Cram is found guilty under charge 1, paragraphs A and B of te Groen's amended charges.

i. Berman is found guilty under charge 1, paragraphs A and B of Hennon's charges.

j. Atkinson is found guilty under charge 2 of Hennon's charges.

k. De Rosa is found guilty under charge 2 of Hennon's charges.

l. Dumont is found guilty under that portion of the charge dealing with the order of the subcommittee of the Executive Board of Hennon's charges.

With respect to the other charges against the foregoing defendants, I find them not guilty.

m. Wald is found not guilty with respect to all of the charges against him.

*Although there is a typographical omission of the identifying letter "A" from te Groen's amended charges, paragraph A of such charges, as referred to herein, deals with the allegations relating to the 10:00 A. M. meeting on February 27, 1956.

RECOMMENDATIONS

Article 13, Section 1 of the By-laws of the Federation provides that a member found guilty of a violation of the section shall be fined by the International Executive Board a sum of not less than \$10.00 nor more than \$5,000 or be expelled from the Federation. Similar penalties are provided for in Article 11, Section 11 of the By-laws. Article 12, Section 36 provides that the advocacy of dual unionism shall constitute sufficient and proper grounds for expulsion.

I have given the most careful consideration to the penalty which I should recommend for each defendant whom I have found guilty of a violation of the Federation's By-laws. In weighing the penalty of each I have considered the evidence in the record, the demeanor of the witnesses testifying before me, the extent and character of the violation, the degree of wilfulness involved and the fact of advice of counsel, along with all of the other circumstances.

I have also considered the principle that disciplinary actions within trade unions are not primarily punitive in character. Their purpose is not to exact the payment of a debt to society or to inflict punishment for the sake of punishment. They are designed primarily to protect the union and the membership which it represents from the disruptive influences which would reduce the effectiveness of the union in obtaining benefits for its membership and which might eventually destroy the union. I have, therefore, given careful consideration to what I believe would best serve the interests of the membership of Local 47 and of the Federation, and would restore harmony to and promote the successful maintenance of Local 47 as a local of the American Federation of Musicians. Certainly the best interests of the membership require that the all-out fight against the Federation, outside of its framework, which I have found exists, should cease forthwith and that all of the problems that exist both within the local and between the local and the Federation be handled within the framework and the constitutional processes of the Federation.

In accordance with the foregoing, I recommend:

1. That the defendant Read be expelled by the International Executive Board from membership in the American Federation of Musicians and, consequently, from membership in its Local 47 and from office therein, subject to the condition that Read shall have the right, at any time after one year, to apply for reinstatement to membership and that the International Executive Board, under the provisions of Article 3, Section 7, of the By-laws, shall entertain and approve such application, provided that, during the period of expulsion, he has not engaged in any further advocacy of dual unionism against the Federation, he has not placed further obstacles in the way of the successful maintenance of Local 47 as a local of the Federation and has not violated any law, order, direction or rule of the Federation, or aided or abetted others in any of the foregoing.

I further recommended that such reinstatement be conditioned upon compliance with the rule now set forth in Article 10, Section 8 of the By-laws of Local 47 that "no expelled member of this association readmitted to membership shall be eligible to hold office for the period of two years from the time of such readmission," and that, accordingly, Read shall not be eligible to be a candidate for or to hold office in Local 47 for a period of two years after the reinstatement.

I make this recommendation with respect to Read because it is clear from the record, as I have found, that he was and is the leader and guiding spirit in each of the violations that I have found.

2. That the defendants Rasey, Toland, Baker, Clyman, Dumont, Atkinson, Ulyate, Evans, Cram and Berman, and each of them, be expelled by the International Executive Board from membership in the American Federation of Musicians and, consequently, from membership in its Local 47 and from any office therein, subject to the following conditions:

(a) That, as expelled members, and in accordance with the rule now set forth in Article 10, Section 8 of the By-laws of Local 47, that "no expelled member of this association readmitted to membership shall be eligible to hold office for the period of two years

from the time of such readmission, "they, and each of them, shall not be eligible to be candidates for or to hold office in Local 47 for a period of two years after reinstatement as set forth below;

(b) That, after one day, the remainder of their penalty of expulsion shall be suspended and their application for reinstatement be deemed filed and granted by the International Executive Board on condition that they do not engage in advocacy of dual unionism against the American Federation of Musicians, that they do not further place obstacles in the way of Local 47 as a local of the American Federation of Musicians, that they do not further violate any law, order, direction or rule of the Federation and they do not aid or abet others in any of the foregoing. I further recommend that, if these conditions are complied with, at the end of one year, the International Executive Board shall declare the penalty herein recommended wholly satisfied and of no further force or effect except as specifically provided in paragraph (a) above.

3. That the defendant Wald be found not guilty on all of the charges against him.

4. With respect to the defendant De Rosa, I have found him to have been guilty of violating the stay order of March 9, 1956. The evidence in the record shows additional mitigating circumstances as to him. Indeed, defendant De Rosa at the Board meeting of March 9 suggested that the Board seek an interpretation from the committee of the International Executive Board as to the meaning and application of its stay before the Board voted to violate that stay. Although, perhaps, I should, under the By-laws of the Federation, recommend that a fine be imposed on this defendant, I believe that the best interests of all would be served by the remission of such penalty and I therefore recommend that the Board remit this penalty with respect to this defendant.

Respectfully submitted,

ARTHUR J. GOLDBERG (Sgc.)

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Referee

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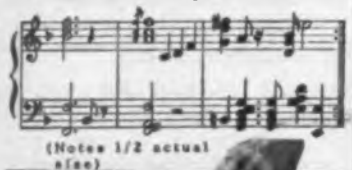
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- FOR SALE**—Stroller model black accordion, 12 bass, seven treble and three bass switches, sets reeds, with deluxe case, \$225.00. H. Sweet, Jr., 2649 Locust Ave., Oceanside, L. N. Y. RO 4-4003.
- FOR SALE**—German cello, Stradivarius model, excellent condition. Kurt Glaubitz, 9 N. Third St., Richmond, Ind.
- FOR SALE**—Vega tenor banjo, musical washboard, boogo drums, timbali drums, trap drums, conga drum, half-size bass violin, tuned mello bulb horns, Martin guitar. E. Alexander, 333 Vine St., Cincinnati, Ohio.

WANTED

- WANTED**—Solo banjo records, also hit club France and Django Reinhardt records, 78 and 45. Write, give titles, condition, price. E. Cosman, 842 Hamilton, Allentown, Pa.
- WANTED**—The Fort Wayne Philharmonic Orchestra will have a number of openings next season if qualified, we will help secure the widest type of employment desired. Write to: Manager Philharmonic Office, 201 West Jefferson, Fort Wayne, Ind.
- WANTED**—Accordianist (vocalist), to join established trio. Must be free to travel and dependable. Chas. Mangarino, 18 Belair Road, Roseton, Staten Island, N. Y. HA 2-3242 (4 to 5 P. M. only).
- WANTED**—Immediately, accordionist, double bass, piano; also guitarist, drummer and bass man with fine ballad vocals, for mountain resort engagement; must be neat and gentleman. Contact Mr. Joe Rafi, 1516 South Sixth St., Philadelphia 47, Pa. Fulton 9-2862.
- WANTED**—Schmidt double French horn with solid high register; write details. Elissa Napp, 726 Highland Parkway, Buffalo 23, N. Y.
- WANTED**—Bassoon, French Con. system buffed, give details. Les Flounders, 5635 Upland Way, Philadelphia 31, Pa.
- WANTED**—Copies of Andrew V. Scott's "Drumology." Dan Shilling, 1362 Hobart Ave., Bronx, N. Y.
- WANTED**—Used "D" trumpet with case, preferably Bach. State price. Nolan Willence, 227 Central Ave., Indianapolis 5, Ind.
- WANTED**—Flute, Haynes or other top quality, also clarinet, student grade, wood. Must be reasonable, give details. B. Burford, 702 West Park Road, Iowa City, Iowa.
- WANTED**—Conn Bb soprano saxophone (current model), with case, A-1 condition, describe fully. John E. Robinson, 1202 North Main St., Evansville 11, Ind.
- WANTED**—Guitar, Gibson L-5 or L-7 preferred or D'Angelico "Excel." Write R. Ditzel, 61 Dale Ave., Jersey City 6, N. J. Delaware 2-8686.
- WANTED**—Bass flute, state price, make and condition. William Lorenz, 2633 Bewick Ave., Detroit 14, Mich.
- WANTED**—Modern, swinging top quality jazz drummer; faultless beat. To join young combo (accordion, bass, clarinet), for summer engagement at high paying, fabulous New Hampshire resort. Must have Latin experience (timbales) and preferably double on vibes. Only neat, dependable, reliable, highly experienced should apply. Excellent opportunity for right person. Contact Steve Butek, Apt. 7-C, 435 West 119th St., New York 27, N. Y. MO 2-0866.
- WANTED**—French horn, Conn 8-D (silver), Reynolds Contemporara, or Kruspe, in order of preference. Must be in good condition and reasonably priced. Also French horn mouthpiece, H. B. White F-1 or Bach 3. Donald Haddad, 1085 Sacra Via, Marietta, Ohio.

AT LIBERTY

- AT LIBERTY**—Drummer desires summer job with dance band or combo. University of Oklahoma student, Local 94 card, references available. Don Reis, 1930 East 35th St., Tulsa, Okla. Phone 2-2661.
- AT LIBERTY**—Combo, 3 to 5 pieces; modern pop, jazz, Dixieland, vocals, etc. Together two years in large college area; want resort or hotel location for summer, available May 28. Good references, Local 169 cards. Royce Johnson, 1101 Ratione, Manhattan, N.Y. Prescott 6-6611.
- AT LIBERTY**—Trombonist, experienced in band and orchestra music; Local 408 card, college student. Wishes to join a dance band for the summer. Edgar T. Carrier, Jr., 34 Birch St., Biddeford, Maine. Phone 2-1212.
- AT LIBERTY**—Guitarist, doubling bass fiddle and vocals; all-around melody and rhythm, comedy impressions. Have car, will travel. Write, wire or call anytime. Robert Filane, 258 Withers St., Brooklyn, N. Y. EB 8-5200.
- AT LIBERTY**—Accordianist, drummer, vocalist; age 24, dance, shows, read music. Want steady job anywhere, will travel; discharged from service, Local 410 card. Emel Opdebeek, Box 25, Seneca, Ill. Phone 7771.

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AT LIBERTY—E♭ saxophonist, doubles on B♭ clarinet and C flute. Desires position with big band; will travel. Robert Amba, 1439 West Somerset St., Philadelphia 32, Pa.

AT LIBERTY—Electric guitarist, sings, reads, fakes, solos. Desires part time or steady work in and around the city. A. Campo, 219 Hiram St., Brooklyn, N. Y. GL 6-1631 (7 to 10 P. M.)

AT LIBERTY—Valve trombonist, can read, fake, jam; prefer modern combo, summer work; will travel. Available June 7. Allan Fisher, 133 No. Washington, Delaware, Ohio. Phone 23801.

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AT LIBERTY—All-around pianist and accordionist, open for steady or single engagements. Cut shows. A. Hardt, 41-23 67th St., Woodside 77, L. I., N. Y. Phone: DE 5-3395.

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AT LIBERTY—Young sax man with seven years big band experience; available after May 20, willing to travel; also plays clarinet and flute; sober and reliable. J. Kelley Robinson, Jr., Box 569 (after May 20), Sylacauga, Ala.

AT LIBERTY—Drummer for dance combo, also vocalist; available first of July, will travel. Jack Russell, 23042 Tuscany, East Detroit, Mich.

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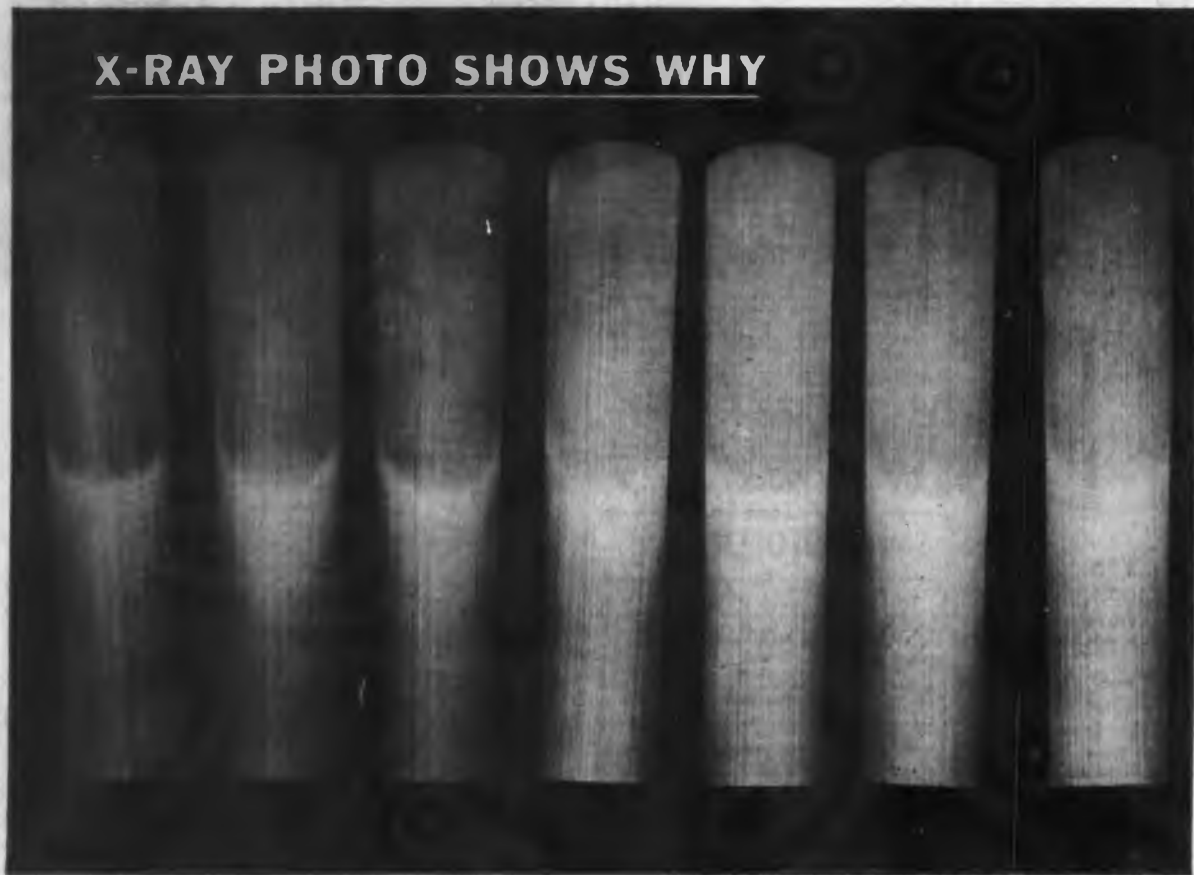


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