

Bill In Congress To Give Unions Greater Control Over Bands Initiating Fierce, Bitter Battle

By MIKE DALY

The American Federation of Musicians (AFM) is backing two bills in the U.S. Congress that, it says, will create better labor conditions for members of the union. But critics of the bill say that the proposed legislation is a blatant attempt by the union to regain its grip on the music industry.

The bill in question is the Live Performing Arts Labor Relations Amendment, sponsored in Congress by Sen. Paul Simon (D-Illinois) and Rep. William Clay (D-Missouri). Spokespersons for the union and the bill's congressional sponsors say the legislation is needed because of the itinerant nature of a musician's work, and they are using labor laws dealing with the construction trade as a blueprint.

Currently, federal labor laws subject most workers to a 30-day waiting period before being required to join the union associated with their job. But because construction workers work on a project basis, they seldom work for more than a few days or weeks for any single employer. Because of this, federal law exempts them from the 30-day waiting rule. The proposed bill seeks to give musicians the same exemption because of the similar contractual nature of their profession.

AFM spokesperson Jessica Roe underscores the similarity between the two occupations. "Say you're a bricklayer, and you've got a contractor that you're going to work for, and the job's only going to take seven days," she says. "The bricklayer's union has the right to go in and negotiate with that contractor for pay, other benefits, whatever, on a seven-day notice. They set up a standard for that community in what is called a prehire agreement. So then if you know that your week of employment starts on Thursday and runs to the following Wednesday, you know before you even take the job what you're entitled to: what kind of working conditions are going to exist, what the rate of pay is going to be."

But the bills are drawing sharp criticism from several music-industry groups, including the National Association of Orchestra Leaders and the International Talent Agencies Association. Both organizations oppose the bill because it would designate all "purchasers" — persons and establishments who hire musicians for live performance — as employers, and all musicians as employees.

Another bone of contention is a provision which would require all music to be furnished by union members; if nonmembers were to perform, union bartenders, waiters, delivery drivers and others could stage a "secondary boycott" — in other words, a strike, picket, walkout, or work slowdown, all of which are prohibited by federal law.

Charlie Peterson, treasurer for the NAOL, says it was his organization's fight against the union that has prompted the AFM to push for this kind of legislation for the past 15 years. In 1965, the NAOL, with the support of the National Labor Relations Board, won a legal challenge that declared leaders of bands to be foremen, or employers. This toppled an AFM rule which required all band leaders to be members of the union.

ITAA membership chairman Dave Jackson says federal labor laws make union membership optional for foremen and other supervisors, and bars them from serving as officers. But the AFM, he says, still requires band leaders to be members of the union, in violation of the labor law. The new amendment, if passed, would enable the union to legally require membership from band leaders, Jackson says.

This, says Peterson and Jackson, represents a blatant move by the union to gain further control over the live music industry and increase its dwindling ranks.

Jackson says that the ITAA represents more than 80 percent of professional, fulltime musicians in the entertainment industry, while the AFM represents about 90 percent of the "local, part-time plumbers" — those musicians who perform only sporadically at best—and less than 10 percent of those that make music for a living.

Peterson says that the bill is designed to force band leaders to return to union ranks, giving up a freedom to the NAOL attained 25 years ago. He said that since the band leaders were designated as foremen, the union's grip on the industry has diminished greatly.

"When we started our actions in 1965, they (the union) had half-a-million members," says Peterson. "They're down to 165,000, and I'm happy to be billed by the president of the AFM as their nemesis."

"They've been trying for 15 years to change that law. Unless the union controls the entire music business—employers, contractors and supervisors alike—they're in trouble. Every (congressional) session since that time, they've prevailed upon certain senators and congressman to sponsor these bills."

But Ned Guthrie, national legislative director for the AFM, says the employer/employee delineation in the bill is necessary because currently, musicians have little leverage in dealing with purchasers. He adds that while a band leader can engage musicians, and is technically an employer, the leader can only be viewed as a joint employer at best, because it's the purchaser that ultimately controls the payroll and working conditions.

Guthrie says that under existing law, "if the band gets stiffed and doesn't get paid, the only way the musicians in that band can collect anything as per their contract is to take action against the leader. If the hotel or the fraternity doesn't pay the leader, it's like the sidemen have to sue themselves. So that's the main thing we're trying to get rid of. Everybody knows that whoever pays for it has control, so this bill will establish the fact that the purchaser is truly an employer, and that everybody who performs that musical service is an employee."

But Stephen Tarkanish, president of STARS Studios & Productions in New Jersey, says that any law designating the purchaser as employer will have far-reaching ramifications for him and others like him in the industry.

Tarkanish says not only hotels and clubs, but booking agents, civic organizations and even the father of the bride will come under hardship as purchasers/employers of musicians. He says that if the bill becomes law, all purchasers will become responsible for paying workman's compensation, unemployment insurance, Social Security, state and federal withholding, union pension and health benefits.

"I won't be able to afford to be in business, and neither will anyone else," says Tarkanish. "The effect of this bill will be devastating on the purchasers of music."

Jackson also uses the father of the bride as an example of someone who could be hurt by the proposed bill.

"Say, for example, that a man and his wife run a small business, maybe with their daughter, and therefore they don't have the five or more employees to qualify for worker's compensation and all that kind of stuff," he says. "Now, the daughter's going to get married. All of a sudden the father of the bride becomes an employer of five musicians. Guess what: all of a sudden they've got eight employees for the year, instead of the three they had before. That puts them in an entirely different tax bracket, the whole nine yards. So naturally he's not going to hire the band."

But Roe says the bill is not aimed at individuals or smaller operations.

"The father of the bride, or the Elk's Club that wants to hire a band for the night, simply isn't going to be affected by this," she says. "But the Holiday Inn might."

Peterson, Jackson, and Tarkanish say that by designating all musicians as employees, the bill prevents musicians from being independent contractors. But Guthrie says that's not the case.

Jackson also says designating all musicians as employees will prevent a traveling band from deducting their travel expenses from their tax returns.

"Let's say you live two blocks from your magazine, or two miles from your magazine. Do you get to deduct all of your expenses because you don't work where you live? Hell, no. Well, neither does the guy like Rod Stewart (if this bill passes). So that means his price has to go up astronomically, and naturally, that means less work."

Jackson says the ITAA would not be so opposed to the bill if it truly would protect the professional musician, as the union maintains it will.

"Who do you want to protect, mostly—the fulltime, professional musician, or the part-time plumber who does it once a year?" asks Jackson. "Naturally, you'd go for the fulltime professional—the guy who works for Rod Stewart or Roy Clark or Willie Nelson."

As band leaders, says Jackson, people like Stewart, Clark, and Nelson now negotiate with the union to establish working conditions and salaries for the backing bands to be employed. To require these 'band leaders' to be union members and give them potential power to dictate union policy is ludicrous, he says.

"The union says that the way the law is now, they're not in a position to negotiate with these 'bosses,'" he says. "So they want to be exempt from that law. But it's not true—they can negotiate and they do negotiate. But they keep telling the senators that they're being picked on by this law and are not allowed to represent their members, and that's bullshit."

Peterson says the secondary boycott provision of the bill is another tactic designed to force band leaders to become union members. "If the bill passes...we become employees," says Peterson. "If they (purchasers) do business with non-members, they could be picketed."

But Roe says that provision aims to give AFM members the same rights as those who belong to other unions.

"No union wants to strike, but every union deserves that right, and every union is guaranteed that right," she says.

"You may have heard of the long strike that we had in Las Vegas. There, we could have asked other unions to honor our picket lines, but we know that that would hurt the entire industry there. However, if we had asked, other unions have the right to honor our picket lines. Right now, in certain circumstances, we don't have the right. All this bill is asking for is the same right that other American workers already enjoy."