

**ADDENDUM to AFLCIO-DPE Arts and Entertainment Sectoral
Submission to White House Taskforce on Worker Organizing and
Empowerment
Submitted By the American Federation of Musicians of the United
States and Canada through the DPE**

The Issue:

For decades, the problem of military musicians and in some cases entire military band units coming unchecked off base to perform at civilian-nonfederal entities-arts and entertainment events has led to significant loss of employment by civilian/commercial musicians who traditionally had been contracted to play these engagements.

It should be made clear that this problem does not relate to military band appearances independently booked by Army, Navy, Air Force, Marine or Coast Guard unit public affairs offices for the purposes of supporting military related events, or tours booked by the same in furtherance of the US military's public relations mission.

Background:

After considerable lobbying-negotiating on the part of the American Federation of Musicians of the United States and Canada AFL-CIO CLC with the Department of Defense in the early 1980's, a DOD Directive was agreed upon by the union and DOD that required military musicians who leave base to play in the civilian arena to not only join the union but to get paid the prevailing wage (including individual musicians' pension payments, state and federal tax withholding and union health and welfare benefits) in the Local jurisdiction of said engagement. Since that time, DOD Directive 5410.18 was put in place to clearly define the conduct of military musicians who sought musical employment off base. In addition, DOD Instruction 5410.19, November 13, 2001 was issued in support of the Directive.

As time went on, the Directive appears to have been overlooked possibly because unit band commanders and NCOIC's neglected at Commander's Call to remind their units of the Directive, nor did they appear to enforce the same. As a result, more and more musicians left base and not only did small engagements, but some also served as musical contractors often hiring 30 to 40 piece symphony orchestras to perform at local churches and other events, thereby again displacing civilian union musicians. These engagements occurred across the United States.

Pertinent DOD Directive-Citations/Protocols:

DOD Directive 5410.18, November 20, 2001, signed by Deputy Secretary of Defense Paul Wolfowitz.

Principle Clause Relating to Military Musicians' Interaction off Base:

4.8.5. Armed Forces musical units generally shall not place military musicians in competition with employment of local commercial musicians.

Subsequent Select Clauses of the Directive Relating to the Conduct of Military Bands and Musicians

Section 4.2.4.2

4.2.4.2. Musical Resources. A military band or choral group, or portion thereof [individual personnel], is not logistical support as defined in enclosure 2 (E2.1.15., "Support (Logistical)") and is not generally available to support non-Federal entity events. Providing support at events sponsored by non-Federal entities by Military Service members in uniform performing in a military band, choral group, or portion thereof, is particularly inappropriate because they convey in that context a strong visual appearance of a DoD endorsement of the non-Federal entity, its event, or its goals. When determined to be in the Department's best interest, a military band or choral group, or portion thereof, may be provided for ceremonial support of non-Federal entity events that are not used for fund-raising. **Military musicians shall not be placed in competition with commercial musicians.** See paragraph 4.8., below, for policy on the use of military musical resources.

4.2.5.3. A military band or choral group, or portion thereof, is not a resource available for loan as logistical support to a charitable fund-raising event sponsored by a non-Federal entity. Providing support at charitable fund-raising events by Military Service members in uniform, performing in a military band, choral group, or portion thereof, is particularly inappropriate because they convey in that context a strong visual appearance of a DOD endorsement of the non-Federal entity, its event, or its goals (see subparagraph 4.2.4.2., above).

4.2.17.1. Competition with Commercial Musicians. The limitations in subparagraph 4.2.17., above, extend to competition with commercial musicians. Military musicians generally shall not compete with commercial musicians. DOD musical support of events sponsored by non-Federal entities is limited to patriotic or military music. Background, dinner, dance, or other social music is not authorized for programs sponsored by non-Federal entities for events, whether they are held either on a military installation or away from a military installation. See 10 U.S.C. 3634, 6223, and 8634 (reference (e)).

4.2.18. Compensation to DOD Personnel or Organizations. DOD personnel and organizations shall not accept compensation from non-Federal entities for community relations activities. Gratuities that qualify in accordance with DOD 5500.7-R (reference (c)) may be accepted

4.8.2. Policy Responsibility. The ASD(PA) establishes policy for the conduct of all DOD musical support within the public domain. Musical support includes, but is not limited to, parades, concerts, choral presentations, patriotic openers or presentations, and other events where a band or band detachment or component performs (see definition E2.1.12., "Patriotic Opener," at enclosure 2).

4.8.5. Armed Forces musical units generally shall not place military musicians in competition with employment of local commercial musicians (see subparagraph 4.2.17.1., above).

4.8.7. Bands are not permitted to produce or participate in recordings with civilian musicians for commercial sale without ASD(PA) approval. 4.8.8. Musical units shall not perform back-up support for non-DoD entertainers at public programs unless the military musical unit performs as a featured participant and is not performing in competition with commercial bands.

5.1.15. Oversee the implementation of Sections 3634, 6223, and 8634 of reference (e), which authorize the Military Services bands, designated special bands (concert bands) by their parent Military Services, to produce recordings for commercial sale.

How Does This DOD Directive Effect Union Organizing/Density:

On the Negative Side:

Freelance military musicians and units that displace union musicians over time negate employment of civilians, lowering union membership numbers in Local jurisdictions that see ongoing violations of the Directive.

Because military musicians often play in the civilian sector for less than prevailing wage (which includes pension, taxes, health and welfare, and work dues), Local performance standards are negatively affected leading unscrupulous employers to rely on cheaper, equally skilled labor.

On the Positive Side:

- Upon initiation of the original DOD Directive, there was an immediate surge in union membership due to the influx of military musicians who actually preferred the union membership safety net and job/contract security protocols.

Solution:

- A Presidential Executive Order addressed to Pentagon leadership that directs base, combatant, and unit commanders to restore adherence to this Directive by serving notice to all Officers and NCOIC's, of their responsibility to reinstate Commander's Call announcements for unit musicians to join the Local union when performing off base while emphasizing the non-compete clause. Similarly, the DOD Directive should be revised to outline methods of enforcement for those caught violating the Directive, subject to the Commander's discretion. With thousands of military musicians performing in the US and in some cases around the world, this could potentially boost union organizing efforts while simultaneously increasing union density.