THE PRODUCING MANAGERS' ASSOCIATION desires to give expression to its sense of the loyalty and good conscience of those members of the acting profession who have declined to compromise their individual freedom as artists and to break contracts, which have been fairly and freely entered into by them.

THE PRODUCING MANAGERS' ASSOCIATION hereby gives notice to all whom it concerns that it will steadfastly stand by those members of the theatrical profession who are loyally standing by the true interests of the theater and its patrons in the discreditable strike now in progress.

DAVID BELASCO
A. L. ERLANGER
GEORGE BROADHURST
WINTHROP AMES
LEE SHUBERT
WILLIAM A. BRADY
C. B. DILLINGHAM
ARTHUR HAMMERSTEIN
ARTHUR HOPKINS
CHAS. EMERSON COOKE
H. H. FRAZEE
EDW. MacGREGOR
ABE LEVY
GEO.C. TYLER
GEO. M. COHAN
ALF. HAYMAN
F. RAY COMSTOCK
MARC KLAW
JOHN L. GOLDEN
FLORENZ ZIEGFELD
JOHN CORT
J. FRED ZIMMERMAN, Jr.
WALTER F. WANGER
RICHARD HERNDON
RICHARD WALTON TULLY
MORRIS GEST
HARRISON GREY FISKE
SAM H. HARRIS
HENRY W. SAVAGE
SELWYN & COMPANY
A. H. WOODS
WILLIAM HARRIS, Jr.
L. LAWRENCE WEBER
OLIVER MOROSCO
CHAS. COBURN
ADOLPH KLAUBER
GEO. WHITE
MORAN & ANDREWS

WARNING!

All members of the Actors' Equity Association are personally liable for all damages and losses to the Managers caused by the strike.

DO NOT BE MISLED—CONSULT YOUR OWN LAWYER

Attention is called to the following letter sent by Mr. Nathan Burkan to the Actors' Equity Association, copy of which was transmitted to Mr. John L. Golden by Mr. Burkan.

August 10, 1919.

Mr. Frank Gillmore, Executive Secretary, Actors' Equity Association, New York City:

My dear Mr. Gillmore.—My attention was called last night to a list of your membership, in which was included my name as a life member.

In view of the strike called against the enterprises managed by my clients, Messrs. Winchell Smith and John Golden and Charles Dillingham, respectively, and in view of the action of the organizers of the strike in willfully bringing about the breaking by members of your association of contracts of service existing with Messrs. Smith and Golden and Dillingham, respectively, which have long periods to run, and particularly in view of the fact that Messrs. Smith and Golden and Dillingham, respectively, have at all times and on all occasions treated their players with the utmost consideration, justice and fairness, as the striking players as well as all other players associated with them will admit, and against whom the players can have no legitimate grievance, I must insist that my name be forthwith stricken from your membership roll.

The action of the organizers of the strike in knowingly and willfully ordering players under written contracts of employment with these managers to leave their employers and break up their attractions, manifests an utter and willful disregard not only of law and order, but of the welfare of your membership, as well as of the rights of these managers, and it also betrays crass stupidity on the part of the officers of your association in permitting such acts to be committed.

Let me call your attention to the decision of the Appellate Division of this Department in the case of Grassi Contracting Co. vs. Bennett, 174 A. D., page 249, where the court held that:

It is not lawful to call a strike, the result of which will be the violation of contracts of its members with their employers; and the United States Supreme Court, in Hitchman Coal & Coke Co., vs. Mitchell, 245 U. S., page 229, held that a combination to procure concerted breaches of contract by plaintiff's employes **is as plainly unlawful as if it involved a breach of the peace.**

In that case the members of a union were enjoined from inducing or seeking to induce the plaintiff's employes from violating their contracts of employment. The Court, in protecting those contracts, said, at page 251:

"Plaintiff, having in the exercise of its undoubted rights, established a working agreement between it and its employes, with the free assent of the latter, is entitled to be protected in the enjoyment of the resulting status, as in any other legal right. That the employment was at will and terminable by either party at any time is of no consequence."

"The right of action for persuading an employe to leave his employer is universally recognized."

Applying this principle to the facts involved in the strike, the strike organizers, **the officers of the Actors' Equity Association, and its membership, were and are guilty of unlawful acts in directing, inducing, persuading or coercing players under contractual relations with managers to strike, to break their contract, and not to play at scheduled performances.** The contract need not be for any specific period (although I know of my own personal knowledge that a great many of the contracts are for long terms, and some have a two weeks' notice clause).

In justice to the many players who are members of the association and who do not realize the consequences of the acts of the organizers of the strike, and the officers of the association, in permitting the organizers to commit the acts which the courts have pronounced illegal, let me call your attention to the famous Danbury Hatters' case, known as Lawlor vs. Loewe, 235 U. S., 522.

In that case the members of a labor union attempted to compel a hat manufacturer to unionize his factory, left his employment and prevented others from taking employment therein, and with the assistance of members of affiliated organizations declared a "boycott" on his goods. The court held that all the members of the labor union who paid their dues were jointly liable with the officers of the union for the damages sustained by their acts. **It is not essential that each member of the Union should have knowledge of the details of the action proposed to be taken by the strike organizers and the officers of the Union.**

The court said, on page 529:

"The individual members are liable as principals for what their officers did in the performance of their duty, even though they did not know of the particular acts done, or may have disapproved of or have forbidden it."

In that case the plaintiff recovered a judgment for $222,000.00, and many of the members of the Union had their bank accounts attached, their property sold at public sale under execution, and many were obliged to pay whatever they had, to make good the damage.

The damages in such cases are not apportioned, but each member is liable individually and collectively for the entire damage done, and if he has sufficient property, he must make good the entire damage.

It is beyond dispute now that very serious damage has been inflicted upon a number of managers by the closing of their theaters. The damages are not speculative, because the managers will be entitled to recover for moneys refunded by them to patrons who were deprived of the opportunity to see the attraction, moneys paid as rent for the theater while it remained dark, moneys paid to employes who had to be laid off in consequence of the strike, moneys paid for advertising, current expenses, and possible losses wherever they can be established.

The resulting damage of this strike may run into millions of dollars, and all those players who have contracts with Managers as well as the officers and strike organizers, and the individual members of this association, though they did not participate in or had any knowledge of the strike, may, within a short period of time, find themselves involved in a serious predicament. By the action of the organizers of the strike and the officers of your association, the life savings of many players have already been jeopardized.

I think it is your duty to at once direct all players who have walked out in breach of their contracts to return and to minimize the damage as far as possible.

This letter is written, not with the idea of giving you advice, but simply to justify my action.

Very truly yours,

NATHAN BURKAN.

Mr. Howard Kyle, founder of the Actors' Equity Association, who for more than six years served as a member of its Counsel and in other capacities without remuneration, has resigned from the Actors' Equity Association. In connection with his resignation Mr. Kyle sent the following letter to Mr. E. H. Sothern, who has also since resigned from the Actors' Equity Association:

New York, August 5th, 1919.

Dear Sothern:

I am sorry I didn't get a word to you before you were induced to send a letter to the Actors' Equity Association, approving the course its officers and council have wrong-headedly taken. For once the managers are right in their stand. They have recognized the Actors' Equity Association as an organization and they invited its representatives to meet them and make a mutual agreement for the uniform adoption and use of an improved form of the United Managers' Protective Association-Actors' Equity Association contract to cover a period of three or five years. Each manager in the new producing Managers' Protective Association (and it includes practically all of them) is under a bond by which he would forfeit $10,000 if he breached any agreement made by his organization. That is any agreement like that of the adoption of a uniform standard contract. This was the very situation, or should I say consummation, toward which the Actors' Equity Association has been working for six years, but the radicals misapprehended the spirit of co-operation that possessed the managers and attributed their action to motives of fear; thereupon an utterly foolish and unnecessary ultimatum was issued concerning extra performances which were made to include legal holiday matinees and Sunday appearances. The arbitrary action was taken despite insistent warnings I made to the Council of its ill advisedness. The aggression came, you see, from our side when the managers were in an amenable state of mind and actually willing, as they are now, to stand for a clause by which all salaries shall be reckoned by the performance.

In order to save their own faces our representatives proposed publicly that the whole matter of a contract be given to an outside Board of Arbitration, thus trying to embarrass the managers. As I openly predicted, the managers said there was nothing to arbitrate and they have proceeded to use the standard contract United Managers' Protective Association-Actors' Equity Association, changing only the clause as to how any issue may be arbitrated; meanwhile poor men and women who are actually working under equitable conditions are forced to strike as the result of the bad leadership of our association.

It is important to remember that the accepted Actors' Equity Association-United Managers' Protective Association contract was actually drawn up in the first instance by the Actors' Equity Association itself, and the clauses consenting to play Sunday night performances and legal holiday matinees were put into this contract by the actors themselves. The changes now demanded, therefore, constitute additions to our own contract, which we have proclaimed as equitable all over the world. No one has ever pretended that the contract, which is a minimum one, is the best that might be secured, and it is only fair to recall that Mr. Marc Klaw, President of the United Managers' Protective Association, spoke at the ratification supper in November, 1917, saying: "This is a history-making occasion, but the contract as it stands is only a beginning."

(Signed) Yours very truly,

HOWARD KYLE.