

June 14, 1977

UNIONIZING THE MILITARY

S. 274, S. 997

STATUS OF LEGISLATION:

There are at present two pieces of legislation before the Senate Committee on Armed Services which have as their aim a prohibition on unionization of America's uniformed services. The first bill is S. 274, introduced on January 18, 1977, by Senator Strom Thurmond of South Carolina for himself and the following co-sponsors: Senators Allen, Baker, Bartlett, Bellmon, Bentsen, Byrd of Virginia, Chiles, Curtis, Danforth, Dole, Domenici, Eastland, Garn, Goldwater, Hansen, Hatch, Hayakawa, Helms, Hollings, Laxalt, Lugar, McClellan, McClure, Morgan, Nunn, Schmitt, Scott, Stevens, Stone, Talmadge, Tower, Wallop, Young, and Zorinsky. Senators Biden and Glenn joined as co-sponsors in February and were joined in March by Senators Ford, Roth, and Schweiker. The second bill is S. 997; introduced by Senator John Stennis of Mississippi, chairman of the Armed Services Committee, on March 15, 1977. The staff of the committee advises that as of this writing, both bills are still pending before the committee in unamended form. To date, only one hearing has been held; Secretary of Defense Harold Brown and Secretary of the Navy W. Graham Claytor appeared before the committee on March 18, 1977. It is expected that additional hearings will be held; but no precise dates have been set, according to the committee staff. There are several bills with similar intent currently pending before the House Committee on Armed Services; but, as was the case during the 94th Congress, no hearings have been held and none are contemplated at this point.

BACKGROUND:

Unionization of the military is not a new concept, even in the United States. During the Vietnam war, a number of groups in what was called the "G.I. movement" actively pushed the idea

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as a radical organizing device. This movement included organizers from Students for a Democratic Society, the Trotskyite Socialist Workers Party, and the National Lawyers Guild. The group most prominently featured in the media during the period was the American Servicemen's Union, founded and led by a member of a dissident Communist organization known as the Workers World Party. Such individuals and organizations were not using the concept of military unionization within the context of labor union activity as generally understood; rather, they were using it as a device to organize opposition to the war within the military establishment -- as a disruptive tool, in other words, aimed at hindering the efforts of the United States in Southeast Asia.

More recently, however, the military unionization concept has been advanced principally by the American Federation of Government Employees (AFGE), an AFL-CIO labor union. Clyde Webber, former president of the AFGE, appeared before the Defense Manpower Commission on August 18, 1975, and testified as follows:

Since it appeared that AFGE and armed forces personnel would have a continuing mutual concern in pay adjustments in the future, I recommended to the AFGE National Executive Council -- our policy board -- that we consider offering membership within the AFGE to members of the uniformed military.

It has been reported that during the same period in 1975, the National Maritime Union (NMU) and the International Brotherhood of Teamsters (which has also concentrated some of its efforts in recent years on organizing policemen) were exploring the same possibility.

In response to this move, Senator Thurmond, along with 24 other Senators, introduced S. 3079 on March 4, 1976. This legislation would have prohibited unionization of the United States military and would also have provided criminal sanctions against attempts, whether by military or by civilian personnel, at organizing military unions. The bill also included a provision which empowered the courts to levy a fine of not less than \$25,000 or more than \$50,000 against any organization found guilty of making such an attempt. This bill was, however, as Senator Thurmond later wrote, "a victim of the election year. The bill died when the 94th Congress adjourned in 1976."

Toward the end of the 94th Congress, the Association of Civilian Technicians began to recruit military members from reserve component forces, while in September, 1976, the AFGE convention voted to amend the union's constitution to permit the recruiting to AFGE's ranks of members of America's armed services. It was in response to these developments that Senator Thurmond, on January 18, 1977, introduced S. 274.

PROVISIONS OF S. 274 AND S. 997:

S. 274 proposes to "amend chapter 49 of title 10, United States Code, to prohibit union organization in the armed forces, and for other purposes." S. 997, similar in intent but somewhat different in language, aims to "amend chapter 49 of title 10, United States Code, to prohibit union organization and membership in the Armed Forces, and for other related purposes [emphasis added]." S. 274 would bar "any individual, group, association, organization, or other entity" from enrolling members of the armed forces in labor organizations. It would also make it unlawful to "solicit or otherwise encourage" members of the armed forces to join any labor organization. S. 997 would prohibit "any labor organization, or any other group, association, organization, individual, or other entity" from engaging in the same activities and from receiving or accepting "any labor organization dues from any member of the armed forces." S. 997 also would bar any organization or person from using, or permitting the use of, military or defense facilities "for labor organization recruiting or unionizing activities" or for any activities which support labor organization or membership in them by members of the armed forces. Such language is not included in S. 274 as introduced by Senator Thurmond.

S. 274 specifically proscribes membership in "any labor organization" by members of the armed forces; it further proscribes solicitation or other encouragement for such membership by members of the armed forces. S. 997 also prohibits any member of the armed forces from joining any labor organization, or from being or remaining a member of such a group, and bars members of the armed forces from soliciting or otherwise encouraging other members "to join, become, or remain a member of any labor organization."

Under the terms of S. 274, it would be unlawful for members of the military to support actively any labor organization activity designed to protest, to focus public attention on, or bring about changes in "the working conditions of members of the armed forces" or which "supports, advocates, or asserts" any right on their part "to join or be represented by labor organizations." The provisions of S. 997 are essentially similar, except that "working conditions" is broadened to "the pay, working conditions, or military service of members of the armed forces," while proscribed activity is also broadened to include specifically any activity which "supports, advocates, or asserts" a right within the military to "engage in strikes, work stoppages, slowdowns, and similar job actions." S. 997 also carries an additional prohibition against any attempt at negotiation, either by a member of the armed services or by any civilian official or employee of the Defense Department, "on behalf of the United States, with respect to the

terms and conditions of the pay, work, or military service" of military personnel with any individual or other entity "which represents or purports to represent members of the armed forces." Likewise, no member of the armed forces or employee of the Defense Department would be allowed to recognize "any individual, organization, or association for any such purpose."

Both bills exclude from these prohibitions situations in which the labor organization in question does not represent, or purport to represent, members of the military in dealings or negotiations with the United States government and does not advocate or assert (S. 997 specifies "support, advocate or assert") the right of military personnel to strike against the government. The language of S. 997 is somewhat more explicit in this respect, however, in that it refers to the right "to engage in strikes, work stoppages, slowdown [sic] or other job actions against the Government of the United States."

Penalties vary within the two bills. S. 274 provides a penalty of not more than five years imprisonment for any individual violating its prohibitions, while S. 997 provides for a fine of from \$1,000 to \$10,000, imprisonment "for a term of not more than five years," or "both such fine and imprisonment." Any labor organization found guilty of violating the provisions of S. 274 would be subject to a fine "of not less than \$25,000 or more than \$50,000." Under the terms of S. 997, the fine would be "not less than \$25,000 nor more than \$250,000."

ARGUMENTS IN FAVOR OF MILITARY UNIONIZATION:

Servicemen see government as insensitive to their concerns. Frustration, dismay, and disillusionment are caused by overblown recruiting promises, seeming disinterest by government, and what is regarded as a lack of communication generally. Such a situation has apparently even been recognized by the Defense Manpower Commission, which stated in an April 19, 1976, report that many military people "felt dismayed and disillusioned because of what they perceive to be neglect, disinterest, or a breach of faith on the part of their government; and there appears to be a significant communications gap between departmental policy-makers and troops in the units in the field."

Military personnel are seen as government employees rather than as a separate, special category of service. This concept is especially the case in a volunteer environment, and it is reinforced by military advertising that fosters the impression that the working conditions and benefits of military life are similar to those in civilian life. Increasing military unrest with attendant discipline problems has been caused, it is argued, by such problems as limitations on pay, challenges to retirement pay, cutbacks in medical programs, reductions-in-force, and the like.

The rise in military unionization sentiment is traceable to the growth in public sector unionism in general during recent years, some examples being the American Federation of State, County, and Municipal Employees (AFSCME), the Service Employees International Union (SEIU), and various teacher's unions, as well as fairly militant unions of policemen and firemen. This period has also been one of markedly greater assertiveness by unions, with government employees demanding privileges and powers comparable to workers in industry. This argument is directly related to the view of armed forces personnel as government employees in the generally accepted sense.

Proponents of military unions point particularly to the European experience. Military unions are widespread and well developed in a number of European countries, especially in Sweden, Norway, Denmark, Belgium, West Germany, and the Netherlands. These six countries have more than 60 soldier associations among them, with nearly 100% organization in Scandinavia. The Swedish groups have full collective bargaining and the right to strike. Some European associations are even seeking occupational safety and health guidelines. The best-known such organization is the Dutch VVDM, a draftee's union that has, it is claimed, brought about such changes as higher pay, elimination of inspections and supposedly "unnecessary" formations, optional saluting, and reforming the military penal code to eliminate more severe forms of punishment.

It is further argued that entrenched interests in the military establishment have too much to lose from reforms of service procedures and that they will, therefore, probably continue to fight them even though they are needed if unionization is to be deterred. In this view, only an outside group with the organizational clout of a trade union can be effective in forcing the changes needed.

Potential conflicts between official directives and rank-and-file personnel are viewed as minimal, the argument being that tensions are traceable to command rather than to labor unions. This line of argument contends that insofar as military labor unions help resolve problems, internal conflicts actually lessen, thereby theoretically improving combat readiness.

Finally, it is stated that unionization can serve to defend individual rights within the military frame of reference. Union legal defense programs, for example, could help insure a serviceman's right to object to certain missions on grounds of conscience, thereby supposedly preserving military effectiveness in justifiable circumstances while acting as a brake on abuse of command authority in others. It is pointed out that Admiral Eugene LaRocque of the Center for Defense Information stated in a December 6, 1976, interview that "If we'd had a union earlier, maybe we might have avoided the tragedy of Vietnam."

ARGUMENTS AGAINST MILITARY UNIONIZATION:

Those who oppose unionization of military personnel recognize a serious morale problem within the armed services, but they contend that unionization is not the proper device for achieving reform. Rather, they point out the activist role played by the various military associations, many of them quite powerful, in bringing pressure to bear on responsible officials. Such associations can speak for military personnel without operating as trade unions and thereby undermining the military chain of command, which is seen as basic to any well-organized and adequately-functioning military force.

The idea that military personnel can properly be represented by trade unions as if they were government employees in the accepted sense is at variance with established constitutional doctrine as expressed by the United States Supreme Court in a 1974 case (Parker v. Levy, 417 U.S. 733, 743): "This Court has long since recognized that the military is, by necessity, a specialized society separate from civilian society." The Constitution of the United States specifically empowers the Congress "to make rules for the government and regulation of the land and naval forces." Thus, the line of argument runs, permitting labor unions to speak for military personnel would represent an infringement upon the powers specifically assigned to the Congress by the Constitution.

Further, the clear distinction between military and civilian society as drawn by the "separate society" doctrine of the Court suggests that it would be an entirely legitimate exercise of legislative authority if Congress were to prohibit military unionization. Court decisions plainly indicate that abridgement of the usual First Amendment rights when applied to military situations is allowable -- indeed, necessary -- if military personnel are to accomplish their highly specialized mission as a properly disciplined defense force capable of responding instantly and effectively to the needs of civilian command authority.

As the law now stands, unionization of military personnel is not, strictly speaking, prohibited, even though there are provisions in both the United States Code and the Uniform Code of Military Justice providing criminal sanctions for certain actions that have at times been associated with militant trade union activities. It is argued, for example, that while Title 18 of the United State Code specifically makes striking against the government a punishable offense, this provision may well not apply to military personnel -- a proposition that would appear consistent with the Court's distinction between military service and conventional government employment.

The European situation cited by proponents of military trade unions can be viewed from another perspective, from which it is seen as dangerous to the maintenance of sound discipline. In the Netherlands, for example, whose VVDM is the most oft-cited example of what can be accomplished by a military labor union, it may be argued

that the uniformed services have developed a divided loyalty which makes them as responsible to the union as they are to the requirements of duly constituted government authority. One Dutch battalion commander has been quoted as saying that soldiers ought to be able to refuse orders on grounds of conscience, as well as "to elect -- and dismiss -- their officers." The same officer went on to state that "In a strike by a union, I cannot say that the army is fully prepared to fulfill its mission -- and I am glad to say that."

This gets to the heart of the opposition to unionization of military personnel. The peculiar requirements of military service are such that, no matter how foreign the concept may be to the usual civilian viewpoint, obedience is absolutely essential to the maintenance of military discipline. The "separate society" cannot function to defend the United States instantly and effectively without the fastest possible response to command authority, which necessarily presupposes the tightest discipline. To permit unionization of the American military would be to undermine, perhaps irreparably, the very basis of command, thus rendering our armed forces potentially incapable of acting quickly and decisively enough to defend the United States in time of crisis.

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