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MILITARY UNIONISM AND THE VOLUNTEER MILITARY SYSTEM, (U)
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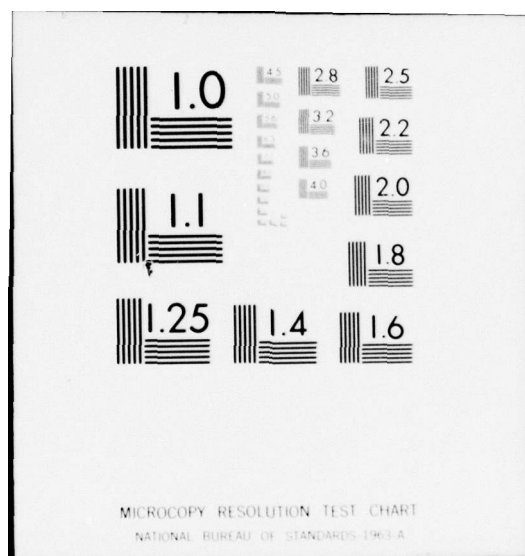
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**Military Unionism
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(6) **MILITARY UNIONISM AND THE VOLUNTEER
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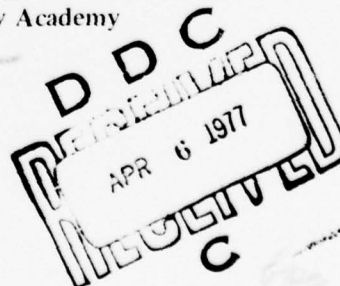
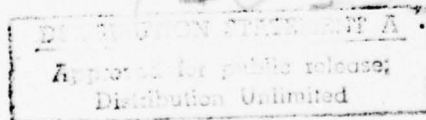
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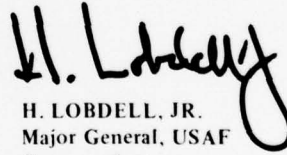
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FOREWORD

The vast majority of senior military officers have deep reservations concerning the concept of military unionization. Any compromise—real or imagined—to the sacredness of the chain of command poses major dilemmas to the traditional commander with joint responsibilities to nation, mission, and the welfare of his personnel. However, admitting one's intuitive feelings will not make the problem disappear nor will it provide any ready solutions.

There is avid research interest in the question of military unionization at all the senior service colleges. These papers evolved out of an elective course on the Future of the Military in American Society taught by Colonel William Taylor, Visiting Professor at The National War College from the Social Science Department at West Point. They include his own work and research on the issue plus the papers of a visiting lecturer, Professor Krendel, and a student, Lieutenant Colonel Lane, who participated in the seminar. Colonel Taylor organized the panel which delivered the papers at the American Political Science Association Convention in Chicago in September 1976. The military unionization question promises to be with us in the years ahead and, therefore, it is critical that we foster a genuine dialogue between military and civilians who are researching and writing on the subject. Only through thorough research, critical analysis, and continuing interchange can the nation find the best resolution to the issue.



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MILITARY UNIONISM AND THE VOLUNTEER MILITARY SYSTEM

Introduction

The issue of military unionization poses a major security question for the next decade. Consistent with the growth of the union movement in America, especially more recent developments involving the unionization of large numbers of employees in the public sector, it is only natural that some would advocate unionization for the nation's military. At the same time, with personnel expenditures taking up nearly 56% of the defense budget, management specialists as well as strategists have begun a detailed review of the entire military manpower and compensation package. Sensing a rising tide of criticism from the parent society and feeling relatively threatened from many sides, military people might eventually turn to some form of unionization to defend the system. On the other hand, most career military personnel perceive unionization as in direct conflict with the time-honored requirements for unquestioned obedience and discipline in combat. Many questions are still unanswered. Will it be enough for DOD to issue strong statements of opposition? What are the constitutional rights of the individual to free association as opposed to the institutional prerogative to restrict those rights to preserve good military order? What can we learn from history of the union movement in the United States and Europe in both the public and private sectors? Is it possible to maintain a combat ready, mobile military in a unionized environment? What will be the effects on the budget and the strategy of the United States? And finally, what should be the policy of the United States in dealing with the phenomenon?

The following series of papers dealing with this crucial topic were delivered at the American Political Science Association Meeting in Chicago in September 1976 under the sponsorship of the Inter-University Seminar on Armed Forces and Society. The panel, entitled "Military Unionism and the Volunteer Military System," included Colonel William Taylor, Tenure Associate Professor in the Department of Social Science at the US Military Academy, Chairman, Lieutenant Colonel Peter B. Lane, The National War College, and Professor Ezra Krendel, Professor of Statistics and Operations Research at the Wharton School at the University of Pennsylvania. Professor Charles Moskos of the Department of Sociology at Northwestern University was the discussant for the papers.

It is the hope of the panelists that the research and publication of these papers will help answer some of the questions posed earlier and

move towards a greater understanding of the complex issue. It should be reemphasized that the papers represent the individual conclusions of the authors and in no way represent the policy of their host institutions nor the Department of Defense.

US VOLUNTEER FORCE SUSCEPTIBILITY TO UNIONIZATION

**Lieutenant Colonel Peter B. Lane
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The union movement in the United States has grown in strength and relative influence over the past century. Recently, however, these trends have taken on new and serious connotations for defense planners. During its early development the union movement generally concentrated on the private sector in such industries as mining, manufacturing, or the merchant marine. Within the last two decades, however, the unions have expanded to include major portions of the public sector in both the professional and nonprofessional areas. One-third of America's approximately 14,000,000 public workers are organized—a figure higher than the total labor force.¹ The Department of Defense (DOD) has also been affected by this societal trend with over 60% of its civilian employees represented by unions.² The American military can hardly avoid this trend which seems to be impacting on most public sector employees. Wishing it away will not suffice; instead detailed analysis is required to understand its full ramification upon the nation's security posture. Quoting the recently published study by the Defense Manpower Commission,

... the question is no longer moot; the possibility of a military union must be faced squarely and appropriate actions to deal with the possibility must be undertaken now.³

It is in that spirit of objectively studying and understanding the phenomenon of potential military unionization that the following paper is offered.

Except for limited periods during the Civil War, World War I, World War II and after, the United States has traditionally relied upon some form of a volunteer system for recruiting its armed forces. Whenever domestic or international conditions permitted, the United States reverted to a system of volunteer service augmented by a professional officer corps trained in the military academies and various officer training programs. Despite minimal defense budgets, recruitment was subsidized by generous cash bonuses, land grants or other veterans benefits. While a conscripted force performed admirably in major conflicts such as World War I and II, serious problems developed among draftees when deployed in extended limited conventional conflicts such as Korea and Vietnam. With growing domestic opposition to the US involvement in the Vietnam conflict, especially among their peer groups, large percentages of American conscripts questioned service in a far away land for goals that were neither understood nor accepted. By the late 60's, discipline problems, drugs, alcohol, and racial conflict practically mandated an alternate means of recruiting service personnel. Following the recommendations of the Gates Commission in 1970, the transition began to an all volunteer force.⁴ With the end of the draft in June 1973, the United States had reverted once again to an all volunteer system for its personnel requirements.

This paper explores the potential of this all volunteer force for future unionization by first contrasting the present volunteer force with the former conscripted system. Then follows a discussion of the present forces within the military as well as in the civilian society which would argue for or against some form of future union organization among military personnel. The Department of Defense has an especially delicate challenge, representing management as well as the workers. In an era of massive global commitments, limited resources, and the increasing costs of personnel, they must maintain a ready combat force equitably compensated in material and psychological rewards for their service.

In analyzing the all volunteer force (AVF) it is quite difficult to differentiate between a true volunteer and conscript in any one time frame. Actually, even under conscription, large percentages of service personnel were true volunteers. While it can be argued that the officer corps for all the services were volunteers during the conscription period, many chose an officer training program to avoid the draft and eventual service in one of the combat arms. In its report, the Gates Commission estimated that at least half of the volunteers for military service were actually true volunteers and would have volunteered even if there had been no draft. Also, all those personnel who have elected to remain in

the service after the completion of their initial tour—approximately 35%—can be designated true volunteers demonstrating that even under conscription, a large percentage of service personnel were already volunteers.⁵

Nonetheless, the remaining element comprises a crucial and perhaps the most important part of our military—the enlisted forces of our combat arms especially in the Army and Marine Corps. The Air Force and Navy could no longer count on large percentages of pseudo-volunteers fleeing conscription into the combat arms. Each service was now forced to recruit volunteers in direct competition with each other even though the Air Force and Navy still retained the advantage of a more functional organization with the incentive of skill and craft training directly applicable to employment in the civilian market.

Since the end of conscription, the services have successfully filled their force level requirements during relatively favorable recruiting conditions. During this time the American armed services have decreased from a figure of 3.1 million personnel in FY 1970 to 2.1 million in FY 1976. Also, the era of the early 70's has been characterized by a major economic recession with large scale unemployment among the youth. Further, recruiters enjoyed the attraction of peacetime service and attractive veterans benefits. Critics of the volunteer system argue that with economic recovery and curtailment of the GI Bill the military services will be unable to attract the quantity and quality personnel for the requirements of the future. The short past of the most recent AVF has been a statistical success but the future looms uncertain as conditions change and the economy recovers.

What are some of those factors which might attract volunteer servicemen to unionization? General discussion must be guarded recognizing that there are substantive attitudinal differences between different ranks as well as inter and intra service differences. While the current force can be labeled voluntary, it is also the product of a society that has increasingly adopted unionization within the public sector in both professional and nonprofessional occupations. Professional policemen, firemen, teachers, and even doctors have unionized and adopted rather militant tactics such as work slowdowns, sick outs, and even strikes in some extreme situations. The skilled and unskilled have exerted different forms of organized pressure to redress perceived wrongs or attain legitimate objectives. During the last decade Americans have seen countless examples of how group pressure has assisted groups to achieve certain objectives. The woman's liberation movement and

consumer advocacy groups are but two examples of the power of organized groups in modern society. Military personnel are products of that society and are not oblivious to the growing power of united action to achieve a group objective. Considering organizational trends among professional groups in the society, it is only natural that elements of these same forces should impact upon the military. While more relevant under the all volunteer system, these societal pressures would be a reality regardless of the current DOD recruiting policy.

Tied to basic societal trends is the fact that the military is now forced to compete on the open market for its recruits. Without a convenient Selective Service labor pool, qualification standards must be set at realistic levels designed to attract competent personnel for the increasingly technical equipment used in the modern armed forces. Initially recruits to the all volunteer force were attracted by various recruiting techniques which tended to emphasize the materialistic aspects of their enlistment. During the post-Vietnam period of the early 70's, the concept of service to the nation was deemphasized in recruiting. Duty to country and patriotism were relegated to secondary status as the services scrambled to find the best combination of incentives necessary to attract the volunteer. Philosophical incentives gave way to economic considerations. Skilled advertising firms were hired to build the recruiting package which stressed the proper mix of pay, travel, skill, veterans benefits, responsibility, and service. In stressing the material at the expense of service factors, Mr. Leo Pellerzi, General Counsel of the American Federation of Government Employees (AFGE), told a Wall Street Journal interviewer,

It is a Volunteer Army, and that means people are selecting a military career as a means of livelihood, and not for patriotic reasons. Servicemen today aren't responding to an attack on the country. They want to be paid.⁶

Constant reminders of utility of a voluntary tour in the military for later use in the civilian community has been used by recruiters. Professors Janowitz and Moskos consider this a legitimate aspect of the military in a democratic society.

Although the armed services in effect are a vast training institution, military leaders have resisted recognition of this role fearing it would divert their attention from their primary mission. But the pressures of the all volunteer force have compelled the

military to accept this role, albeit reluctantly, and to stress education and training in their recruitment appeals.⁷

This factor was also borne out in a recent survey of recruits in 1975, which indicated that patriotism ranked well down in a list of reasons for entering military service. In order they indicated: (1) job training, (2) income and benefits, (3) GI Bill (education), (4) college education while in service, (5) patriotism, and (6) unemployment as the reasons for enlisting.⁸ Thus, both the services and the prospective enlistee emphasize utility factors such as pay, skill training and educational opportunity as critical in the current recruiting environment.

It must be recognized that the vast majority of recruits will serve out their enlistment and return to civilian life. Recruiting appeals which tie service-related functional skills to civilian life invite comparisons with those particular occupations, working conditions, and pay. Thus recruiting techniques which stress the relationship of the military and society in terms of pay, education and skill training tend to tie military service closer to the trends and phenomena current in the society. Professor Ezra Krendel has written,

The All Volunteer Armed Forces, recruiting as they do in an environment in which there has been an erosion of the ideal of service when confronted with economic reality, can be expected to respond strongly to the same basic issues upon which trade-union strength has developed. The prime collective bargaining issue is equity in pay for services or work performed.⁹

Servicemen today are recruited on the basis of material benefits, educational opportunities, and specific contractual items such as skill training or base of choice. These factors are specifically related to the union movement which strives to define the specific contract between the manager and the worker in terms of working conditions and compensation. Emphasizing these factors tends to make the all volunteer force more susceptible to unionization in the future.

Those personnel who are more heavily organized into functional skills would be more receptive to the principle of unionization. This would seem to apply to certain functional specialties in the services more than the combat arms of the Army and the Marine Corps. The Civilian Technicians program currently employed in the National Guard and Reserve systems of the Army and Air Force provides a relevant

example. These civilians in uniform serve in a dual capacity, civilians during the work week and guardsmen for weekend drill periods. Organized in such fields as aircraft repair, civil engineering, or computer technology, these technicians unionized rapidly once they were granted Federal Employee Status with the National Guard Technicians Act of 1968.¹⁰ With wage contracts linked to comparability with similar skills in the civilian community, these organizations have achieved notable pay and other benefits especially in the more unionized Northern units where civilian pay scales are higher than in nonunionized sections of the country. In fact, in some situations compensation in blue collar categories is approaching the pay of some supervisory personnel in the officer and NCO ranks, raising other potential morale problems. Bargaining has been largely restrained to the local level covering items such as work rules, uniforms, and hair lengths. While still officially civilians, these technicians have demonstrated similar concerns for comparability, job security, and definition of work rules that impact upon the overall civilian community and potentially affect active duty personnel, especially in the more technical career fields.

The Johnson Administration initiated the principle of comparability, tying federal pay scales to the industrial sector which in turn were tied to the military by a complex system of job classifications. In a macro sense, this principle once again linked military personnel to the civilian society in respect to pay compensation but at the same time it has prompted detailed study of the actual worth of the total military benefits package. Service personnel have achieved major pay increases at all levels and have been guaranteed relative parity with other federal civil servants for the future. Some variation of the comparability principle could be a remedy against military unionization. In effect, the military enjoys periodic pay increases which were partially lobbied and fought for by the unionized federal sector. They are exempt from dues and other union responsibilities while enjoying many of the benefits. The recently published report of the Defense Manpower Commission recommended that the principle of comparability should be replaced by a principle of competitiveness.¹¹ While the overall purpose of the comparability legislation was to upgrade the status of military life in a material sense, it also made military members more cognizant of their rights to an equitable share of the American system in comparison with the civilian sector and other federal employees. While the competitive compensation principle has some notable advantages over comparability, it would have to be studied carefully, explained thoroughly, and implemented gradually to avoid the perception that it is just another management technique to reduce further the shrinking the serviceman benefits package.

Perhaps the major incentive to unionization among an all volunteer force would be the perception of an erosion of service-related benefits and a certain frustration and helplessness to do anything about it. Recent personnel changes such as rapid force reduction, shrinking promotion opportunities, or retirement system changes without ample adjustment provisions will be interpreted as renegeing on an implied contract agreed to by both parties at enlistment. The Defense Manpower Commission too recognized the problem.

Many members of the active forces feel dismayed and disillusioned because of what they perceive to be either neglect, disinterest or a breach of faith on the part of their Government, and there appears to be a significant communications gap between departmental policymakers and the units in the field.¹²

With the President delaying recommended pay increases, commissary subsidies reduced, health care costs increased, and educational benefits curtailed, many service personnel are frustrated with the system which supposedly represents them.

With personnel costs currently making up more than half of defense budgets, actions are underway to control or even reduce the escalating costs. As defense policymakers struggle with global commitments, limited budgets, costly weapons systems, and the responsibilities to provide adequate compensation for their personnel, they obviously must review the high cost items. Under a conscription system, most draftees accepted their lot, putting up with inadequate pay, aging barracks, and out-of-date rules and regulations in an almost fatalistic fashion. The draft became almost a way of life for America's youth, almost their price for citizenship as well as gateway to the GI Bill and some form of upward mobility after discharge. To the AVF the perception is somewhat different. Commitments have been made by the government to upgrade the way of life for America's service personnel. Implied, if not legal, promises have been made as to pay, benefits, and pension rights. Perceiving a threat to these implied guarantees and aware of the power of the organizational form in protecting or righting certain grievances, elements of the AVF might turn to some form of unionization for protection. This would first take the form of protest within the system through the IG or Ombudsman system, Congressional pressure, or even the use of strengthened service associations such as the Fleet Reserve or Air Force Associations. The resort to full unionization would only be a last resort for most of the all volunteer force after all other potential avenues of communication had been found wanting.

More inclined to view the service as a long-range career than the earlier conscript, the volunteer is more concerned with protecting the long-range aspects of his benefits such as pensions or family-oriented benefits such as commissaries or dependent medical care. These are precisely the high cost items coming under heavy scrutiny in this peacetime age of budgetary constraints. As noted earlier, the first term volunteer has been attracted to service life for a variety of reasons. Most will leave the service after their initial tour of duty, but they enter the armed forces with an open mind and, as a group, are more inclined to consider reenlistment and a full career.

The first term enlistee conscript or volunteer forms a distinct group in the overall question of susceptibility to future unionization. He is young, impressionable, undecided about the future, and concerned about local short-range issues such as working conditions, command relationships, dining hall hours or barracks conditions, etc. While more moderate in his outlook than a conscript, his problems are still quite different from the NCO and officer who are usually married, older, and more long-range oriented. Living in barracks often in isolated areas, his perspectives and desires are rather fundamental and quite different from his older, more mature supervisors. Any prospect of the conscript union in the Netherlands or the formation of a left wing oriented enlisted men's union such as appeared during the waning days of the Vietnam conflict hangs heavy over defense personnel planners. The first term enlistees are obviously more susceptible to unionization and will probably be the target of the initial union effort to organize the military.

There are also some persuasive factors which argue against the attraction of unionization for the all volunteer force. As indicated earlier, large percentages of the volunteer force have already made a career decision or are at least holding open the possibility. Most of these personnel will be in supervisory and even command positions quite early in their careers, actively participating in the decisionmaking process. There is an inevitable conflict between the military concept of command and the unionization principle. The first term volunteer realizes that very soon, he could be the Platoon Sergeant or an NCO; strong incentives are present for him to preserve the sacredness of the chain of command and avoid any connotation of a dual chain of authority, the traditional military and the union.

Too often one hears the phrase that "You will only get a union if you deserve it." While there is some truth in that admonition, the DOD

and the individual services have instituted major policy reforms to modernize and improve service life for the enlistee. Enlightened management has endeavored to eliminate the petty aspects of service life and has gone a long way to preclude the appeal of unionization because of an indifferent command system. At the national level, the principle of comparability has given the military direct ties to the federal pay scales and the civilian sector without the necessity of unionization. Putting the "people back in personnel" has been a guiding principle of service personnel managers and commanders in all the services in recent years. A humane, concerned, and responsive command system can help resolve some of those petty grievances that could be a powerful incentive toward unionization.

Who are those most likely to accept the principle of unionization? Would it be those who are better educated and aware of their rights both within and outside the military or would it be a relatively disorganized, less educated, and unskilled group? One argument for conscription in a democracy is that it provides for a better cross-section of the society than you have with a purely voluntary system. Yet this in turn produces a force perhaps more resentful of the intrusion into their lives and future plans, especially in an environment of peace and the apolitical attitudes of today's youth. The conscript would be more aware of the power of organization in civilian life and would be able and willing to articulate those grievances. They would probably adopt more of an adversary relationship with the career types in the military and conceivably be more prone to look towards some type of conscript union directed at short-term concerns than the current volunteer force.

This paper has attempted to analyze those special considerations of the volunteer force which would make it susceptible to future unionization. The key questions are quite traditional and don't really revolve about a comparison of the volunteer against the conscript. As indicated, the American armed forces have been historically volunteers and remained largely volunteers even under a conscription system. The more important elements are the societal trends currently impacting upon every citizen regardless of his occupation. With public sector employees organizing throughout society to attain their objectives, the military institution must consider the pros and cons as well as alternatives to the challenge.

While the AVF exhibits more of a united front under the all volunteer system, there is still a duality of interests between the career officers and NCO's and the first term enlistee. The union's ability to maintain a responsible posture to threatened military seniors while

winning benefits for the servicemen (especially the first term enlistees) will pose a major challenge if not an irresolvable dilemma. The unions are faced with many other conflicts in the process. Who is management and who is labor when it comes to the military? Is it the officer or is it the supervisor? If the unions decide to expand the potential membership to include both officers and enlisted men, they will have to concentrate their appeal at the national level. If they get too involved with the local gripes of the enlisted man, they will alienate the chain of command to include NCO's and officers and reduce their appeal to those groups. Too narrow an approach would restrict the potential membership so as to reduce the union movement to disenchanted elements among first term enlistees. Thus, the unions will have to tread carefully. They will have to be patient and expend funds on a large education program to break down the natural opposition of the supervisors. Results will come slowly if at all.

While aware of the trends in the public sector, unionization in the military is by no means inevitable. Officials have numerous options available to parry or even preclude eventual unionization. Major legal and constitutional questions remain.¹³ Does the individual First Amendment guarantee of free association prejudice the good order and discipline of an effective military organization? The latest DOD position is one of unalterable opposition to any form of unionization. Key officials including then Defense Secretary Rumsfeld, Chairman of the Joint Chiefs, General Brown, and then Deputy Secretary of Defense Clements have publicly expressed their full opposition to any form of unionization. Also, legislation has been introduced in Congress to make military unionization illegal. Whether legislation to ban unionization among the armed forces would stand a court test awaits decision at this writing.

Aggressive work by DOD and all the services could alleviate much of the appeal of unionization. Efforts are continuing to consolidate the total compensation package to help the servicemen understand and stabilize his total benefits as well as compare them with the civilian sector. Prospective recruits are thoroughly briefed on guaranteed salary and fringe benefits and made aware that certain elements of the current package are subject to change by DOD or Congressional action. The services have also strengthened, educated, and sensitized the entire command structure to the critical balance between mission accomplishment and morale of the unit. Leadership principles haven't changed; they are just receiving greater emphasis in the modern military.

Finally, service associations could expand their past advocacy roles which have concentrated on overall force structures and weapons

acquisition and become more involved in personnel matters. The men and women of the armed forces are less concerned with unionization than that their voice be heard throughout the chain of command as well as in the legislative assemblies of the nation. The former service association could assume a much greater responsibility in this area serving as a strong advocate with the Executive and Legislature, therefore, precluding much of a formal union's *raison d'être*. This would obviously require study since it would affect the tax exempt status of the service associations as well as membership qualifications.

Currently, many observations and suppositions are largely subjective. Large scale statistical research is required in determining the true attitudes of service personnel as well as the society concerning this vital question. Analysis could identify those vital areas of major and immediate concern to the men and women in the armed services. The DOD could act to alleviate many of the perceived grievances of their personnel short of unionization while preserving the professional standards of all the service members.

Even assuming an enlightened and sensitive leadership from DOD and service level, the cost pressures will not disappear. With suggestions *alive to hold the line or even reduce personnel costs in the military*, there will exist certain disenchanted elements in the services. While action can be taken to satisfy the concerns of the majority of career-oriented personnel, special attention must be paid to the problems of the first term enlistee. While most of the above mentioned actions also apply to this category, special programs can be designed to increase the attractiveness of military service to the cross-section of the nation's youth. An abbreviated GI Bill is but one example; it would attract the enlistee and fulfill his concern for education both for later military service or in preparation for his eventual return to civilian life. The Army has already begun implementing elements of this proposal in their recruiting. Should the current strained DOD budget bear the full costs of this valuable program or can some funding alternative be found? The individual services face major personnel challenges in the years ahead. Officials must merge the best combination of forces and weapons to insure the national security during the current age of the all volunteer force. Reductions, delays, and consolidations weigh heavily on civilian and military decisionmakers as they strive to achieve the proper balance in light of realistic budgetary possibilities. The all volunteer force remains susceptible to unionization given the current environment within and outside the military. The DOD must accept the trends or implement some alternative action in the legal, legislative, policy or personnel areas to control the march of events.

FOOTNOTES

1. For purposes of this paper, a Labor Union is an organization of workers formed for the purpose of advancing its member's interests in respect to wages and working conditions.

2. US Civil Service Commission, *Analysis of the Data and Report on Union Recognition in the Federal Service*, Bulletin No. 711-32, March 1975.

3. Defense Manpower: *The Keystone of National Security*. Report of the President and the Congress, Defense Manpower Commission, April 1976, p. 62.

4. The President's Commission on an All-Volunteer Armed Force, Washington, DC: US Government Printing Office, 1970. See also Morris Janowitz, "The All-Volunteer Military as a 'Sociopolitical' Problem," *Social Problems*, Vol. 22, No. 3, February 1975, pp. 434-435.

5. *Ibid*, pp. 6-7.

6. *Air Force Magazine*, July 1975, p. 88.

7. Morris Janowitz and Charles C. Moskos, Jr., "Racial Composition in the All-Volunteer Force: Policy Alternatives," *Armed Forces and Society*, Vol. 1, No. 1, Fall 1974, p. 119.

8. Manpower Research and Data Analysis Center, "Preliminary Results May 1975 AFEES Survey," 300 No. West St., Alexandria, VA., May 1975, Sec. II.

9. Ezra S. Krendel, "Trade Unionism and the US Armed Forces," Unpublished Research Paper at the Wharton School, Philadelphia, PA, May 20, 1976, p. 8.

10. Francis W. A'Hearn and Russell L. Weaver, "The Unionization of Air National Guard Technicians and Its Impact on Labor-Management Relations" Thesis, School of Systems and Logistics, Air Force Institute of Technology, Air University, 1974.

11. Defense Manpower Commission Report, p. 286. See also *Air Force Times*, March 15, 1976, p. 3.

12. *Defense Manpower Commission Report*, p. 60.

13. See William J. Taylor, Jr., "Military Unions for the United States: Justice Versus Constitutionality," Research Paper Presented at the British Inter-University Seminar on Armed Forces and Society Annual Conference, Manchester, England, April 12-14, 1976, pp. 7-9.

TRADE UNIONISM AND THE US ARMED FORCES

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The Defense Manpower Commission has totally rejected the concept of unions for the members of the US Armed Forces.¹ By so doing, they have brought to light an issue which may not readily recede into oblivion. The purpose of this paper is to explore the implications of collective bargaining for the US Armed Forces. Much of the substantive detail which has been omitted from this paper will be found in a forthcoming book.² The vexing mechanics of such potential collective bargaining which includes definitions of bargaining units (geographical? functional? NCO's? company grade officers?, etc.) will be omitted at this time since it presupposes the issue has been settled in favor of military unions. Similarly, legal issues will not be addressed here. Whether or not military unions would be upheld as a constitutional right is less important than whether the pressures to form such unions exist and, if so, whether the management of the Armed Forces can address such pressures constructively so that the nation is stronger for it.

Trade unions arose in this country to both guarantee equity to the worker in the payment he received for his services in a joint enterprise with management as well as to create an industrial form of due process. Despite the hostility with which industrial management met the emergence of collective bargaining, certain unanticipated advantages occurred. The first was the stability imposed on labor/management relations by the collective bargaining agreement or contract, and the second was the improvement of lower-and middle-level management which occurred because of the union's presence. This improvement occurred in the main because a new feedback of information had been created which helped to provide management with signals about inept foremen or managers and also helped to modify their behavior along lines which promoted greater productivity. It is tempting to note that a tyrannical gang boss and a sadistic drill instructor are not dissimilar. The question, of course, is whether such information feedback or social-control devices which appear to have had value can evolve without union intercession.

Since several northern European countries have had military unions for some time, we will examine them before turning to the US Forces. It should be kept in mind throughout, however, that the US role in the defense of the Western Alliance is unique; hence, military experimentation or organizational modes which are relatively risk-free for one of our allies may be disastrous if we undertake them. The European experience with military unions can be interpreted best by examining the historical and traditional relations between the labor movement in a country and that country's government. In the Scandinavian countries this relationship, despite stormy beginnings, is close and of relatively long standing. In a real sense the labor movement and the political parties which they dominate *are* the establishment. In Norway and Sweden, therefore, it is not surprising that military unions are a readily accepted extension of public sector unions for state employees. France, on the other hand, has a tradition of union politicization, confrontation with established government, and a polarization of economic interests. It is thus consistent with French history and traditions that Prime Minister Jacques Chirac in a speech in the National Assembly in November 1975, bluntly accused the Socialists of undermining national security by encouraging the formation of labor unions in military units. Although both the Socialists and Communists officially oppose military unions, the Socialist leadership accused the Government of Valéry Giscard d'Estaing of failing to fulfill promises of military reform. A. Chirac declared that military officials considered the unions as a "mortal danger" for both "military institutions and democracy itself." He added: "The Government will not tolerate the creation of such committees in French military units."³ Between the polarized positions of France and the Scandinavian countries, we find the Federal Republic of Germany. Military unions had their effective beginning in the FRG after a two-year legal dispute which ended on August 1, 1966, with a Defense Ministry decree permitting the unions to recruit on base. The impetus behind the DGB's (German Federation of Labor) interest in achieving a trade-union presence in the armed forces of the FRG resulted more from the DGB's commitment to strengthening democracy in the institutions of the FRG, and particularly in the military, than from the more traditional trade-union issues which predominate in Scandinavian negotiations and which appear to underlie the sporadic beginnings of a drive toward military unions in France.⁴

What are the implications for the United States? The trade-union movement in this country is neither as highly politicized nor as potent politically as it is in the Scandinavian countries and in France. The cooperative and supportive relationship between the unions in Sweden

and Norway and their respective governments does not exist in this country. The need to institutionalize democratic processes in the US military, as in the FRG, has been discussed but lacks support from trade-union sources. It is difficult to see, moreover, why a unionized, all-volunteer military would be more intimately a part of the fabric of American society than would a nonunionized, all-volunteer armed force. In fact, a plausible and somewhat frightening argument can be summoned against the unionization of the Armed Forces in American society since there is the potential for creating a "Praetorian Guard" attitude on the part of its members.

The American trade unions maintain a generally adversary posture toward management, and in keeping with the expectations this attitude arouses, the responses of the leaders of the Armed Forces have been much closer to their French than to their Scandinavian counterparts. One result of this adversary posture has been the emergence, from both the negotiated contract and the "case law" deriving from grievance procedures, of a "web of work rules" which define the relationship of the workers to their foremen and managers. These work rules start with the base conditions which obtained when the first collective bargaining agreement was negotiated, and they may be left unchanged, elaborated *on or modified in subsequent agreements*. Oftentimes work rules which at present are featherbedding arose because a procedure which once had economic value for management was incorporated into an early collective bargaining agreement and was not negotiated out of subsequent contracts either because of management's reluctance to pay the *negotiated price or through inadvertance*. Such work rules, if not mitigated by a clearly perceived common interest by labor and management in their common enterprise, can have a paralyzing effect on the introduction of new technologies or procedures.

Our defense posture must emphasize the augmentation of manpower by equipment and technology; it must, perforce, be capital intensive - but, to be effective, capital intensive in a flexible, adaptive manner, capable of accepting and exploiting new technologies. The Maginot line was capital intensive, but it was grossly maladaptive both in its execution and the manner by which it inhibited the introduction of new concepts of mobile, mechanized warfare into French military thinking. The supreme irony was that DeGaulle, the prophetic theoretician of mobile, mechanized warfare, was more influential upon the Germans than upon the French. The Maginot line resulted from a management decision which was given impetus by France's appalling losses in World War I and the consequent need to husband her depleted human resources. The end result was totally counterproductive rigidity; in effect, management designed featherbedding.

The nature of military organizations is such that until recently the creation and maintenance of rigid work rules and procedures was a management act solely. This situation has changed somewhat in the armed forces of some of our European allies where a trade-union presence is making itself felt. While the tendency to inhibit the re-deployment of equipment and personnel resources in their armed forces which a union presence could engender *may be acceptable, provided* an American protective shield exists, it could be disastrous if such attitudes were to become part of American military thinking. The most effective and advanced research and development capability in the world has no value to our defense if it cannot be implemented; that is, if the innovations in the deployment of personnel and equipment it requires cannot come to pass because of either deliberate organizational resistance, or because of a psychological climate of resistance to change. The results are the same *however* this inhibitory climate may arise or be sustained.

What are the lessons we can extract from this? We should foster and strengthen countervailing trends among personnel in our Armed Forces.

A possible countervailing force to both collective bargaining and to union advocacy of rigid work rules, which is significant for personnel whose roles have professional content, or the potential for achieving it, is to reinforce their behavior in a professional role. The Defense Manpower Commission has addressed the issue by both advocating educational opportunities for NCO's to enhance their professional standing and strongly recommending total rejection of union membership by officers.⁵ This view is limited. Educational opportunities should be encouraged, but the reality of professionalism implies not only the capability, but the ability and opportunity as well, to act and to decide in a responsible manner. Education for professionalism without the functional attributes may be counterproductive. The assertion that officers as a group are management and, hence, cannot bargain is at variance with experience both in Europe and in analogous situations in this country.

A drive to attain some of the behavioral aspects of professionalism can be seen in the desire for participative management by the military, in matters where command prerogatives were not threatened, as expressed throughout Scandinavia and the FRG by military union leaders. This pressure to participate has been noted in the US Navy, for example, by Bowers.⁶ Taken in the positive context of efforts to achieve the reality of professionalism and to improve military lead-

ership, this desire to share in aspects of command has important implications for the US Armed Forces in training and operations. In particular, if implemented, it requires that command prerogative be defined in a manner which restricts it to the the command environment. Thus, for example, where possible the living-condition aspects of military services should be separated from the service or potential emergency aspects of military service. If this is achieved in a practical manner, a professional attitude can be nurtured without weakening the unity of the chain of command.

There are other implications of collective bargaining for the Armed Forces. The traditional military role has been one of service and a calling rather than a vocation in the industrial sense. The All Volunteer Armed Forces, recruiting as they do in an environment in which there has been an erosion of the ideal of service when confronted with economic reality, can be expected to respond strongly to the same basic issues upon which trade-union strength has developed. The prime collective bargaining issue is equity in pay for services or work performed.

Clyde M. Webber, late President of the American Federation of Government Employees, addressed this issue directly in his statement of August 18, 1975, to the Defense Manpower Commission. In summary, he pointed out that the military personnel pay scale was linked to the federal civilian pay scale which was in turn linked by the comparability concept to industrial pay scales. Thus, in working to sustain and increase the pay of federal civilian employees, the AFGE was also acting as an agent for military personnel. Clearly, then, one can see where, from a union point of view, the military personnel were getting a free ride. Whether the military personnel will feel disposed to pay for this ride is another matter. The Defense Manpower Commission's forthright response was to recommend that the Armed Forces abandon the guideline of comparability with industrial compensation via linking with the civil service and replace it with the principle of competitive compensation.⁷ Furthermore, the report strongly emphasizes the importance of adhering to the contractual obligation incurred by the government to military personnel in matters of pay, retirement and benefits.⁸ It does not necessarily follow, however, that either the AFGE or other unions, such as the National Maritime Union or the Teamsters whose traditions are more militant, will not continue to see opportunities in unionizing the service. In fact, a supposed Teamster interest in unionizing enlisted men in the Armed Forces may have precipitated the introduction of S. 3079.⁹

The second major issue which trade unions have addressed has been the achievement of due process in management/labor relations. The Armed Services have a large number of different devices for achieving this goal. These range from the formal exercise of the chain of command, intervention of the Inspector General, notifying the Navy Ombudsman, on up to the citizen's right to request his congressman or the President to intervene. How these various devices for redressing grievances work in practice is an issue which has not been examined fully. Clearly, this plethora of devices implies that many are ineffective. A requirement exists for institutionalizing a limited number of grievance-resolution devices which are perceived by their users as insulated against retribution and are timely, effective and fair. The alternative may be that the shop-steward system of grievance submission may appear increasingly attractive.

The Defense Manpower Commission report vigorously opposes United States military unions mainly because of a fear that the unity of the chain of command will be violated.¹⁰ This apprehension is misleading because it diverts attention from the main union-related problem which is the *management* of the Armed Forces, not their *command*. Unions do not foster or encourage the disregard of authority or infractions of discipline. The wildcat strike is as much a revolt against union leadership as it is a rebuff to management. Experience in public sector unions such as those of police and firemen in this country and that of the Police Federation in the United Kingdom or the European military unions, reveals no weakening in command attributable to union influences. Unions do, however, impose a new set of constraints on management in utilizing and compensating personnel.

The global challenges against which our Armed Forces must protect us are such that our manpower will be outnumbered in any major great power confrontation. The Secretary of Defense has released figures indicating that the Soviet military establishment, exclusive of border guards and internal security forces, was 4.4 million men, approximately twice the size of the US Armed Forces.¹¹ The sponsors of the Act of Congress which created the Defense Manpower Commission as an expression of their concern with the increasing defense manpower costs noted that in the period from 1950 to 1974 the average annual cost of maintaining a serviceman on duty increased from \$3,400 to about \$12,400. Our response has been to apply technology to warfare so as to both compensate in a cost/effective manner for our numerical inferiority and to keep abreast of the advances of our potential adversaries. The military impact of technology is seen in nuclear weaponry and delivery systems, space surveillance, remote piloted

vehicles, augmented individual fire power, greater mobility, and in such events as the use of sensors in the Sinai to enable a few hundred men to do what would have required thousands just a few decades earlier. In this environment the US Armed Forces cannot be a labor-intensive enterprise. Their management must be able to exploit technological innovation and redeploy their manpower resources as technology requires. Without this managerial ability, there is the risk that our Armed Forces will become less capable of exploiting technological innovation and as such less capable of performing their critical mission.

The exploitation of modern technology - especially when it directly affects personnel practices - must be carried out in a knowledgeable manner. Thus, modern command and control technology by enabling higher commands to observe and to intervene in the activities of subordinate commands may become a device which inhibits the professional activity of military officers. The risk needs to be recognized and guarded against.

By recognizing when conditions which foster the emergence of collective bargaining exist in the Armed Forces and by responding to these conditions in a creative rather than doctrinaire fashion, a stronger and more effective American Armed Force may emerge.

FOOTNOTES

1. *Defense Manpower: The Keystone of National Security*, Report to the President and the Congress, Defense Manpower Commission, April 1976, p. 61.

2. E. S. Krendel, *Military Unions and the United States Armed Forces* (Phila., Pa.: University of Pennsylvania Press) in editorial review.

3. "France Fighting Military Unions," *The New York Times*, Nov. 30, 1975.

4. Lucien Mandeville, *Syndicalism, Group Representation and the French Military*, presented at the British Interuniversity Seminar on Armed Forces and Society, Manchester, Apr. 12-14, 1976.

5. *Defense Manpower: The Keystone of National Security*, p. 63.

6. D. G. Bowers, *Expressed Preferences and Organizational Practices Experienced by Navy Officers*, Center for Research on the Utilization of Scientific Knowledge, Institute for Social Research, Ann Arbor, Dec. 1973.

7. *Defense Manpower: The Keystone of National Security*, Chap. 8.

8. *Ibid.*, p. 61.

9. Mike Causey, "Senate Heading Off Unions for Military," *The Washington Post*, Apr. 24, 1976.

10. *Defense Manpower: The Keystone of National Security*, p. 62.

11. *Ibid.*, p. 53.

MILITARY UNIONS FOR THE UNITED STATES: JUSTICE VERSUS CONSTITUTIONALITY

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Introduction

The concept of unionization of the "active duty" military in the United States is new—an outgrowth of the all volunteer system. True, there was a short-lived American Servicemen's Union (ASU) which was a manifestation of the antiwar movement in the United States of the late 1960's. Although a serious concern of the moment for the military leadership, the ASU was never taken seriously as a "union movement." The end of the Vietnam war and the end of the conscription system removed the *raison d'être* of both the antiwar movement and the ASU. However, there were a number of court cases growing out of antiwar protests which dealt with the First Amendment rights of free speech, assembly and association. These cases have a bearing on the constitutionality of the right of servicemen to join unions and engage in union activities.

There are unions in the United States which have involved military reservists and members of the National Guard in union activities, e.g., The Association of Civilian Technicians and The National Maritime Union. Too, some in the active duty military are employed "off-duty" in nonmilitary jobs and hold union memberships in a nonmilitary capacity.

All of the above categories of union membership are fundamentally different from the category which this paper addresses, i.e., membership by active-duty military personnel in unions of public employees which purport to represent them in matters relating to their service in the armed forces through collective bargaining with agencies of the Federal Government. The difference is union representation of the *collective* interests of *active* US servicemen, rather than relying upon present channels now open to military personnel individually and upon the efforts of several nongovernment organizations which lobby on behalf of US military personnel collectively.

Recent Developments in Unions of Public Employees

Until now, there has never been a serious attempt to unionize military servicemen in the United States.

It comes as a surprise to many that systematic union bargaining in the United States has a very short history indeed. Even in the private sector, collective bargaining received the protection of federal law only four decades ago with the enactment of the Wagner Act. Despite previous efforts, mass unionizing did not succeed until the movement of 1935-45. In the late 1950's and 1960's, a series of successful constitutional attacks against the authority of states to abridge the First Amendment right of free speech, assembly, and "association" led to the right of state and local public employees to organize and join labor unions. In early 1962, President John F. Kennedy issued Executive Order 10988 which established the basis for employee-management cooperation in the Federal service. Among other provisions, the Order recognized employee organizations as bargaining representatives, limited the rights of employees to strike, and authorized advisory arbitration as the final step in a negotiated grievance procedure. In 1969, Executive Order 11491 further clarified the rights of labor organizations and Federal agency management.

None of these developments in the rights of public employees to join unions representing them in their principal job capacities touched on the rights of active duty servicemen to join and engage in union bargaining activities. The simple reason is that, for Americans, it has simply been "unthinkable" for servicemen to join in union activities which would place them in an adversary role vis-a-vis government authority. However, very recently some have begun both thinking and doing something about the unthinkable.

Why A Unionized Military Now?

Some have argued that the end of military conscription and creation of an All-Volunteer Force in the United States has fundamentally altered the principal motivation for people to join and remain in the armed services. As this argument goes, with the advent of the volunteer force the traditional notion that young men have a patriotic duty to serve in the American forces has disappeared.¹ The antimilitary sentiment which developed as an offshoot of the antiwar movement of the Vietnam era was partially responsible for this change. The end of conscription removed the legal presumption that eligible young males should serve in the Armed Forces. Finally, there has been an increasing

lack of credibility in the need for large standing armed forces in an era of detente when threats to the security of the United States are not widely perceived. In brief, given alternative employment opportunities, young Americans would prefer "business as usual" to public service in the military.²

Given a relatively healthy economy in the first three years of transition toward a volunteer force (1970-73), the armed services found themselves in manpower competition with civilian industry. Military recruitment efforts focused on the creation of personal incentives—higher salaries, combat arms bonuses, educational opportunities, and military working and living conditions more commensurate with other walks of life. The notion of military service tended to become more a job opportunity and less a patriotic obligation.

The All-Volunteer Force was proclaimed a reality by the Secretary of Defense in January 1973. Simultaneously, the inflation of 1973 began to take its toll on military personnel costs which grew rapidly to constitute approximately 58 percent of the defense budget. Both critics of large military spending and congressional and defense budgeteers interested in holding the line on rapidly escalating military personnel expenditures sought ways of cutting costs. Many of the measures studied or adopted impacted upon military benefits. "Military entitlements" such as shopping privileges in post exchanges and commissaries at prices below the civilian retail market, free medical benefits for servicemen and women and their dependents, adjusted active duty pay scales for comparability (with civilian pay scales), educational opportunities, and adequate retirement pay have long been viewed by service personnel as implicit parts of the military contract. Increasingly these entitlements have been attacked as "benefits" which are not in perpetuity and certainly not "contractual rights."³

Although almost totally opposed to the issue of military unionization, the nongovernment organizations which lobby on behalf of the military (e.g., the National Association for Uniformed Services, The Association of the United States Army, and The Fleet Reserve Association) and several unions which represent other federal employees (e.g., The American Federation of Government Employees, The National Maritime Union, and The Association of American Technicians) agree that military benefits are being seriously eroded.

Another factor precipitating the fledgling movement to unionize service personnel purportedly relates to military working and living

conditions. Despite the reforms and liberalization during the first two or three years of the all-volunteer force, supposedly a reaction to liberalized policies has occurred in the military.⁴ Too, efforts to hold the line against rising military personnel costs have human costs. Manpower reductions without simultaneous reductions in functional requirements mean that fewer people have to do the same job. Sometimes greater efficiencies result: sometimes people simply have to work longer and longer hours for the same pay. "Holding the line" against inflationary increases in other budget categories has severe impact on military living conditions such as construction and repair of military housing and length of overseas tours of duty. The consequence is that the everyday facts of military life do not coincide with previous recruitment advertising.⁵ "Grievances" growing out of such conditions are not readily resolved by the traditional military chain of command or the Inspector General system. Company, battalion and brigade commanders have little impact on decisions concerning manpower levels and funding levels. They can attempt to explain to subordinates why conditions exist; they can exercise leadership to change perceptions and motivations, but they cannot remove the direct causes of fundamental problems resulting from inadequate manning of funding.

Whether real or imaginary, these two fundamental arguments—that there has been an erosion in both material and individual "rights," and that existing mechanisms for promoting "justice" for service personnel are inadequate—have laid the foundation of support for military unions.⁶

Constitutional Issues

The central constitutional question concerning the right of active duty service personnel to join unions in their principal duty capacity centers on the First Amendment to the Constitution which prohibits Congress from enacting legislation which abridges the rights of free speech, free press and the rights to assemble and petition. The US Supreme Court has held that the First Amendment constitutes the cornerstone of the American democratic system of government and has found inherent in the First Amendment a "freedom of association."⁷ Lower courts have held that public employees have a constitutional right to join labor unions under their First Amendment right to freedom of association.⁸ In 1967 the Supreme Court held that Congress cannot pass laws under its "enumerated powers" if those laws place an excessive burden on the freedom of association rights of federal employees.⁹ Thus, both court decisions and the practices of the latter 1960's support the right of public employees federal, state and lo-

cal—to join unions and the unconstitutionality of congressional attempts to abridge that right. Although this precedent speaks to a wide range of public employees, some of whom might be termed “paramilitary” (i.e., police and firemen), it does not deal specifically with the case of the military.

The Supreme Court has consistently avoided entering the realm of authority and rights in the military, deferring to the Congress. The fundamental grant of congressional authority over the military derives from the Constitution:

*Congress shall have the power . . . to raise and support armies, but no appropriation of money to that use shall be for a longer term than two years; to provide and maintain a Navy; to make rules for the government and regulation of the land and naval forces.*¹⁰

Two cases in 1953 contained the essence of the Court’s approach to the law applicable to the military and to the First Amendment rights of service personnel. In the first case, the Supreme Court dismissed a *habeas corpus* petition for two Air Force men convicted of rape—murder in Guam, finding that:

*Military law, like state law, is a jurisprudence which exists separate and apart from the law which governs in our federal judicial establishment. This court has played no role in its development; we have exerted no supervisory power of the courts which enforce it; the rights of the men in the armed forces must be conditioned to meet certain overriding demands of discipline and duty, and the civil courts are not the agencies which must determine the precise balance to be struck in this adjustment. The Framers expressly entrusted that task to Congress.*¹¹

In the second case, involving a military refusal to grant a commission to a drafted doctor who had refused to complete required forms, the Court observed that:

*. . . judges are not given the task of running the Army . . . The responsibility for setting up channels through which such grievances can be considered and fairly settled rests upon the Congress and upon the President of the United States and his subordinates.*¹²

Thus, where the military has had jurisdiction over an individual, the Supreme Court has refused to interfere with the military courts exercising a grant of authority from Congress to safeguard the rights of service personnel. The congressional grant of authority to military courts is found in the Uniform Code of Military Justice (UCMJ) enacted by Congress in 1950 and revised periodically since that time. The UCMJ establishes the framework for criminal jurisdiction and a system for appeals.

Note at this juncture that:

1. The Supreme Court has not spoken to the issue of military unions and has deferred to Congress on the relevant First Amendment rights of military personnel.
2. Executive orders on the right of federal public employees to unionize have not addressed the matter of unions for military personnel.
3. Congress has not passed laws relating to unions of military personnel (although this matter shall be addressed below).

Thus, one is forced to look elsewhere for legal guidance on the right to trade union membership for military personnel—to the legal precedents found in lower civilian courts and military tribunals. It is important to keep in mind that the *First Amendment itself prohibits* Congress from enacting legislation which abridges the rights of free speech, free press, the right to assemble and to petition, and by Supreme Court extension, a freedom of association. The First Amendment applies to all American citizens. The central question is the degree to which any branch of government—federal, state or local—can restrict military personnel from full exercise of the First Amendment rights which would form the basis of legal union membership by active duty military personnel in their principal duty capacities.

Court Decisions and Military First Amendment Rights

Military Courts

The Court of Military Appeals had its first opportunity in 1954 to address some of the issues concerning the First Amendment rights of

military personnel. In *US v. Voorhees*, involving an Army officer's refusal to delete certain references in an article he was to publish, the Court's decision had three separate opinions, two of which are quoted below. Each of the opinions agreed, grudgingly, that the protections of the First Amendment applied to military personnel. Judge Quinn's opinion referred to First Amendment rights as restricted by "military necessity." Judge Latimer elaborated on limitations to the First Amendment in the case of military personnel:

I believe it ill-advised and unwise to apply the civilian concepts of freedom of speech and press to the military service unless they are compressed within limits so narrow they become almost unrecognizable. Undoubtedly, we should not deny to servicemen any right that can be given reasonably. But in measuring reasonableness, we should bear on mind that military units have one major purpose justifying their existence: to prepare themselves for war and to wage it successfully. That purpose must never be overlooked in weighing the conflicting interest between the right of the serviceman to express his views on any subject at any time and the right of the Government to prepare for and pursue a war to a successful conclusion. Embraced in success is sacrifice of life and personal liberties; secrecy of plans and movement of personnel; security; discipline and morale; and the faith of the public in the officers and men and the cause they represent. In connection with this litigation, it is to be remembered that while we can discuss the principles involved in a time of temporary peace, that is the period during which we must prepare for war or other eventualities. A principle which interferes with preparing for war may interfere with its successful prosecution; and a privilege given unwittingly in peace may be a death knell in war.^{1 3}

Again, in 1967, the Court of Military Appeals spoke to the issue in reviewing *US v. Howe*, a case involving an officer who carried anti-government signs in Vietnam war protest marches while off-duty in civilian clothes, off-post:

We need not determine whether a state of war presently exists. We do judicially know that hundreds of thousands of members of our military forces are

*committed to combat in Vietnam, casualties among our forces are heavy, and thousands are being recruited, or drafted, into our armed forces, That in present times and circumstances such conduct by an officer constitutes a clear and present danger to discipline within our armed services, under the [civilian] precedents established by the Supreme Court, seems to require no argument.*¹⁴

These and subsequent cases decided by the Court of Military Appeals establish a rather consistent approach to the First Amendment rights of military personnel; that is, military personnel have such rights, but they must be balanced by the unique requirements of "military necessity," loosely defined as requirements of military good order and discipline required for national security.

Civilian Courts

Lower federal courts have ruled on First Amendment rights for military personnel in a number of cases which grew out of the Vietnam war protest movement. In *Dash v. Commanding General, Fort Jackson, South Carolina* (1969), a district court examined the authority of the Post Commander to restrict distribution of publications on post and to refuse a request to hold on post an open meeting to discuss the Vietnam war. The court first addressed the right of federal courts to decide such questions, holding that:

*... however hesitant they may be to 'intrude', Courts will be available to determine whether there is a reasonable basis for such restrictions as may be placed on the serviceman's right of free speech by the military establishment.*¹⁵

As to the basic issues, the court stated:

... in those cases where this is a reasonable basis for the conclusion that the distribution (of published materials) represents a 'clear danger to the loyalty, discipline or morale of his troops' (the Post Commander may) prohibit the distribution

Can training for participation in a war be carried on simultaneously with lectures on the immorality or

injustice of such war? In my opinion, the denial of the right for open, public meetings at advertised meetings (sic.) on post for discussion of the propriety of the political decision to participate in the Vietnam war was justified 'by reason of the peculiar circumstances of the military' and represented no infringement of the constitutional rights of the plaintiffs or others similarly situated.¹⁶

In 1971, a Federal Court of Appeals reversed a District Court decision in *Cortright v. Resor* which had held that the Army violated a soldier's First Amendment right when it transferred him to another post because of his anti-Vietnam war activities. The Court of Appeals held:

As stated at the outset, we are from holding that under no circumstances could a civilian court interfere with a transfer order or prescribe other relief if that were needed to prevent abridgement of a soldier's First Amendment rights. We hold only that the Army has a large scope in striking a proper balance between servicemen's assertions of the right of protest and the maintenance of the effectiveness of military units to perform their assigned tasks.¹⁷

Like the military courts, civilian courts have been relatively consistent in restricting the First Amendment rights of military personnel where the exercise of those rights were prejudicial to military good order and discipline or accomplishment of assigned military missions. The requirements of military necessity are to be balanced against the First Amendment rights of military personnel.

The Current Political Climate for Military Unions

It is understandable that the American Federation of Government Employees (AFGE), the National Maritime Union and the American Association of Technicians wish to push the case for unions for military personnel in the United States. There are two fundamental reasons:

I. The AFGE and others claim that military benefits are being eroded and that no one is representing the just cause of military personnel. Too, AFGE points to its own success in acquiring pay comparability for federal employees, including the military.¹⁸

2. The AFGE, approximately 390,000 strong, sees in two million active duty military personnel a significant increment of AFGE power—union members who pay annual dues of approximately \$72 per person—with the potential of becoming the largest and strongest AFL-CIO union in America.¹⁹

It is equally understandable that the nongovernment organizations which lobby on behalf of the military are opposed to military unionization:

1. To the extent that unions gain control in representing the interests of military personnel, the nongovernment lobbying organizations lose their membership, dues, and *raison d'être*.

2. The membership of these organizations tend to be senior noncommissioned officers, commissioned officers, and retired military personnel—representing rather traditional and conservative views, generally at odds with the basic philosophical tenets and operational approaches of unions.

The leadership of the military services and the Department of Defense managers tend to view unions as a threat to traditional military good order and discipline and, consequently, a liability to mission accomplishment in the vital arena of national security.

The position of the Congress is presently unknown. In previous years, one might have anticipated strong opposition from older and senior senators and representatives, many of whom were veterans of World War II, and some of whom could carry large voting blocs in their hip pocket. However, given the generally liberal views of "the Freshman Democrats" the approach of the Congress is less certain.²⁰

The views of the target population for union membership, two million active duty military personnel and 700,000 members of the National Guard and Reserves, are unknown. No survey results are available. However, there are a few inconclusive indicators that some in the All-Volunteer force are unhappy with their present lot and susceptible to the appeals of unionization.²¹

The views of the public at large on military unionization per se are unknown. One opinion survey based on a sample of 1,529 people across the country asked two questions, "Do you favor or oppose members of the US Armed Forces being organized into unions?" and "Do you believe members of the Armed Forces should be permitted to go on

strike?" Eighty-two percent opposed military unions. The strongest opposition came from those over 45 years old, those with some education beyond high school and those who are nonunion government employees. The greatest support for military unions came from those between 18-24 years of age (33%) and from racial minorities (31%).^{2 2}

It is likely that the issue of unionizing military personnel will remain alive in the United States for the foreseeable future—at least until the Supreme Court has spoken to the issue.

Some of the popular arguments heard in the United States against unions of active duty military personnel are sound; others are not. The argument is well taken that union bargaining and representation of grievances would be prejudicial to military good order and discipline and, by extension, to capability for mission accomplishment. First, not all military personnel would join unions. In any given command, basic interests and organizational loyalties would be split between union and nonunion members of the command. This would undercut *esprit de corps* a basic tenet of military good order and discipline. Thus, irrespective of rather common debates concerning the nature of the commander-union relationship, the basic fact is that union members would be placed in a relationship with the chain of command different from others in the command. This would be divisive. But, second, what might begin only as a union representation of the interests (pay and allowances) of military personnel could, and probably would, grow into direct interference and conflict with command prerogatives. In fact, the late AFGE President, Clyde Webber, has been quoted as stating that "even if our membership votes to bring servicemen into the union movement, our goal will be to get into contract bargaining and a regular grievance system eventually."²³ Erosion of the chain of command would, indeed, impair readiness for mission accomplishment.

Would unions involving active duty military personnel strike? There are no precise precedents to which one may turn, but there are sound analogies in the United States. Unions of public employees in the United States generally are prohibited from striking at both the federal and state levels. But the Federal Postal Union has struck and was successful in its demands. Police and firemen's unions are prohibited from striking in all 50 states, but many have done so, in effect, through work stoppages such as "sick ins" lasting as long as five days.²⁴ Clearly, strike prohibitions in executive orders or statutes do not serve as iron-clad deterrents to strikes by strong unions of public employees. Can a union prevent its membership or part thereof from striking? An AFGE President has stated:

There isn't any way to stop those things. They don't ask me to go on strike. They don't ask their national vice president to go on strike . . . But the thing about it is that you cannot control individual elements of an organization whether it happens to be the United States Army as has been demonstrated a couple of times in the last three or four years, or the Navy or the Air Force, or the AFGE. People take into their own hands what they think they have to.²⁵

There is a clear, if not yet present, danger in military unionization. It is along the lines suggested above that those opposed to military unionization should make their arguments.

Some other popular arguments against military unions are unsound—e.g., those that attempt to relate unionization of American military personnel to the European experience with military unions. Such arguments are full of logical traps. One cannot argue that unionized American military personnel would strike when the European analogies show that the unionized military do not strike. One cannot argue that where European military personnel have unionized, standards of appearance related to discipline have degenerated; for, one must then go the next step to prove conclusively (and causally) that mission capability has degenerated. This would be a difficult and possibly counterproductive undertaking.

Arguments against military unions in the United States should be divorced from analogies to continental Europe—simply because there are few real analogies—and focus on the American case as unique. The differences are especially marked in patterns of collective bargaining.²⁶

European unions have grown largely as part of governing establishments. For example, the governing Social Democratic parties in Sweden and the Netherlands came to power largely because of the strength marshalled by trade unions. To the contrary, American unions have grown not only as adversaries to private management, but as political adversaries of federal, state, and local governments over those issues related to the rights of American labor. In the continental European case (where strikes by military unions are prohibited), a military union “bargains” with or consults with elements of its own power base in government with which its interests are closely identified. In the American case, military unions would bargain in an adversary relationship with government management whose political power base rests upon a span of interests of which organized labor is only one. In

brief, analogies between the military union-government relationships of European nations and those of the United States are tenuous. Americans may not draw valid inferences from the European experience.

The better arguments should be developed fully by those who are opposed to unions of active-duty military personnel. They should become the basis of public debate and they should be publicized in the United States. Most Americans probably recognize the fundamentals of "military necessity" and, in any case, "Free collective bargaining and the right to strike are increasingly unacceptable to broad sectors of public and political opinion; indeed many workers, and some union leaders share these views."²⁷

Congress probably has the constitutional authority to prohibit unions of active duty military personnel. When tested in court, a law prohibiting such unionization would probably be upheld on the basis of military necessity.

Simultaneously, the erosion of military benefits should be stopped to remove the major basis for union claims to legitimacy in representing the just claims of active duty military personnel. The nongovernment organizations which lobby on behalf of the military should pool their resources to press the case for military benefits and, therefore, against military unionization.

Finally, procedures for processing grievances and for permitting participatory management in the active duty military should be re-examined.

Any one of the above approaches, alone, probably cannot suffice in stopping a movement replete with dangers to the national security of the United States. A viable policy must incorporate all three approaches in tandem. Such a policy best assures both justice for the individual active duty service member and the reasonable balance in First Amendment rights which court tests have found to be within the meaning of the Constitution and the Bill of Rights.

FOOTNOTES

1. See, for example, David Cortright, "The Union Wants to Join You," *The Nation*, February 21, 1976, pp. 206-209; see also Tod Ensign and Michael Uhl, "Soldiers as Workers," *The Progressive*, April 1976, p. 37.

2. See the AFGE arguments cited by Gary R. Ballard, "Big Labor Pushing for Unionization of Armed Services," *Human Events Magazine*, November 8, 1975, p. 8. Charles C. Moskos has alluded to the possibilities for such attitudinal changes; see his "Social Control of the Military," a paper presented at the meeting of the American Sociological Association in San Francisco, California in August 25-29, 1975, pp. 10-12.

3. See Major General Herbert C. Sparrow, USA (Ret.) "The Promises Men Live By," *Armed Forces Journal International*, Vol. 112, No. 9 (May 1975) pp. 21-22.

4. See, for example, Colonel Richard M. Jennings, USA (Ret.) "The Military and Social Adaptation," *Strategic Survey*, Vol. IV, No. 1 (Winter 1976), p. 73.

5. See Cortright, *op. cit.*, p. 207.

6. See *Ibid.*; See also "Congressional Hearings," *Naval Affairs*, March 1976, p. 11 and Sparrow, *op. cit.*, p. 2.

7. *United States v. Robel*, 88 S. Ct. 423 (1967); see cases cited at note 7. For other cases and related analysis see Major James A. Badami, "Servicemen's Unions: Constitutional, Desirable, Practical," an unpublished thesis presented to The US Judge Advocate General's School, March 1973.

8. For example, *Atkins v. City of Charlotte*, 296 F. Supp. 1068, D.C.N.C. (1969).

9. *United States v. Robel*, *op. cit.*

10. United States Constitution, Sec. 8, Cls. 12, 13, 14.

11. *Burns v. Wilson*, 346 US 140 (1953).

12. *Orloff v. Willoughby*, 345 US 93 (1953).

13. 4 U.S.C.M.A. 509, 16 C.M.R. 105 (1954).

14. 177 U.S.C.M.A. 165, 37 C.M.R. 437 (1967).

15. 307 F. Supp. 854, D.S.C. (1969).

16. *Id.* at 856.

17. 447 F. 2d, 254, 2d Cir. (1967).

18. See Clyde M. Webber, "Testimony Before the Defense Manpower Commission: Organizing the Military Services into a Union," August 8, 1975, pp. 2-8.

19. "Military Unions? A Look at the Consequences," *The Officer*, December 1975, p. 17.

20. See Cadet Cole Cartledge, "The Projected Effect of the House Freshman Democrats on Legislation Establishing Unions in the United States Armed Forces," unpublished research paper at The United States Military Academy, West Point, New York, Fall 1976, *passim*.

21. See note 6, *supra*. In fact, however, no one has referenced any definitive data to support such a conclusion.

22. See "Ditto on Right to Strike," *Army Times*, June 21, 1976, p. 23.

23. Mossberg and Levine, *op. cit.*, p. 30.

24. See Ezra S. Krendel, *et. al.*, "The Implications of Industrial Democracy for the United States Navy," Technical Report No. NKG-10 prepared under the Navy Manpower R&D Program of the Office of Naval Research, January 1975, pp. 147, 152.

25. "Unionizing: An Interview with Clyde M. Webber, National President of the American Federation of Government Employees," *The Times Magazine*, September 24, 1975, p. 43.

26. See Adolph Sturimthal, *Comparative Labor Movements: Ideological Roots and Institutional Developments* (California: Wadsworth Publishing Company, Inc., 1972) pp. 50-52.

27. Sumner Rosen, "The United States: A Time for Reassessment," in Solomon Barkin, ed., *Worker Militancy and Its Consequences, 1965-75* (New York: Praeger Publishers, 1975), p. 351.