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UNIONIZATION AND THE UNITED STATES ARMED FORCES (1985)

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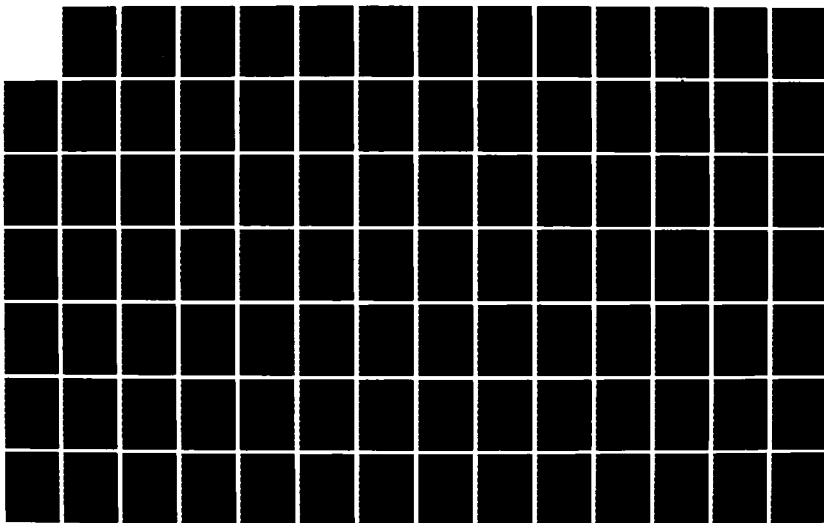
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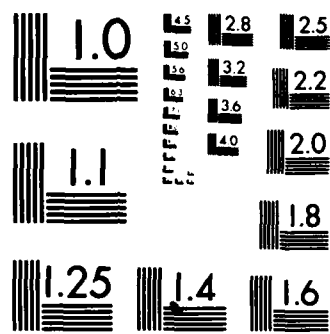
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UNIONIZATION AND THE UNITED STATES ARMED FORCES (1985)

BY ANTONIO P. MONACO  
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# I

## INTRODUCTION

Elimination of the draft in June 1973 and creation of the all-volunteer force, was an attempt to silence the source of discontent that beset the Armed Forces during the combined peaks of antiwar dissension and urban rioting.<sup>1</sup>

Shortly thereafter, the all-volunteer force began losing its traditional attitude of "duty and service to country" and became a "job" to most servicemen, narrowing the military life style of regimentation and obedience to a civilian work environment. Servicemen demanded better pay and benefits, improved work conditions, use of free time and fairer methods of assignments and promotion. Serious unionization efforts and its growing public support caused Congress and the military establishment to be concerned.<sup>2</sup>

In 1978, only five years after the birth of the all-volunteer force, Congress was quick to pass Public Law 95-610, outlawing military unionization, suppressing the momentum and threat of unionization.<sup>3</sup>

During 1985, numerous service publications and periodicals have echoed the loss of or the threat of losing current benefits with such headlines as:

### Air Force Times

"Base Housing 50,000 Units Short of Need"<sup>4</sup>

"Civilian Medical Care Rated Higher Than Military"<sup>5</sup>

### Army Times

"Active Duty Uneasy Over Retirement Debate"<sup>6</sup>

"Hill Interest Grows In Longer Military Careers"<sup>7</sup>

### Navy Times

"16% Benefits Lose In 'Generous Plan'"<sup>8</sup>

"Enlisted Hourly Pay Runs Below Civilian Counterpart"<sup>9</sup>

Uncertainty, loss of benefits have caused those serving in the Armed Forces to be greatly concerned about their future. Few realize that soldiers, airmen, seamen, and marines who enlist into the Armed Forces must endure many hardships with no guarantee of a future. A stipulation in their enlistment contract reads:

Laws and regulations that govern military personnel may change without notice to me. Such changes may affect my status, pay, allowances, benefits, and responsibilities as a member of the Armed Forces **REGARDLESS** of the provisions of this enlistment/reenlistment document.<sup>10</sup>

Committing twenty years service or more to a military career, without guarantees, would hardly be acceptable to most people. In fact the Secretary of Defense, Caspar W. Weinberger stated that, "... only 12 percent of those who enter active service ever reach retirement eligibility (twenty years)."<sup>11</sup> A shocking low when compared to the 25% of the German Armed Forces who stay in for forty years or more.<sup>12</sup>

Servicemen must rely on the mood of Congress, public sentiment, looming budget deficits, raising national debt for their futures. Public Law 95-610 has almost ceased open debate of military unionization of the United States Armed Forces, whereas, the ancient philosopher Heraclitus wisely stated, "There

is nothing permanent except change." Searching for insight and alternatives will always provide pro-active steps, rather than reactive measures.

The need to review public policy, as James E. Anderson wrote: "For policy purposes, a problem can be formally defined as a condition or situation that produces 'a human need, deprivation, or dissatisfaction, self-identified or identified by others, for which relief is sought.'"13 Public policy is the end result of demands placed on government and its bureaucracy to resolve problems.

It is important to identify and resolve problems in a timely manner, especially symptomatic problems. "The Massachusetts Institute of Technology research team who wrote The Limits to Growth use - as an example of the suddenness with which exponential growth reaches its fixed limit - the riddle of the lily in the pond. Imagine a pond in which a lily pad grows, doubling its size each day so that in thirty days its completely covers the pond and cuts off all other forms of life. The lily seems to grow slowly, and you do not decide to cut it back until the day it covers half the pond. When is that? The twenty-ninth day."14 For the Armed Forces, national readiness is essential as General of the Army Omar Bradley clearly pointed out, "In war there is no second prize for runner-up."15

The focus of this research, is the fears of unionization expressed by the United States 95th Congress (1978), in contrast to the thirty years of union involvement in the German Armed Forces, Der Deutsche Bundeswehr-Verband.

## II

### UNIONIZATION OF THE PUBLIC SECTOR

Civilian federal employees working at the Philadelphia naval yard participated in the first full-fledged labor dispute with the United States Government in 1835. Their dispute centered on shortening the work day from sunrise to sunset with forty-five minutes for breakfast and an hour for lunch to a ten-hour work day. After the National Trades' Union petitioned Congress and the President, they won.<sup>1</sup>

It was not until 1883, with the passage of the Pendleton Act creating the United States Civil Service Commission, that Congress took a significant step to formally recognize federal labor relations.

Attempts to stop union lobby efforts started in 1895 with Postmaster General Wilson, issuing a "gag order" forbidding any postal employee, at the risk of being removed, to influence Congress. President Theodore Roosevelt followed suit by issuing two executive orders, January 31, 1902 and January 25, 1906, imposing the "gag order" principle on all federal employees, which stated:

All officers and employees of the United States, of every description. ... are hereby forbidden, either directly or indirectly, individually or through associations, to solicit an increase in their pay or influence or attempt to influence in their own interests any other legislation whatever, either before Congress or its committees, or in any way save through the departments. ... in or under which they serve, on penalty or dismissal from the Government service.

President William Howard Taft pushed Congress too far when he issued an executive order on November 26, 1909 by amending the "gag orders":

Nor may any such person respond to any request for information from either House of Congress, or any committee from either House of Congress, or any Member of Congress, except through or as authorized by the head of his department.

Congressional backlash, resulted in the enactment of the Lloyd-Lafollete Act of 1912, 37 Statute 555, eliminating the executive gag orders, reaffirming Congressional authority and postal employees rights. Although literal interpretation excluded all non-postal employees, it was generally assumed that it gave equal protection to all federal employees. The Lloyd-Lafollete Act stated:

...that membership in any society, association, club, or other form of organization of postal employees not affiliated with any outside organization imposing an obligation or duty upon them to engage in any strike, or proposing to assist them in any strike, against the United States, having for its object, among other things, improvements in the conditions of labor of its members, including hours or labor and compensation therefore and leave of absence, by any person or group of persons in said postal service, or the presenting by any such person or group of persons of any grievance or grievances to the Congress of any member thereof shall not constitute or be cause for reduction in rank or compensation or removal of such person or groups of persons from said service. The right of persons employed in the civil service of the United States, either individually or collectively, to petition Congress, or any member thereof, or to furnish information to either house of Congress, or to any committee or member thereof, shall not be denied or interfered with.

As a result of the Lloyd-Lafollete Act, federal employee unions gained momentum and recognition. In 1917, the National Federation of Federal Employees was founded; and in 1932, the American Federal of Government Employees was founded, both taking an active role.

The Lloyd-Lafollete Act established the statutory right of federal employees to join a labor union; but it was not until President John F. Kennedy, on January 17, 1962, issued Executive Order 10988 that procedures to facilitate union recognition and negotiation in federal service were established. President Kennedy's executive order did for the public-sector what the National Labor Relations Act of 1935 did for the labor relations in the private sector.

President Richard M. Nixon's Executive Order 11491, adjusting Executive Order 10988, provided a public-sector collective-bargaining model. This allowed the federal employees' union the same protections provided to the private sector in the Taft-Hartley Act of 1947.

Executive Orders (Presidential) 10988 (1962), 11491 (1969), 11616 (1971), and 11838 (1975) provided the statutory rights and legal framework for unionization of the Armed Forces.

### III

#### THE DRAFT TO ALL-VOLUNTEER FORCE

The Vietnam War opposition served as the focal point for the anti-draft sentiment in the country. This discontent is reflected by Jean Carper's comment:

Wartime has a way of exposing the ugly facts and shocking us into a realization of what is happening. Our boys are no longer going on foreign duty merely to stroll the hills of Bavaria or the streets of Tokyo. Some 9000 have already been killed in Vietnam. About one in five of our soldiers in Vietnam are draftees. These young men, though many do not protest their obligation, did not volunteer to end their existence in the Asian mud, nor spray flaming napalm on helpless Orientals. They are coerced into servitude by our Selective Service System. No man between eighteen and thirty-five is free of the draft's ever-watchful eye. An institution so powerful that it controls the lives of 33 million young men, the very heart of the nation, should be ever watched itself to make certain it is operating on the highest principles of justice and integrity. That no such claims can be made for Selective Service is becoming monstrously clear.<sup>1</sup>

Morris Janowitz, argued, discontent with the draft had deeper philosophical origins:

In advanced industrialized societies, with some notable exceptions, the goals and style of military institutions have been subjected to massive criticism and the belief is that the moral worth of conscript service has been shaken. In part, hedonism and the importance of self-expression supply a new basis for resistance to military authority among young people. It is difficult to draw the line between highly personalized opposition to military institutions and broader, more moralistic viewpoints which generate a powerful sense of neutralism and new forms of pacifism. The sheer destructive power of weapons systems and the apparent

feeling that political leaders are unable to control the nuclear arms race are essential ingredients.<sup>2</sup>

During the 1968 Presidential Campaign, Presidential candidate Richard M. Nixon, was impressed by Milton Friedman a University of Chicago Department of Economics Professor, on free-market arguments to create an all-volunteer armed forces.<sup>3</sup> Ending of the draft had great popular appeal, in a public statement, 17 October 1968, he stated, "I say it's time we took a new look at the draft -- at the question of permanent conscription in a free society. If we find we can reasonably meet our peacetime manpower needs by other means -- then we should prepare for the day when the draft can be phased out of American life."<sup>4</sup>

On March 27, 1967, President Nixon established a fifteen-man commission, chaired by Thomas S. Gates former Secretary of Defense in the Eisenhower Administration, to develop "... a comprehensive plan eliminating conscription and moving toward an all-volunteer armed forces."<sup>5</sup>

On February 20, 1970, the Gates Commission Report (Report of the President's Commission on the All-Volunteer Force) was sent to President Nixon. The Gates Commission Report, covering letter stated:

We unanimously believe that the nation's interests will be better served by an all-volunteer force, supported by an effective stand-by draft, than by a mixed force of volunteers and conscripts, ...<sup>6</sup>

The Gates Commission Report eventually led to the all-volunteer armed forces, causing a last draft call in December 1972. The draft officially ended June 30, 1973.<sup>7</sup>

#### IV

#### ATTITUDES OF SERVICEMEN

Pressure to unionize the Armed Forces grew quickly from the outset of the all-volunteer force. Problems with retention and enlistments became the first indication of discontentment within the Armed Forces. Servicemen perceived that their hard work and sacrifice resulted in erosion of career benefits and this perception fostered disillusionment.<sup>1</sup>

The inflation rate of 1973 began to take its toll on military personnel cost (consuming 56% of the defense budget); cutting military entitlements became the accepted way Congress could hold the line on escalating costs.<sup>2</sup> In fact, the Defense Appropriation Bill of 1974 contained several changes or denials, which served to heighten servicemen fears. The Bill:

1. denied money for lower grade enlisted personnel dependent travel
2. cut deeply into money earmarked to pay for accrued leave.
3. increased cuts in Permanent Change of Station (PCS) and Temporary Duty (TDY) travel
4. cut proficiency pay and directed phase-out of the program by 1976
5. cut funds for dependent education
6. refused to fund enlisted associate degree programs
7. cut Civilian Health And Medical Program of the Uniformed Services (CHAMPUS) funding by \$31 million
8. reduced commissary personnel funding by \$4.7 million.<sup>3</sup>

In December 1974, in a memorandum by the Secretary of the Navy, J. William Middendorf II, Middendorf expressed his concerns

and identified fourteen benefit areas that had recently eroded, he cited, "... health care; the retired pay inversion; in-service education benefits; accrued leave payments; reenlistment travel pay; junior enlistment travel; officer promotion slow down; career-counselor cuts; commissary construction; \$36,000 pay ceiling; PCS reductions; elimination of superior performance pro-pay; 3-way split pay raises; limits on private car and household goods shipments from overseas."<sup>4</sup>

Capital Hill was blunt about servicemen's rights when Congressman Samuel Straton (D) of New York, upset over the issue of eroding military benefits stated, "I am getting a little tired of the constant allusion to contractual rights when it comes to military benefits."<sup>5</sup>

Before the Senate Armed Services Committee, David P. Taylor, Assistant Secretary of the Air Force for Manpower, identified the growing problem benefit erosion was having among servicemen. He stated, "We are nickel and diming our force into a great morale problem. I don't blame the force for being concerned ... I agree that this piecemealing of benefits has created a problem."<sup>6</sup>

Congress by cutting military benefits created fertile ground for union appeal. Mr. Leo Pellerzi, General Counsel of the American Federation of Government Employees (AFGE), stated,

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.<sup>7</sup>

By 1976, the Defense Manpower Commission, recognizing the adverse impact eroding military benefits was having, stated,

"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."<sup>8</sup>

Realizing the significant impact Congress had on the Armed Forces, United States Army General Bruce Palmer, Jr., former Vice Chief of Staff warned:

Members of the armed forces perceive a steady erosion in the benefits that were promised them in return for their services. This perception of neglect or breach of faith has resulted in a distrust of government by some of our uniformed personnel. Hence, they are turning to unions to represent them.<sup>9</sup>

One factor of discontent within the Armed Forces centered on military working and living conditions. The Pentagon had responded by liberalizing several policies, such as:

- o relaxation of uniform regulations
- o approval of beer in barracks and mess halls
- o the opening of hard rock clubs
- o liberalized leave policies
- o a ban on all forms of unnecessary harassments
- o eliminating morning reveille
- o easing pass restrictions
- o going to a five-day work week
- o less field exercises
- o reduced twenty-man living bays to one/two-man rooms<sup>10</sup>

Monitoring servicemen's attitudes towards military unionization, Manley, McNichols, and Young published the results of their survey (Table 1)<sup>11</sup> and concluded (in answering the question "Who would join a military union?) the data strongly suggest that it is the military member who:

1. believes that a military union will have no effect, or a positive effect on the ability of the Armed Forces to perform its mission;
2. perceives a need for third party representation;
3. believes that a military union could solve problems which an individual, on his own, could not;
4. believes that a military union could improve working conditions; and who
5. believes that a military union would not impair supervisor-subordinate relations.<sup>12</sup>

Another survey, conducted by Amerise and Hoyt, of 1600 Air Force officers and enlisted personnel, concluded there is no indication of any overwhelming desire for union representation, nor, with the exception of field grade officers, is there a decisive rejection either.<sup>13</sup> However, the idea of a military union had made significant progress towards acceptance by 1976, revealed by four responses:<sup>14</sup>

<u>Question No</u>	<u>% Agree</u>	<u>% Undecided</u>	<u>% Disagree</u>
19. Military fringe benefits are being eroded.			
Officer	94.1	0.7	4.3
Enlisted	89.5	4.3	6.2
20. A military union would prevent the erosion of fringe benefits.			
Officer	56.5	11.2	29.7
Enlisted	60.0	17.1	19.8
55. A military union could effectively represent the interests of military personnel with the Congress through lobbying.			
Officer	59.0	13.3	27.2
Enlisted	54.9	28.4	16.7
56. There is a need for such a lobbying effort in behalf of military personnel.			
Officer	65.9	7.8	25.9
Enlisted	63.4	18.7	17.9

Table 1. RESPONSES TO MILITARY UNIONIZATION QUESTIONS

Item	Agree			Undecided <sup>a</sup>			Disagree		
	Ofcr	Amn	All	Ofcr	Amn	All	Ofcr	Amn	All
<i>Perceived Problems</i>									
Military fringe benefits are being eroded	95 <sup>b</sup>	88	89	1	4	4	4	8	7
Pay raises over the past five years have adequately offset increases in the cost of living	28	15	17	4	6	6	68	79	77
There is a need for a lobbying effort in the congress on behalf of the military	67	65	65	7	18	16	26	17	19
There is a need for third party representation of individual air force members in the negotiation of disputes with the air force	35	54	51	15	21	20	50	25	29
The prestige of the military has declined over the past several years	75	77	77	7	11	10	18	12	13
<i>Union Effectiveness</i>									
A military union could prevent the erosion of fringe benefits	55	60	59	12	17	16	31	20	22
A military union could secure higher pay raises for its members	48	53	50	20	17	18	32	20	22
A military union could effectively represent the interests of military personnel with the congress through lobbying	59	57	57	13	27	24	28	16	19
A military union could look after the interests of military personnel by helping resolve disputes through direct negotiation with the air force	38	60	55	20	20	20	42	20	24
A military union could solve problems which an individual, on his own, would be unable to solve	55	56	56	13	19	18	32	25	26
Union representation would insure that military members are treated with dignity as individuals	27	43	41	19	25	24	54	32	35
Members of federal civilian employee unions have benefited from the efforts of their unions	65	65	65	21	25	24	14	10	11
Unions obtain more benefits for members than would be obtained without them	72	67	68	5	13	12	23	20	20
Membership in a military union would result in better working conditions	34	40	38	14	22	20	53	37	40
Union leaders generally act in the best interests of union members	40	49	48	13	24	22	47	27	30
<i>Impact of Military Unions</i>									
If military unions were established and recognized, the effectiveness of the air force would be decreased	70	38	44	14	25	23	16	37	33
A military union would have a negative effect on discipline	72	48	52	9	15	14	19	37	34
Unions attempt to take away the rights of managers	57	32	37	7	22	19	36	46	44
Membership in a military union would decrease an individual's professionalism	55	27	32	34	45	44	10	28	24
Military unions would improve relations between supervisors and subordinates	14	31	28	16	34	31	70	35	41
A military union should have no say in operational matters	87	55	60	6	19	17	7	26	23
Strikes can be a legitimate means of collective action and should be permitted for military personnel in noncritical jobs	9	18	15	5	13	12	85	69	72
If a military union is formed, it should be restricted to enlisted personnel	14	19	19	17	19	19	69	62	64
<i>Views on Joining a Military Union</i>									
There is a need for a military union	21	34	32	15	27	25	64	39	44
Military unionization is inevitable	18	31	29	13	30	27	69	39	44
I would join a military union	16	37	33	21	33	31	63	30	36

a Indicates middle ground. Questions have been modified slightly for purposes of presentation. Seven-point responses were primarily used, with "Undecided" being the middle point.

b Figures are percentages of officers (Ofcr) and airmen (Amn) respondents participating in the survey. Percentages are also provided for overall (All) responses. Responses are weighted to reflect by-grade distribution of officers and airmen at the time the survey was distributed. A total of 938 personnel provided completed questionnaires, 520 officers and 418 enlisted personnel.

V

UNIONIZATION ATTEMPTS

Prior to Congress passing Public Law No. 95-610, joining or forming a military union was not illegal. The Department of Defense (DOD) had always recognized servicemen's constitutional right to freedom of association. But DOD issued Directive 1325.6 in September 1969, directing that "Commanders are not authorized to recognize or to bargain with a so-called 'servicemen's union.'"<sup>1</sup> Also, the directive gave specific guidelines on:

- o possession and distribution of printed materials,
- o off-post gathering places,
- o publication of "underground newspapers,"
- o on-post demonstrations and similar activities,
- o off-post demonstrations by members,
- o grievances,
- o and provided constitutional and statutory provisions relevant to handling of dissident and protest of activities in the Armed Forces (Table 2).<sup>2</sup>

Increased unionization efforts forced DOD guidance to commanders, (via DOD Directive 1354.1) captioned "Relationships with Organizations which Seek to Represent Members of the Armed Forces in Negotiations or Collective Bargaining." This guidance was issued on October 6, 1977, and cancelled by DOD Directive 1354.1, dated November 25, 1980, subject: "DOD Policy on Organizations that Seek to Represent or Organize Members of the Armed Forces in Negotiation or Collective Bargaining," which incorporated Public Law No. 95-610.<sup>3</sup>

Historically, the ideas of collective action, grievance redress, or even strike can be found in the colonial militia when, "Mutinous soliders in control of the powder magazines and public offices at the seat of the Continental Congress in Philadelphia, threatened to use force to get their wages."<sup>4</sup>

One of the most ambitious unionization efforts involved 140,000 servicemen stationed in the Pacific. A short-lived campaign began in Manila in early 1946 protesting the slow pace of post-World War II demobilization. The union died, however, as servicemen were discharged from the Armed Forces.<sup>5</sup>

The Vietnam War spawned the so-called "GI Movement" and "Servicemen's Union." At its peak, during 1970-71, more than 100 newspapers and organizing committees voiced anti-military, anti-war, and anti-establishment sentiment. By 1976, only 15 survived the loss of the draft and the Vietnam War as issues for protest. Three organizations: "Movement for a Democratic Military" (MDM), which focused on working and living conditions; "United States Military Rights Association," which focused on allowing homosexuals in the service; and "Citizen Soldier" (same goals as MDM) attempted to affiliate or establish mutual cooperation with the American Federation of Government Employees (AFGE), an AFL-CIO affiliate, thereby gaining legitimate recognition. These efforts failed.<sup>6</sup>

Two organizations: "The Enlisted People's Organizing Committee" and the "Friends Military Counseling Service" in December 1976, along with AFGE employees, began to recruit organizers among servicemen at Fort Dix and McGuire Air Force

Base in New Jersey. Army soldiers also organized under the AFGE banner at Fort Riley, Kansas. Both efforts were derailed, however, by the AFGE National Headquarters announcement that the National Executive Council instructed all AFGE locals to set aside any formal applications for membership until, "a detailed, specific and orderly program could be developed."<sup>7</sup>

The most celebrated attempt at military unionization began Christmas Day, 1967, when Army Private Andrew Stapp met with representatives from fourteen different military bases in New York City.<sup>8</sup> The representatives affirmed an eight-point program which became the cornerstone of the American Servicemen's Union (ASU):

1. An end to the saluting and "sir-ing" of officers
2. Rank-and-file control over Court-Martial Boards
3. An end to racism in the Armed Forces
4. Federal minimum wage for all enlisted men
5. The right of GI's to collective bargaining
6. The right of free political association
7. The election of officers by enlisted men
8. The right to disobey illegal and immoral orders<sup>9</sup>

Historical Note: Demand No. 7 had a precedent in the Colonial Militia. Members of the militia elected their own officers, which by today's standards is considered unprofessional.<sup>10</sup>

Membership in ASU reached a peak of 5,000 by 1969 and then began to decline.<sup>11</sup>

Fear that the United States was becoming militarily inferior to the Soviet Union moved Colonel Hubert Connelly, a retired

United States Air Force Officer to create the Federation of Commissioned Uniformed Servicemen (FOCUS). Its goal was to form a professional military personnel union, with the purpose of strengthening the United States thru modernization of its back-up forces: The National Guard and the Reserves. Because of lack of membership and financial support, FOCUS disbanded in April 1974.<sup>12</sup>

In the Army medical field, professional frustration forced Lieutenant Colonel John Baker, United States Army medical officer to lead about twenty Army doctors, in July 1975, in announcing the formation of a world-wide "Union of the U.S. Military Physicians." The issues at hand were:

- o Stabilization of physicians variable incentive bonus pay
- o Greater emphasis on continuing medical education programs
- o Improved living and working accommodations
- o Reasonable work hours per week
- o Restoration of authority to physicians in-wards and clinics.<sup>13</sup>

But early in 1976 it failed, because of lack of management, resources and interest.

It can be said that narrow appeal and lack of recognition from legitimate unions, stifled unionization efforts. Congress and DOD did not become concerned until two AFL-CIO affiliated unions, the National Maritime Union, and the American Federation of Government Employees, actively sought to unionize the military.

The National Maritime Union (NMU) announced in December 1975, that it would study the possibilities of unionizing the Armed Forces because their 55,000 membership worked on American

vessels and for the federal government under several military commands, including the Military Sealift Command and the Army Corps of Engineers.<sup>14</sup> Their efforts never went far beyond the study stage.

The giant of public service unions, the American Federation of Government Employees (AFGE) became interested in unionizing the Armed Forces only after battling Congress over a pay increase. Clyde Webber, AFGE President, before the Defense Manpower Commission on August 18, 1975 explained:

You will recall that President Ford succeeded President Nixon on August 9 last year, and the decision to submit an 'alternate pay plan' for the 1974 Comparability pay increase was one of his first major problems. Having served in office for less than three weeks, President Ford proposed to defer the pay increase for two months.

Considering the honeymoon climate that existed between President Ford and the Congress, his 'alternate pay plan' became a major crisis for our union, our members, other Federal employees as well as the uniformed military personnel.

In considering the possibilities of overcoming the 'alternate pay plan' the full impact of the effect it would have on the uniformed military was brought to my attention.

Since AFGE represents more than 392,000 employees of the Department of Defense, many of whom are employed at military installations where uniformed military personnel are quartered, we decided to try to bring the military into the pay increase fight.

I have attached a copy of the handbill which was distributed to members of the military. AFGE circulated several hundred thousand copies of this at that time.

In evaluating our position in 1974, AFGE expected a very close vote on the 'alternate pay plan', even though we had the full support of all the AFL-CIO and affiliated union lobbyists located in Washington. To our surprise the vote was 64-35. Almost two-thirds of the Senate supported our position on equity in Comparability pay.

After the 1974 exercise was completed, I received reports of discussions which union lobbyists had with Senators before and after the vote. These conversations indicated a heavy letter-writing effort

on the part of uniformed military people as well as the anticipated support from our members.

In January 1975, the President's State of the Union message and subsequent budget presentations to Congress indicated the President's plans for limiting the amount of the pay increases for civilian employees and the uniformed military to a five percent level. This notice came at a time when it was thought that the private sector survey data on which the pay increase would be based would indicate an increase of better than 8 percent. 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 AFGE to members of the uniformed military.<sup>15</sup>

During the 1976 AFGE National Convention, the delegates voted to amend their constitution opening union membership to the Armed Forces; and the AFGE Executive Committee in March 1977, approved a plan to recruit military servicemembers. The momentum shifted in May of 1977, however, when 80% of the rank and file voted down the referendum to recruit members of the Armed Forces, fearing Armed Forces membership would numerically dominate the union with its power. The leadership of AFGE continued their efforts but never regained the momentum.<sup>16</sup>

It should be noted that in 1975, Congress repealed the 1967 legislation tying military pay increases to increases in salaries of the federal civil service, general schedule (GS), employees.<sup>17</sup>

**CONSTITUTIONAL AND STATUTORY PROVISIONS RELEVANT  
TO HANDLING OF DISSIDENT AND PROTEST ACTIVITIES  
IN THE ARMED FORCES**

**A. Constitution:** The First Amendment, U.S. Constitution, provides as follows:

"Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

**B. Statutory Provisions:**

**1. Applicable to All Persons**

- a. 18 U.S.C. §1381—Enticing desertion.
- b. 18 U.S.C. §2385—Advocating overthrow of the Government.
- c. 18 U.S.C. §2387—Counselling insubordination, disloyalty, mutiny, or refusal of duty.
- d. 18 U.S.C. §2388—Causing or attempting to cause insubordination.
- e. 50 U.S.C. App. §462—Counselling evasion of the draft.

**2. Applicable to Members of the Armed Forces**

- a. 10 U.S.C. §917 (Article 117, UCMJ)—Provoking speech or gestures.
- b. 10 U.S.C. §882 (Article 82, UCMJ)—Soliciting desertion, mutiny, sedition, or misbehavior before the enemy.
- c. 10 U.S.C. §904 (Article 104, UCMJ)—Communication or corresponding with the enemy.
- d. 10 U.S.C. §901 (Article 101, UCMJ)—Betraying a countersign.
- e. 10 U.S.C. §888 (Article 88, UCMJ)—Contemptuous words by commissioned officers against certain officials.
- f. 10 U.S.C. §889 (Article 89, UCMJ)—Disrespect toward his superior commissioned officer.
- g. 10 U.S.C. §891 (Article 91, UCMJ)—Disrespect toward a warrant officer or noncommissioned officer in the execution of his office.
- h. 10 U.S.C. §892 (Article 92, UCMJ)—Failure to obey a lawful order or regulation.
- i. 10 U.S.C. §934 (Article 134, UCMJ)—Uttering disloyal statement, criminal libel, communicating a threat, and soliciting another to commit an offense.

## VI

### PUBLIC LAW 95-610

Members of Congress introduced Senate Bill 274 (Public Law 95-610), and some thirty bills in the House, prohibiting military unions. Congress was concerned over the public debate, growing numbers of servicemen who accepted the idea of a military labor union, recent attempts by organized labor to unionize the Armed Forces, and the fact that DOD Directive 1354.1 (1977) did not prohibit servicemen from joining a military labor organization.<sup>1</sup>

The Defense Manpower Commission stated clearly, "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."<sup>2</sup>

The Pentagon responded with DOD Directive 1354.1 (allowing union membership), by respecting the First Amendment (freedom of association), but, prohibited a servicemember from joining an organization which

...presents a clear danger to discipline,  
loyalty or obedience to lawful orders,  
because it engages in acts prohibited by the  
Directive or violates or conspires to violate  
specific articles of the Uniform Code of  
Military Justice.<sup>3</sup>

In October 1977, at the Investigations Subcommittee of the Armed Services Committee, the Department of Defense's position on Senate Bill 274 was presented in testimony by the Assistant Secretary of Defense for Manpower, Reserve Affairs and Logistics, and the General Counsel. DOD unalterably opposed unionization of the Armed Forces believing the problem could be dealt with more

effectively by Departmental Directives and Regulations, rather than legislation. DOD reasoned that legislation carries a substantial risk of being constitutionally challenged and, if the Supreme Court overturned the legislation, it would void DOD Directives and Regulations.<sup>4</sup>

On November 8, 1978, Congress passed Public Law 95-610 (10 USC 975, later amended to 976), "Union Organization - Armed Forces - Prohibition," an Act to amend Chapter 49 of Title 10, United States Code.<sup>5</sup>

Section One of Public Law 95-610 Congress made the following findings:

1. Members of the armed forces of the United States must be prepared to fight and, if necessary, to die to protect the welfare, security, and liberty of the United States and of their fellow citizens.

2. Discipline and prompt obedience to lawful orders of superior officers are essential and time-honored elements of the American military tradition and have been reinforced from the earliest articles of war by laws and regulations prohibiting conduct detrimental to the military chain of command and lawful military authority.

3. The processes of conventional collective bargaining and labor-management negotiation cannot and should not be applied to the relationships between members of the armed forces and their military and civilian superiors.

4. Strikes, slowdowns, picketing, and other traditional forms of job action have no place in the armed forces.

5. Unionization of the armed forces would be incompatible with the military chain of command, would undermine the role, authority, and position of the commander, and would impair the morale and readiness of the armed forces.

6. The circumstances which could constitute a threat to the ability of the armed forces to perform their mission are not comparable to the circumstances which could constitute a threat to the ability of Federal civilian agencies to perform their functions and should be viewed in light of the need for effective performance of duty by each member of the armed forces.<sup>6</sup>

Congress declared, "The purpose of this Act is to promote the readiness of the Armed Forces to defend the United States."<sup>7</sup>

A summary of Public Law 95-610 states:

It is unlawful for a member of the Armed Forces who knows of the activities or objectives of a particular military labor organization to join or maintain membership in such organization or to attempt to enroll any other member in such organization.

It is unlawful for any person (1) to enroll any member of the Armed Forces in a military labor organization or to solicit or accept dues or fees for such an organization from any such member; (2) to negotiate or bargain on behalf of members of the Armed Forces concerning terms or conditions of services; (3) to organize any strike, picketing, march or demonstration intended to induce any civilian officer or employee, of any member of the Armed Forces to (a) negotiate or bargain concerning the terms or conditions of service of any member of the armed services, (b) recognize any military labor organization as a representative of individual members in connection with a complaint or grievance arising out of the terms or conditions of service of such member, (c) make any changes in conditions of service in the Armed Forces of individual members; or (4) to use any military installation, facility, reservation, vessel, or other property of the United States for any meeting, picketing, demonstration or similar activities for the purpose of engaging in any activity prohibited by the act.

It is unlawful for any military labor organization to represent a member of the Armed Forces before any civilian officer or employee, or any member of the Armed Forces in connection with any grievance or complaint of such member arising out of the terms or conditions of service.

Further, the law prohibits (1) any member of the Armed Forces, and any civilian officer or employee from negotiating or bargaining on behalf of the United States concerning the terms or conditions of military service of members of the Armed Forces with any person who represents or

purports to represent members of the Armed Forces, or (2) permitting the use of any military installation or facility for any meeting, march, or picketing for the purpose of engaging in activities prohibited by the law.<sup>8</sup>

Stiff penalties were incorporated for individuals who violated any of its provisions by stating that individuals "shall be subject to a fine of not more than \$10,000 or imprisoned for not more the five years, or both." For an organization or association that violated any of its provisions, the penalty was a fine of "not less than \$25,000 and not more than \$250,000."<sup>9</sup>

## VII

### THE GERMAN ARMED FORCES

The founding of the Local Workers' Association in 1848 began the trade union movement in Germany. Early unionization efforts focused on economic and social interests precluding soldiers in the Wilhelminian period (2nd Kaiserreich). At that time, the German military functioned as an element of state power and authority, suppressing riots and strikes. Its officer corps reflected the social upper class. The workers' association was shortlived, being dissolved in 1854 by an act of the Federal Assembly.<sup>1</sup>

Bismarck united German principalities, kingdoms and other independent states into the First Reich in 1871. Military units from each state were converted into units of the imperial army, evolving from Prussian army traditions of command and organization. The 1878 "Socialist Law," at Bismarck's urging, subjected the workers' movement to severe repressive measures. Even though the law was repealed and the union movement regained its momentum, the movement was never recognized in Imperial Germany.<sup>2</sup>

After World War I, the Weimar Republic, the Second Reich, acknowledged labor rights and union representation. Article 159 of the Weimar Constitution guaranteed "the freedom of association for safeguarding and promotion of professional and economic interests to anyone and all professions." Also, Article 129, paragraph 4 of the Constitution, provided "professional soldiers (regulars) are guaranteed inviolability of well-earned rights."<sup>3</sup>

The German Officer Corps reflected the caste feeling (class thinking) of the Kaiserreich. The Versailles Treaty created the Reichswehr (the Armed Forces of the Republic) and disbanded the Imperial General Staff; it lived on, however, under the disguising name of "Truppenamt" (Armed Forces Office), reporting to the Ministry of Defense. A Prussian army officer, General Hans von Seeckt, accepted the office of "Truppenamt" under the condition that he would determine the "spirit of the General Staff." General von Seeckt kept the armed forces out of politics, which isolated the soldiers from political events, creating what is often referred to as a "state within a state."<sup>4</sup>

On March 23, 1921, the Military Service Act declared soldiers could not form an association that engaged in political activities which could violate military discipline and order. Subsequent military regulations were so restrictive that few attempts to organize the military were made.<sup>5</sup>

Adolf Hitler was elected to public office and under a declaration of emergency powers in 1933 seized political power in Germany, which established the Third Reich. Under this new political structure, the Reichswehr was replaced by the Wehrmacht, loyal to civilian authority. On October 24, 1934, free unions were abolished and the "Deutsche Arbeitsfront" (German Labor Front) was established, incorporating workers and employers into the National Socialist Workers (Nazi) Party.<sup>6</sup>

The unconditional surrender of Nazi Germany in 1945, brought economic and social ruin, disbanded armed forces, and an allied occupation. Four years later, Britain, France, and the United

States sectors were unified and the Federal Republic of Germany was proclaimed on May 23, 1949, under a new constitution, without an armed force.

Because of the cold war tensions between the Soviet Union and Western nations, the rearmament of Germany began to appeal to England, France, and the United States. These countries maintain a large defensive force within Germany. In March 1954, with the acceptance of an invitation to join NATO, the Federal Republic of Germany amended its Constitution establishing "die Bundeswehr" (German Federal Army) and re-introducing compulsory military service. With the creation of the Defense Ministry, the first volunteers were appointed for military service on November 12, 1955.<sup>7</sup>

Public opinion for rearmament was mixed in war torn Germany. Some feared the military would isolate itself from the new republic, thereby contributing to its downfall, as previously experienced with the Nazi regime

...Mirabeau had coined the phrase that Prussia was not a country with an army but an army with a country, and this description remained to some extent true of the German Empire. In the Weimar Republic, on the other hand, the army tended to become a state within a state, neither master nor subordinate of the legitimate authority of the state but a rival to it. The politicians of the Bonn Republic were determined to assure the primacy of the political.<sup>8</sup>

A minor party, the Social Democratic Party (SPD), closely linked to the German Trade Union Federation (DGB - seven million strong), objected to the formation of the Bundeswehr, fearing it would become politically powerful.<sup>9</sup>

But the ruling party in parliament, the Christian Democrats (CDU), alleviated public fears by stating:

Article 9, Paragraph 3, German Basic Law, guarantees freedom of association as an unalienable right. Article 6 of the National Servicemen's Act guaranteed that soldiers possess the same civic rights as any other citizen, these rights may be restricted by legally founded military duty. Servicemen had the right to join an association or union from the outset.<sup>9</sup>

1956, constitutional amendment provided an Ombudsman, "...to protect the 'citizen in uniform' and to act as the eyes and ears of parliament. He was not merely to be a 'complaints man,' but he was also to watch the developments in the armed forces and to inform parliament in good time if any undemocratic tendencies appeared. While at first the former aspect of his work appeared to predominate, in recent years importance has been attached to his more general duty of reporting on the state of the armed forces. Paradoxically it has been a need for greater discipline rather than the feared revival of militarism that he has discovered."<sup>10</sup>

A concept of generating leadership qualities from within a person, "Innere Fuhring" "(Internal Guidance), encouraged servicemen to develop questioning minds, humanizing the military by moving it further from the Prussian model.<sup>11</sup>--"Military personnel in the Bundeswehr were deemed 'citizens in uniform' and granted, almost without restriction, all the rights of citizenship, including the right to freedom of association."<sup>12</sup>

## VIII

### GERMAN FEDERAL ARMED FORCES ASSOCIATION (DBV)

On July 14, 1956, eight months after the first volunteers were appointed for service in the German Armed Forces, fifty-five servicemen (consisting of 23 officers, 25 non-commissioned officers, and seven junior enlisted personnel) met in a domestic service building of the Armored Forces School, Munster Lager (Lower Saxony).<sup>1</sup> Captain (Dr.) Bergatt was elected chairman of the meeting, which created the German Federal Armed Forces Association (Deutscher Bundeswehr-Verband, DBV). In forming this new association, the soldiers rejected the Association of German Soldiers (Verband Deutscher Soldaten, founded 1946), which represented former Wehrmacht soldiers and their families, and the Federal Border Guard Association (Bundesgrenzschutz-Verband, founded 1951).<sup>2</sup>

The German Armed Forces Association original proclamation to all Bundeswehr posts stated:

The founding of this association is based on the conviction that ideal and material interests of professional and long term servicemen and their dependents can best be represented by a vocational organization of their own.

This association will represent the professional and social interests of the servicemen towards and before the parliamentary bodies and administration agencies of the Federal Republic. Mission of the association:

Participation in preparing legislation in the fields of career, pay, care and pensions; legal advice and aid in all matters pertaining to our profession; safeguarding constitutionally guaranteed basic rights.<sup>3</sup>

DBV membership reflected a preponderance of professional soldiers and did not allow conscripts to join until 1969.<sup>4</sup> Today membership is open to every active, reserve and retired Army, Navy, and Air Force serviceman from private to general; and, by statute, family members and families of deceased servicemen.<sup>5</sup> A year after its founding, DBV membership grew to 30,000; and membership broke the 100,000 mark in 1963.<sup>6</sup> Current membership of 309,911 (1985) represents a powerful constituency.<sup>7</sup>

The DBV is ideologically independent and funded solely by its membership. Politically, the DBV does not endorse political candidates,<sup>8</sup> but is active "in a variety of ways with the political parties, the German parliament, the parliamentary party committees and the parliamentary committees (primarily the Committees of Defense, Internal Affairs, Finance and Supply)."<sup>9</sup> Also, the DBV is the "legally recognized top organization of all servicemen and as such the Federal Government and parliament are required to consult with the Association in the drafting of all legislation affecting the interests of soldiers, their dependents and successors."<sup>10</sup>

At the 9th DBV General Meeting in 1973, Chairman Colonel Volland outlined the Association's future by stating:

The Deutscher Bundeswehr-Verband sees itself as a political force in society wanting to achieve its goals in a common effort with other forces supporting this state. Fundamental decisions of far-reaching importance for defense and society lie ahead of us waiting to be decided. We seek the cooperation of everybody standing up for the security policy of this state and for the justified interests of its servicemen and we are also willing to assume our share of common responsibility.<sup>11</sup>

A rival to DBV is the one million member Public Service, Transport and Traffic Workers Union (Gewerkschaft Öffentliche Dienste, Transport und Verkehr, ÖTV), which is an affiliate of the German Trade Union Federation (DGB). The DGB is the largest public service trade union.<sup>12</sup> In 1957, ÖTV began organizing civilian defense workers and was authorized in 1958 to recruit servicemen from the Bundeswehr. ÖTV membership in the Bundeswehr reached 2,500 by August 1966 (.005% of a 450,000 manned force).<sup>13</sup> Efforts to recruit more servicemen started when "a soldiers section within the ÖTV was formed in 1961, followed by the formation of a professional grouping of military personnel (Fachgruppe Soldaten) in February 1964."<sup>14</sup>

Competition between DBV and ÖTV resulted in lengthy disputes. The Minister of Defense rejected ÖTV's 1965 formal request to actively recruit servicemen declaring, "The interests of servicemen were adequately protected by the DBV." Labor pressure increased and on August 1, 1966, Defense Minister Kai-Uwe von Hassel yielded, issuing a decree permitting ÖTV to recruit on military installations. Membership in ÖTV grew to 15,000 by 1968 and leveled off at 30,000 members.<sup>16</sup>

The union's efforts increased pay and made promotions easier. It also gained improved recreational benefits and guaranteed public service employment after service.<sup>17</sup>

## IX

### RESEARCH QUESTION

The main research question: Should Congress reconsider its findings on Public Law 95-610, Union Organization-Armed Forces-Prohibition? Included in this research question are the fears expressed by Congress that can be answered through the following sub-questions:

1. Will unionization adversely affect discipline, morale, training and recruitment?
2. Is Public Law 95-610 constitutional?
3. Could the United States Armed Forces adopt the union policies of the German Armed Forces?

An area of concern which Congress did not address in Public Law 95-610 is explained by Congressman Charles H. Wilson (D) of California, and Congresswoman Patricia Schroeder (D) of Colorado, members of the House Committee on Armed Services and House Committee on Post Office and Civil Service. They both voted "present" (abstained) on Senate Bill 274<sup>1</sup> and in their "Supplemental Views on Senate Bill 274" stated:

...S.274 does not address the factors underlying the unionization movement itself. An adequately functioning grievance system in which service members have full confidence is of the highest priority. The Congress also should make final decisions on the form and nature of the military compensation system. Perceptions of the erosion of benefits, as well as the uncertainties involved when issues such as double-dipping, commissary privileges, and medical benefits are debated and voted on year after year lead to strong pressures for unions. Although efforts are under way in these areas, the passage of S.274 can only decrease the sense of urgency in dealing with these problems.<sup>2</sup>

Soon after Public Law 95-610 was passed, debate on unionization came to a standstill because the Armed Forces started receiving pay raises, increased allowances, and improved quality of life programs. However, future retirement benefits have decreased 15 to 20% since 1980.<sup>3</sup>

The German Armed Forces modeled itself after the United States. Coming from total disarmament after World War II and, within two decades, Germany is second only to the United States as the best-trained, best-equipped, conventional fighting force in the free world. To do this, Germany used our training methods and equipment, as well as US-NATO goals and objectives.<sup>4</sup>

#### Unionization Impact

Congress has stated, "Discipline and prompt obedience to lawful orders of superior officers are essential..." in that, "Unionization of the armed forces would be incompatible with the military chain of command, would undermine the role, authority, and position of the commander, and would impair the morale and readiness of the armed forces."<sup>5</sup> These issues are a reflection of the first sub-question: Will unionization adversely affect discipline, morale, training and recruitment?

#### Discipline

Discipline and obedience to orders are founded on the fundamental premise that military commanders bears the ultimate responsibility for their men, and must be given the maximum discretion possible to accomplish their mission.<sup>6</sup>

Although discipline and obedience to orders leads to good order and maintenance within a command, "available evidencecasts

considerable doubt on the value of military discipline as a factor relevant to combat motivation. The basic drive of self-preservation, the desire to return home safely, and mutual bonds with a buddy provide the soldier his main combat motivation."<sup>7</sup>

One percent of the World War II American enlisted men identified leadership and discipline, compared to 19% of the American officers, as a primary means of motivation.<sup>8</sup>

Sociologist Roger Little conducted studies on American Army units during the Korean War. He concluded, "that solidarity among small groups was the most important factor in explaining the behavior of enlisted men in combat."<sup>9</sup>

The Vietnam War again highlighted peer and small group relationships as a prime motivator. An incident occurred, April 1972, during the Easter Offensive, at Phu Bai when C Company, 2nd Battalion, 1st Infantry of the 196th Brigade was ordered to patrol enemy territory. About 100 Army soldiers refused to patrol believing that the mission was too dangerous. Battalion Commander, Lieutenant Colonel Fredrick Mitchell, convinced the men to patrol, he said, "The men were convinced not by threat of court-martial, but by learning that their refusal would endanger A Company; to protect their buddies, the soldiers reluctantly moved into the field."<sup>10</sup>

Throughout three wars, servicemen have acted according to the responsibility of their rank and position caused by peer pressure, rather than the discipline and obedience to lawful orders. At each level of the military structure, bonded together by individuals serving for a common goal, servicemen execute just orders willingly.

Congressman Wilson, of California, and Congresswoman Schroeder said they devoted considerable study to Senate Bill 274, stating:

Opponents of unionization argue that it would lead to divided loyalties and a breakdown of discipline. If this is so, then it could be argued that unions present clear danger to the military and the Nation. But this threat is only a possibility. We have no experience with military unions in the United States, and European examples do not lend much support to that contention.<sup>11</sup>

Generally, discipline within a union is a key objective - enforcement of contracts, conduct of members, and strict control of the labor force to meet the standards expected by industry.<sup>12</sup> Nevertheless, German military unions (DBV and ÖTV), "represent soldiers only in matters of pay and related concerns, and would not interfere with orders, duty or discipline."<sup>13</sup> Neither union has authority in combat operations nor in periods of national emergencies,<sup>14</sup> and both have "accepted the principles of military command, obedience and discipline and have strictly refrained from interfering in military command and duty matters."<sup>15</sup>

The DBV clearly stated, "Discipline and command are indispensable in the armed forces,"<sup>16</sup> and that the "activities of the Association have at no time caused any friction in the force, because the statutory principle of not interfering with duty matters has always been strictly adhered to."<sup>17</sup> DBV's claim was substantiated by ex-battalion commander, Oberst i. G. (Colonel, Chief of Staff) Jens Prause. Oberst i. G. Prause is an active duty field grade officer in the Bundeswehr, completing twenty-five years on active duty and as a member of DBV. He

stated, "I commanded the Field Artillery Battalion 75 for two years and my authority wasn't challenged by DBV or OTV. Command and control functions (chain of command), training exercises and discipline are duty related issues they don't get involved in."<sup>18</sup>

Hauptfeldwebel (Master Sergeant) Wenzel, currently on active duty in the Bundeswehr, served eleven years as platoon leader of the Panzer 155mm Artillery Battalion 145 (formerly 65), and has been a member of DBV for 18 years. He stated, "The DBV or OTV has never undermined my authority or affected discipline in my platoon. In my twenty-two years of service I have not heard of nor have I witnessed such a thing happening."<sup>19</sup>

The Defense Manpower Commission, in its Report to the President and the Congress, concluded, "The Federal Republic's mixed military association labor unions works well and compromises neither discipline nor preparedness."<sup>20</sup> The conclusions of four other studies revealed: first, "There is no evidence that military discipline has suffered as a result of military memberships in the OTV or the DBV"<sup>21</sup>; second, "American commanders argue that unions would undermine military discipline and are unnecessary. This has not been the case with America's NATO allies"<sup>22</sup>; third, "No evidence exists that a union has undermined military discipline in ... Germany"<sup>23</sup>; fourth, a study prepared by the General Accounting Office (GAO) stated European union-type activities to improve military pay, benefits, and working conditions, "did not seem to (adversely) affect military discipline, efficiency and morale."<sup>24</sup>

## Morale

Morale is affected by many factors, involving complexities of human nature and human situations. Attempts to develop a human relations model have failed, as organizational theorist Charles Perrow describes:

The models have become increasingly complex, with something like the following progression: high morale leads to high productivity; good leadership ('democratic' leadership, good human relations, consideration, etc.) leads to high morale (and thus to high productivity); effective leadership (combining a concern for people with a concern for task effectiveness) leads to high morale and/or high productivity; effective leadership has to be tailored to the group situation (e.g., group task, structure, member relationship, timing, stress, etc.).

The increase in complexity has resulted in a decrease in applicability and in theoretical power. We are now in a situation where the variables are so numerous and complex that we can hardly generalize to organizations or even types of organizations. Only in extreme cases of very poor leadership or very good leadership can we say much with confidence, except that most situations fall between these extremes.<sup>25</sup>

Describing the Neo-Weberian Model, Charles Perrow continued:

...most effectiveness studies now assume that high morale is an indicator of one aspect of organizational effectiveness. But these morale studies ask how satisfied people are with their jobs, supervisors, career prospects, working conditions, and pay. It goes unremarked and unnoticed that the definition of morale is in terms of what the company assumes would be good for it. The unstated premise is that high morale means that people find it gratifying to do what the organization wants them to do. So thoroughly grounded is this premise that at first glance it seems absurd to recommend a morale measure that would assume that the happy employee is happy doing what he or she wants, rather than what the company wants.<sup>26</sup>

Dr. Kelly defined morale as, "The degree of satisfaction of an individual's perceived needs."<sup>27</sup> Needs perceived, whether valid or not, become real objectives and can influence human behavior. Individuals who enter military service may be unaware that they have no contractual rights or guarantees, as stated in their enlistment/reenlistment document.<sup>28</sup> It is quite understandable why servicemen react negatively to retirement and benefit erosion.

A study exploring the predictability "between employee morale and the ability of the employee to predict the responses of his supervisor" was conducted.<sup>29</sup> The evidence identified a direct correlation in improved morale as "the ability to anticipate the actions of others"<sup>30</sup> increased, which lowered tensions and brought higher satisfaction within the group.<sup>31</sup> Servicemen's attitudes, discussed in Chapter IV, already support the negative impact lack of predictability has had on morale in the Armed Forces.

The failure of Congress to define servicemen's rights and benefits may be a contributing cause of why only 12% of the Armed Forces personnel stay in for twenty years.<sup>32</sup> Why? An experience drain does not promote the readiness of the Armed Forces. Competent personnel have the ability to create their own opportunities and may seek civilian careers which offer greater fulfillment and monetary rewards. Take the case of a non-commissioned officer, a Sergeant First Class (SFC), who after fourteen years with the Army's Military Police Corps, terminated his service in October 1985. His reasoning: 1. lack of job

satisfaction, 2. limited financial security, 3. limited promotion opportunity, 4. boredom and the fact that he had attained all of his goals which the service could offer.<sup>33</sup>

Assistant Defense Secretary for Manpower, William Brehm, in reference to the Defense Manpower Commission and Quadrennial Review of Military Compensation Reports due before Congress stated, "I can foresee an extended debate (on the proposed restructure of military compensation) with a detrimental effect on military morale."<sup>34</sup>

Congressman George Mahon, Chairman of the Appropriations Committee and Defense Sub-Committee stated, "I am appalled that we are even discussing unionizing. I know that there has been some erosion (of benefits) but I hope not to the point that we need unions."<sup>35</sup>

Senator Strom Thurmond accused service journals of "Brainwashing" military readers, making them feel Congress and DOD are "taking away their benefits."<sup>36</sup> On the other hand, Senator Barry Goldwater blasted colleagues who sought to cut military benefits charging, "These attacks are hypocritical, for no group in the United States has more fringe benefits, allowances - call them what you will - than members of Congress. Moreover, we voted them for ourselves, often as amendments to other legislation and without fanfare."<sup>37</sup>

Pentagon leaders in a briefing with Secretary of Defense Donald Rumsfeld stated, "The fact that each proposal (changing or cuts in basic pay, retirement, medical care, leave, housing, etc...) was made in apparent isolation, with no announced,

coordinated objective in mind, impacted even more heavily on member morale and motivation."<sup>38</sup>

To improve morale, Assistant Secretary of the Air Force Manpower and Reserve Affairs, David P. Taylor, stated, "Stability of the benefits package is what we need."<sup>39</sup> A predictable environment could begin with a contractual agreement with guarantees between servicemen and Congress, i.e., Enlistment/Reenlistment Contract.

Der Deutsche Bundeswehr-Verband represents the interest of its members in non-duty matters, such as "his personal legal status under the aspects of pay and allowances, career, pensions, disciplinary law, medical care, housing, promotions, discharges, change of status, etc..."<sup>40</sup> Direct involvement by service-members through their "Opinion-Building Process" gives each member a sense of participation and a positive (constructive dialogue) with Parliament, which improves morale.

Membership in DBV is based on individual (voluntary) written application.<sup>41</sup> Analyzing the DBV membership, participation among junior enlisted, non-commissioned, and commissioned officers is strong - 71.9%. Membership by age, rank, and category are as follows:

Age:	18-25	36.0%	Rank:	E1-E4	59.9%
	26-32	30.3%		E5-E6	11.9%
	33-42	15.6%		E7-E9	15.9%
	43-52	10.2%		01-03	7.3%
	53-62	2.9%		04-06	4.8%
	over 63	5.0%		07-010	.2%
Category:	Professional Soldiers	14.8%			
	Volunteers	58.8%			
	Draftees	9.7%			
	Reserve/Retire	16.5%			
	Relatives	.2%			

Hauptfeldwebel Wenzel stated, "Morale is good. We have our own service publication, Die Bundeswehr, like your Army Times, but when we debate issues affecting our pay and benefits it doesn't worry us because our DBV has a direct impact on writing the legislation."<sup>42</sup>

United States Embassy Officials concluded, "Union and association activity in Germany has had no adverse affect on military readiness, and morale is good in the service."<sup>43</sup> Two other studies have concluded, "Available information reveals no adverse impact on morale within the Bundeswehr as a result of military unionization."<sup>44</sup> and "...that the State's acceptance of the DBV and the ÖTV, and the continuing progress made in obtaining substantial improvements in wages and working conditions, and in upgrading the quality of military life have enhanced armed forces morale."<sup>45</sup>

This evidence supports the activities of the DBV and ÖTV, and the fact that they have had a positive impact on morale within the Bundeswehr; and provides a framework for constructive dialogue among servicemen.

#### Training

Training programs, both unit and individual soldier, instill the professional skills necessary to survive in combat. Commanders are held accountable for the readiness of their unit. From the outset, the German Armed Forces used American equipment and adopted its training methods.<sup>46</sup> Ex-battalion commander Oberst i. G. Prause said, "Training is conducted to ensure a high state of combat readiness without interference from DBV. DBV's

non-intervention policy in duty related matters is strictly adhered to."<sup>47</sup> The DBV, "... raises no demand that could encroach upon the principle of readiness for action. It does not call into question the principle of command and obedience. It does not interfere in troop service affairs."<sup>48</sup>

The United States may be able to gain some insight from the U.S. Army's experience working with labor unions to gain trade union recognition for its training programs. The emergence of the all-volunteer force created concern among Army leaders in attracting and retaining the manpower required to perform its mission.

In October 1970, the Commandant of the British Royal School of Military Engineers visited the U.S. Army Engineer School. Since Great Britain established an all-volunteer Army in 1964, he was asked if they experienced any manpower problems. The Commandant said the "Royal Engineers consistently met their recruiting objectives, because of their trade union apprenticeship program."<sup>49</sup>

The United States Army Engineer School sought to get their equipment operators and repairmen credit for the military training and experience they received. In December 1972, formal recognition was granted by the International Union of Operating Engineers and the Union of Construction Equipment Operators and Repairman.<sup>50</sup>

Both unions, in cooperation with the Engineer School, developed the "Union Recognition Program," a log book system verifying training and experience. The program was formally announced to the Corps of Engineers in May 1973, as a

"significant recruiting incentive for the Army."<sup>51</sup> Within five months, over 1,100 requests were received at Fort Belvoir, Virginia, for log books and it became standard issue at Fort Leonard Wood, Missouri, for soldiers who completed Advanced Individual Training (AIT) as equipment operators or engineer equipment repairmen.<sup>52</sup> A survey conducted in August 1973, concluded that 89% of the 435 servicemen undergoing AIT at Fort Belvoir, in various speciality fields, wanted to enter "a union recognized Army apprenticeship program."<sup>53</sup> Colonel Joy, Corps of Engineers stated, "The objective of the program is not to obtain a union card while in service, but simply to get union recognition of Army training and experience." He also expressed concern that, "Unions might someday dictate how to train..."<sup>54</sup>

How well did the program work? The program expanded and in 1975 went Army-wide.<sup>55</sup> Today, the "Army Apprenticeship Program," as it is now known, affects 12 major commands, 11 service schools (Engineer, Quartermaster, Transportation, Signal, Ordnance, Missiles & Munitions, Armor, Field Artillery, Air Defense Artillery, Intelligence (DEVENS) and Intelligence School & Center), 85 programs, and 150 Military Occupational Specialties (MOS). This involves 177,628 servicemen of which 33,547 (18.8%) are currently participating, as of May 1985.<sup>56</sup> The program is governed by Chapter 6 of Army Regulation 621-5, subject: "Army Continuing Education System (ACES)", dated October 1, 1985.

United States Army Training and Doctrine Command (TRADOC) Education Service Specialist, Bruce Barkclay, when asked if there were any problems with the Army Apprenticeship Program stated,

"Yes, we are trying to encourage more people to participate. It's an outstanding program." TRADOC's goal is to get 21% of the eligible servicemen to participate by fiscal year 1989. Mr. Barkclay continued, "The rapport between various labor unions and the Army is excellent, and I'm not aware of any problems."<sup>57</sup> Also, the United States Army Recruiting Command is provided with "quarterly MOS and program updates for recruitment" purposes.

Overall, the Union Recognition Program, now called the Army Apprenticeship Program has had a positive effect on "recruitment, readiness, professional development, and retention."<sup>58</sup>

The United States Defense Attache Office (Bonn, West Germany) concluded, "neither the ÖTV nor the DBV ... has adversely affected military effectiveness in any manner."<sup>59</sup>

This evidence indicates that union activities have not been detrimental to training or to combat readiness, and have served to attract young men into the Armed Forces.

#### Recruitment

The German Armed Forces utilized the basic personnel structure of the United States Armed Forces prior to the all-volunteer force - conscript, volunteer, and regular. The Vietnam War was the catapult that ended the draft within the United States, but for Germany the system provides ample manpower resources.<sup>60</sup>

The nature of a conscript force "can only fulfill its function if the public as a whole is willing to defend this state (Germany)."<sup>61</sup> A balance is struck between the Bundeswehr and society at large:

As a citizen in uniform, the soldier is an integral part of society as well. The universal military obligation therefore provides for a constant lively exchange between the people and their soldiers. The joint declaration of loyalty to defense clearly shows the will for preserving the liberty of the individual and the State.<sup>62</sup>

A German conscript serves fifteen months of active duty upon enlistment, with twelve months of standby reserve, and a total reserve obligation of two years.<sup>63</sup> A conscript (Grade E-3) receives a nominal monthly salary of 327DM (\$138 US) plus food, laundry, clothes, lodging, and rail travel.<sup>64</sup>

To avoid the nominal pay of a conscript or to start a military career, direct enlistment (volunteer) is available. A volunteer serves two years at a time up to fifteen years, which at various intervals he may apply, and if accepted, become a professional "regular" for life.<sup>65</sup> A volunteer (Grade E-3) receives 1,727 DM (\$729 US) monthly base pay plus benefits.<sup>66</sup> An American Armed Forces Servicemen (Grade E-3) receive a monthly base pay of \$744.60 plus benefits.<sup>67</sup>

The State employs civilians to augment the Bundeswehr, similar to the United States Department of Defense civilian employees except they do not become uniformed soldiers in a declared national emergency. The system is closely aligned to the American National Guard Civilian Technician program. These technicians, during an emergency, become uniformed personnel.<sup>68</sup>

Once a servicemen enlists, retention and his eventual retirement are important factors in maintaining the force structure of the Armed Forces. Contrary to the 1970's, recruitment and retention have exceeded United States Department

of Defense goals (Recruiting 101% in 1981, 83, 84; and 102% in 1982).<sup>69</sup> However, only 12% stay in the service for at least twenty years, even though, "the average retirement age is 42."<sup>70</sup>

After a life-long career in the Bundeswehr "a relatively early retirement age" begins at age 52.<sup>71</sup> The DBV stated, "Special retirement age is designed to prevent the services from becoming superannuated. Thus, retirement of a Master Sergeant or Captain may be at 52 (a number of years before normal retirement age), that of a major at 54, of a lieutenant colonel at 56 etc."<sup>72</sup>

Secretary of Defense Casper Weinberger stated, "The men and women in uniform endure great personal hardships and make many sacrifices for the security of the United States. Military people spend long periods of time away from home, lose money every time that they move, must send their children to many different schools, must serve in isolated posts without their families, and very often must risk or give their lives for their country. The military compensation system including retirement is fair but by no means lavish."<sup>73</sup> To an American servicemen, having no guarantees or contractual rights, what does he have to look forward to after twenty years of service? According to Lieutenant General Edgar Chavarrie, United States Air Force, Deputy Assistant Secretary of Defense for Military Personnel and Force Management, "Retirement pay after twenty years is 38 percent of basic military compensation. The average monthly net pay of a retiree is \$785.00, of which more than 48 percent of the retirees draw annuities below the poverty level for a family of four."<sup>74</sup> General Chavarrie continued:

... the military retirement system is not an old-age pension plan as are other systems. It is not designed or intended to fulfill an old-age income maintenance function. It does not offer any capital accumulation features. It does not provide any deferred income provisions. It does not offer any thrift plan features, nor does it have any matching savings supplemental plans. In short, the military system doesn't look anything like a normal retirement plan -- for a very good reason. It isn't one.

What is it then? The Navy retirement statutes use a term that perhaps describes it best -- retainer pay. In effect, that is what the military system is. It allows us to retain people -- to form a ready pool of talent that is accessible.

Right now, our contingency mobilization plans include the recall to active duty of between 22 to 86 percent of the retired force, depending on the service. Many thousands already have their recall orders in hand should it become necessary.

Further, retirees retain their military status until they die. We can call them up when necessary, we keep them under the Uniform Code of Military Justice, we place restrictions on what they can do and what kind of work they can perform after leaving active service. When leaving active service after 20 years or because of a disability, they can receive retired pay that the Supreme Court has characterized as 'reduced pay for reduced levels of military service.'<sup>75</sup>

Competitiveness within the German Armed Forces to become a professional "regular" for life is strong.<sup>76</sup> The DBV and ÖTV serve as advocates, improving the quality of life within the Armed Forces to make a service career attractive. A final report submitted to the German Federal Minister of Defense in December 1978 by a "Coordinating Group" (Task Force) on "Bundeswehr Welfare (Evaluation and Goals)" studied:

... 141 separate social benefits and current problems and takes into account suggestions and proposals put forward by professional associations and trade

unions. The report concluded that the standard of Bundeswehr welfare benefits was high and second to none in the Alliance. No serious weaknesses or deficiencies in the system of social benefits were identified. This assessment is in consonance with the findings of the Parliamentary Commissioner for the Federal Armed Forces who, in his 1977 annual report, stated that 'military welfare (had) achieved an extraordinary standard.'<sup>77</sup>

Budgetary constraints provide incentives for Congress to "search for a way of reducing military personnel costs."<sup>78</sup> A number of various alternatives have been studied and proposed, for example:

#### Reduction of the Total Force

- o Reduce the size of the active forces
- o Reduce the size of the Reserve Components
- o Increase size of active forces; reduce size of Reserve Components
- o Reduce size of active forces; increase size of Reserve Components
- o Increase civilianization of noncombatant spaces (Civil Service)

#### Expansion of the Manpower Pool

- o Open more job fields to women
- o Expand prior service recruiting programs
- o Lower enlistment standards
- o Abandon policy of geographic representation

#### Enhancement of Voluntary Programs

- o Continue present programs and policies
- o Increase enlistment incentives for the Reserve Components and Active Army
- o Improve the effectiveness and efficiency of the recruiting forces
- o Improve and expand retention programs

#### Introduction of Involuntary Programs

- o Expand the reserve obligation and include women
- o Reinstitute the draft for the active Army
- o Institute a draft only for the Reserve Components
- o Offer military service as an option in a National Service Program<sup>79</sup>

Examining any of the above alternatives involves numerous social, political, and economic considerations. For example, examining only two of the cost savers, advocates of the draft claim, will illustrate the complexity of identifying real costs.

If the draft returned, one concept involved paying "\$100 a month in basic pay, and receive few of the benefits service members now receive. Recruits, on two-year hitches, would not get shopping privileges in commissaries and exchanges, and would receive no benefits for dependents."<sup>80</sup>

Computing base pay only - current enlisted grades E-1 to E-3 account for 618,335 personnel, assuming one-third would be volunteers (206,112), leaves 412,223 as potential conscripts. Multiply by a salary of \$100 per month for one year equals a \$494,667,600 annual cost, compared to the current pay scales of \$2,212,489,983.<sup>81</sup>

Office of the Secretary of Defense, Honore Bright, Director of Accession Policy stated, "The total cost of recruiting active and reserve servicemen for the Armed Forces in Fiscal Year 1984 cost \$1,327,300,000, including the salaries of 32,070 active and reserve duty servicemen and civilians, to enlist 328,457 people into active duty and 221,700 into the reserves."<sup>82</sup> A pro-draft argument would claim the costs involved could be substantially reduced and servicemen reassigned to active duty units.

Mr. Bright was quick to point out offsetting disadvantages to the draft, which was later reaffirmed in the Army Times:

Pentagon manpower officials argue that conscription would not save money. Money saved on recruiting and, possibly, lower pay for draftees, would be offset by increased

training costs because a force with greater turnover requires more training than a reasonably stable volunteer force in which retention is emphasized. At best, no savings would derive from the change, say some manpower officials. Most military manpower planners predict that personnel costs actually would increase if the U.S. returned to a draft.<sup>83</sup>

Congressman Charles H. Wilson and Congresswoman Patricia Schroeder stated, "The Congress...should make final decisions on the form and nature of the military compensation system. Perceptions of the erosion of benefits, as well as the uncertainties involved...are debated and voted on year after year lead to strong pressures for unions."<sup>84</sup>

A study on DBV and OTV impact on recruitment concluded, "No evidence was found to suggest that recruitment or retention of personnel has been adversely affected by military unionization."<sup>85</sup>

#### Constitutionality of Public Law 95-610

Prior to Congress passing Public Law No. 95-610, joining or forming a military union was not illegal. Congress' right to regulate and maintain an Armed Forces vs. servicemen's rights under the Bill of Rights are the issues reflected in the second sub-question: Is Public Law 95-610 constitutional?

The United States Constitution in Article 1, Section 8 empowers Congress: To declare War; to raise and support Armies; to provide and maintain a Navy; to make rules for the Government and regulation of the land and naval forces; to provide for calling forth the Militia to execute the Laws of the Union, suppress insurrections and repel invasions; to provide for

organizing, arming and disciplining the Militia; to make all laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.<sup>86</sup>

Under this provision Congress has acted to secure America's best interest. Challenges to Congressional authority have resulted in numerous Supreme Court interpretations; some established precedents are listed:

- o drafting men for service in the armed forces-Arver v. United States, 245 U.S. 366 (1918);
- o requiring conscientious objectors to perform work of national importance-Brooks v. United States, 147 F. 2d 134 (2d Cir. 1918);
- o commandeering vessels-Lake Monroe, 250 U.S. 245 (1919);
- o imposing price controls and banning civilian use of materials needed by the military-Yakus v. United States, 321 U.S. 414 (1944);
- o imposing mandatory curfew in certain designated military areas-Hirabayashi v. United States, 320 U.S. 81 (1943);
- o excluding citizens from certain defined areas-Korematsu v. United States, 323 U.S. 214 (1943).<sup>87</sup>

In May 1950, Congress enacted and President Harry S. Truman signed Public Law 506 (81st Congress), House Resolution 4080, "An Act to unify, consolidate, revise, and codify the Articles of War, the Articles for the Government of the Navy, and the disciplinary laws of the Coast Guard, and to enact and establish a Uniform Code of Military Justice" (UCMJ). The UCMJ went into effect on May 31, 1951. Whereas, for the first time servicemen were subjected to one set of disciplinary laws.<sup>88</sup> Also, it provided "for a Court of Military Appeals to be composed of civilians which shall rule finally on questions of law and thus

constitute the supreme tribunal for those in the armed forces (UCMJ, Article 67)."

In 1954, the Court of Military Appeals ruled on a case, United States vs. Voorhees, 4 U.S.C.M.A. 509, 16 C.M.R. 83 (1954), involving an Army officer's refusal to delete certain references in an article he was to publish. The Court's decision held, servicemen rights are protected under the First Amendment as restricted by "military necessity." Judge Latimer elaborated:

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 in 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.<sup>89</sup>

The Court of Military Appeals has upheld the concept of "military necessity," loosely defined as requirements of military

good order and discipline required for national security;<sup>90</sup> in subsequent decisions as follows:

U.S. v. Howe, 17 U.S.C.M.A. 165, 37 C.M.R. 429 (1967); U.S. v. Harvey, 19 U.S.C.M.A. 539, 42 C.M.R. 141 (1970); U.S. v. Gray, 20 U.S.C.M.A. 63, 42, C.M.R. 255 (1970); U.S. v. Priest, 21 U.S.C.M.A. 570, 46 C.M.R. 368 (1973).<sup>91</sup>

The Supreme Court has ruled in several cases stating that "military constitutes a specialized community governed by a separate discipline from that of the civilian," *Orloff v. Willoughby*, 345 U.S. 83, 94 (1953), and that, "the rights of men in the armed forces must perforce be conditioned to meet certain overriding demands of discipline and duty." *Burns v. Wilson*, 346 U.S. 137, 140 (1953). Further, "This court has long recognized that the military is, by necessity, a specialized society. We have also recognized that the military has, again by necessity, developed laws and traditions of its own during its long history. The differences between the military and civilian communities result from the fact that 'it is the primary business of armies and navies to fight or be ready to fight wars should the occasion arise.'" *United States ex re. Toth v. Quarles*, 350 U.S. 11, 17 (1955).<sup>92</sup>

In a 1974 Supreme Court decision, *Parker, Warden, et al. v. Levy*, 417 U.S. 733 (1974), the Court's earlier decisions were reaffirmed, "...while military personnel are not excluded from First Amendment protection, the fundamental necessity for obedience, and the consequent necessity for discipline, may render permissible within the military that which would be constitutionally impermissible outside it."<sup>93</sup>

President Clyde Webber of the American Federation of Government Employees (AFGE) said, "There is nothing in the law which prohibits members of the military from joining unions."<sup>94</sup> An AFGE legal study cited a 1967 Supreme Court decision, U.S. v. Robel, 389 U.S. 258 (1967), who (Robel) was indicted under the Subversion Activities Control Act. The Court struck down the ban against a member of the Communist Party from working as a Federal employee in a U.S. Navy shipyard. The Court held that Congress could not enact legislation under its enumerated powers (U.S. Constitution, Article 1 Clause 8) if the resulting law places an excessive, "over-broad," restrictions on the First Amendment rights of federal employees.<sup>95</sup> Chief Justice Earl Warren stated:

Implicit in the term 'national defense' is the notion of defending those values and ideals which set this Nation apart ... It would indeed be ironic if, in the name of national defense, we would sanction the subversion of one of those liberties-the freedom of association-which makes the defense of the nation worthwhile.<sup>96</sup>

The court continued:

It is precisely because the statute sweeps indiscriminately across all types of association with Communist-action groups, without regard to the quality and degree of membership, that it runs afoul of the First Amendment.<sup>97</sup>

The United States Court of Military Appeals ruled military personnel on-base, on or off duty, have the same First Amendment rights to express their beliefs as civilians. U.S. v. Daniels, 19 U.S.C.M.A. 529, 42 C.M.R. 31 (1972). However, in the case Dash v. Commanding General, Fort Jackson, South Carolina, 307 F. Supp. 854, D.S.C. (1969) authorization must be obtained to

disseminate material, speak publicly or to associate freely on base from the base commander.<sup>98</sup>

A study concluded, "To date, there is no clear legal precedent, or court decision, regarding the narrow issue of whether there is a constitutional basis for the military to organize into a labor union."<sup>99</sup>

Legal arguments are founded on precedents set in the courtroom and in society at large. Numerous military unions existed (as discussed in Chapter V) prior to Congress passing Public Law 95-610 in 1978. It also appeared, DOD Directives and Regulations monitored union activities successfully. In addition, labor unions, the National Army Air Technician Association (NAATA), the Association of Civilian Technicians (ACT), and others, have represented dual military-civilian servicemen since Congress passed the National Guard Technician Act of 1968, Public Law 90-486,<sup>100</sup> without much conflict.

The National Guard Technician Act of 1968 established full-time civilian technicians who served in dual civilian/military roles in the Air and Army National Guard as federal employees. As federal employees, they are covered by Executive Orders 10988, 11491, and 11616, which entitled them to be collectively represented by labor unions.<sup>101</sup>

In 1976, The Defense Manpower Commission described these civilian technicians as follows:

The full-time technicians found in the National Guard and Reserve Forces of the Army and Air Force play an essential role, but their dual Civil Service-military status poses special problems. These individuals hold a large percentage of the field grade

officer (major to colonel) and senior enlisted (E-7 to E-9) positions in the Reserve Components, and many are commanders. Large numbers of technicians already belong to unions. They earn their livelihood as full-time civilian technicians in their National Guard or Reserve unit, and the military part of their dual status is only a part-time avocation. It is not surprising that they are far more prone to seek union membership than their non-technician National Guard and Reserve associates and their active force counterparts.<sup>102</sup>

The Subcommittee on Civil Service of the Committee on Post Office and Civil Service conducted public hearings on S.274 (Public Law 95-610 before enactment) concluded:

S.274, as passed by the Senate, would also deny to civilian technicians the right to representation in collective bargaining. This right has been available to such employees since 1968 under Executive Order 11491. The committee was not persuaded by the arguments of the National Guard Association that collective-bargaining activities by employee representatives detracted from the preparedness of the National Guard. Indeed, available information and testimony of the Department of Defense indicated that it was in the national interest for these dual-status employees to enjoy representation in their civilian capacities.

Accordingly, the committee has stricken those provisions of the bill which would have had the effect of including civilian technicians within the provisions of the bill.

In summary, the committee believes that S.274 is an overreaction to a potential danger of very restricted proportions. Such a danger, in the unlikely event that it does exist, can be dealt with more effectively by strong, carefully drawn regulations. Such regulations have already been promulgated by the Department of Defense.<sup>103</sup>

The original bill introduced (S.274) by Senator Strom Thurmond and cosponsored by forty-three of his colleagues<sup>104</sup>

underwent "numerous changes." These changes were "directed at revising language in the Senate bill to eliminate what witnesses before the (House Committee on Armed Services) Subcommittee and members identified as possible constitutional problems."<sup>105</sup>

Section 2, Subsection G of Public Law 95-610 states:

(g) Nothing in this section shall limit the right of any member of the armed forces-

(1) to join or maintain membership in any organization or association not constituting a 'military labor organization';

(2) to present complaints or grievances concerning the terms or conditions of the service of such member in the armed forces in accordance with established military procedures;

(3) to seek or receive information or counseling from any source;

(4) to be represented by counsel in any legal or quasi-legal proceeding, in accordance with applicable laws and regulations;

(5) to petition the Congress for redress of grievances; or

(6) to take such other administration action to seek such administrative or judicial relief, as is authorized by applicable laws and regulations.<sup>106</sup>

Congressman Charles H. Wilson and Congresswoman Patricia Schroeder, in their "Supplemental Views on S.274," warned:

The legislative remedy that is proposed in S.274, which would call for an outright ban on unionization in the military, however, raises serious constitutional questions. These pertain primarily to the rights guaranteed all U.S. citizens under the 1st and 5th amendments. The first amendment states that 'Congress shall make no law ... abridging the freedom of speech ... or the right of people to peacefully assemble ...' The fifth amendment provides that no person shall be 'deprived of liberty' without due process of law. 'Liberty,' in this case, would be the right to join a union.

The Supreme Court has ruled in past decisions that the government can legally restrict some rights of citizens serving in

the Armed Forces when it is required in the national interest. But any prohibition would be judged in terms of whether or not membership would pose a clear danger to the military .... There is some probability, then, that the Court could strike down such legislation.<sup>107</sup>

Congressman Wilson and Congresswoman Schroeder identified the key issue, "Congress shall pass no law ..." (Emphasis added). It should be noted that the Constitution was unacceptable to the people as written and fear of a strong national government brought about the Bill of Rights as a precondition for ratification. The preamble to the Bill of Rights established the intent and purpose by which Congress could govern. It declared, "The Conventions of a number of States having, at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added..."<sup>108</sup>

It is clear Congress has the right to regulate the Armed Forces but does not have indiscriminate authority to pass "a" law to restrict freedom of association, which segregates or isolates the all-volunteer Armed Forces from the society at large. These are the grounds on which Public Law 95-610 could be declared unconstitutional.

A study conducted by attorneys from the office of the Army General Counsel concluded "the best way" for the Armed Forces to deal with unionization is to accept it, then "develop regulations to curb its activities."<sup>109</sup> The Department of Defense position on Public Law 95-610, as discussed in Chapters V and VI, offered the best approach to the issue of unionization of the Armed Forces.

Up until 1985, Public Law 95-610 had not been constitutionally challenged,<sup>110</sup> but as fears mount within the Armed Forces over budget cuts directed by the Gramm-Rudman Act, discontent will surface the issue of unionization. For example, a recent article in the Army Times heighten fears over a possible reduction in force (RIF), stating:

Pentagon officials have predicted that up to 333,000 active and 176,000 reserve personnel may have to be involuntarily separated from the services before the end of fiscal 1986 if Congress does not act on retirement legislation this year or return to DoD the money removed from the personnel budget under the assumption that retirement changes would be made.

Weinberger said the cuts that could come this year would be 'a large reduction of a force already too small for our needs.'

On top of this year's cut, the military stands to lose another 20 percent of the force in fiscal 1987 if the Gramm-Rudman automatic budgets cuts go into effect.

DoD was able to partially protect military personnel accounts from automatic budget cuts this year. 'If we did not have that protection, 280,000 personnel would have been dismissed last week,' Weinberger said before the Senate Budget Committee Feb 6.

With no special protection allowed under budget-cutting law next year, the military may have to send 300,000 personnel home, Weinberger said.<sup>111</sup>

In summary, Public Law 95-610 may be unconstitutional and "could be successfully challenged in the courts on the grounds that it might violate the constitutionally guaranteed rights of free speech and free association. Two constitutional lawyers, former Solicitor General Erwin Griswold and Professor Charles A. Wright, whose opinions were solicited by the Chairman of the Senate Committee on Armed Services, testified that although Congress may legislate to prohibit strikes or even collective

bargaining, the flat prohibition against the right of association raised serious questions. The language adopted by the House Committee on Armed Services, while more moderate in its approach, could still be subject to that constitutional challenge."<sup>112</sup>

#### Unionization Policies, Adaptation to United States

There are distinct social, cultural, and political differences that exist between Germany and the United States. Fundamental to the military profession are values, goals, and objectives "common to all good armies across time."<sup>113</sup> The third sub-question will explore these possibilities: Could the United States Armed Forces adopt the union policies of the German Armed Forces?

Public Law 95-610 makes it illegal to have a military labor union, as defined:

A 'military labor organization' is one which negotiates or bargains with an officer or employee of the Government on behalf of military personnel, represents military personnel in connection with a grievance or complaint, or by concerted action seeks to induce an officer or employee to negotiate, bargain, or make any change with respect to the terms or conditions of military service.<sup>114</sup>

Under the provisions of this law, the Deutsche Bundeswehr-Verband (DBV) would be allowed to exist in this country since:

Service or fraternal organizations, which seek to improve the life of military personnel by legislative lobbying, would not come within the definition of a military labor organization (Section 2, Subsection (A) (2) of Public Law 95-610).<sup>115</sup>

Unique to the German Parliament, DBV is accepted under Article 94 of the Federal Civil Service Act ("Representative

organizations of the unions concerned are to be included in the preparation of general provisions dealing with civil service matters.") as the representative organization of the Bundeswehr. The Ministry of Defense has formally acknowledged DBV's role in all legislation affecting the interest of soldiers, their dependents and successors in a November 24, 1971 Cooperation Decree.<sup>116</sup> No such requirement exists in Congress, however, legislators would feel the impact of such a highly organized group, in day to day lobbying efforts.

DBV is organized into a simple three-level structure (Figure 1). Officers of the DBV are elected by the membership at each level of its organization; servicemen electing servicemen to represent their interests rather than paid union officials. A lot of DBV's success can be attributed to this key point.<sup>117</sup> This is similar in scope to American commanders appointing or having servicemen elected to various enlisted advisory boards. Members of these boards advise the commander of their problems and preferences relating to welfare and recreation activities, as well as, wives' ombudsmen for matters pertaining to the family on and off-post.<sup>118</sup>

The first level of the DBV consists of 1,474 chapters (unit, independent unit, garrison, or post). Local commanders, if they are not already members, are invited to review the local DBV bulletin boards, attend presentations and lectures.<sup>119</sup>

Brigade General W. Gail clarified two key points on apparent conflicts between commanders and DBV. First he referenced a "general complaint system," and second he answered the question,

# Structure of the Association , Organizational Chart

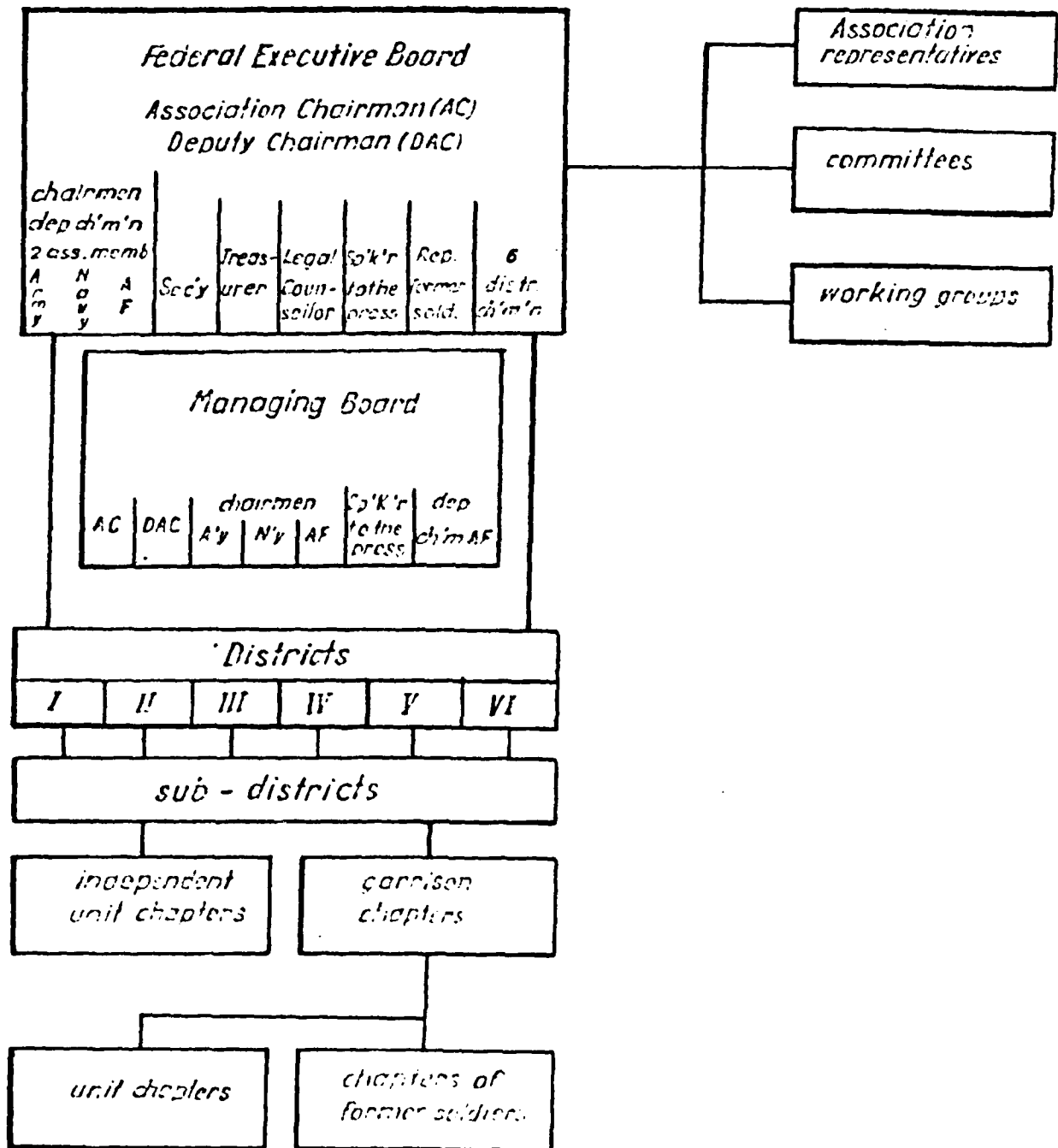


FIGURE 1

"Do the men look to their DBV representative rather than to their officers?" On the first point General Gail stated:

The commanding officer is responsible for everything which is in a strict sense military duty and responsibility, so he can care for everything which happens within the barracks, but he is not responsible, and cannot be responsible for wages, for instance, or for how many days leave a non-commissioned officer is entitled to have. He is not responsible for distributing housing, and so on. He can only forward his opinion. But there must be another body on the decisive points.<sup>120</sup>

In answering the second question General Gail replied:

As an example, in the Federal Armed Forces working time is a topic of prevailing interest. In civilian areas the working time is 42 hours per week. We normally have to serve some 60 hours a week, and even in the ground-based air defense units up to 70 or 75 hours a week. The men who feel that that is too much will tell their commanders that something should be done about it, either that the workload should be reduced or that they should be paid for the extra hours. The commander will forward that to the highest echelons, and finally the Chief of Air Staff will talk with the Secretary of Defense. This is one way. But the DBV will listen to the voices of the soldiers and forward complaints on their way to Members of Parliament, to the Finance Ministry and to the Secretary of State too, but the soldier himself is always looking first to his superior officer. However, he knows that there is another way of putting on pressure.<sup>121</sup>

Oberst i. G. Prause concurred with Brigade General Gail's assessment, stating, "The DBV has caused no conflict or divided loyalties between the officers and enlisted. I felt no pressure or contradictions even when my battalion elected me as their DBV representative to the garrison chapter, while I was a battery commander. I have always felt, throughout my career, DBV gave me

excellent support to accomplish my job as a military leader. The DBV solved problems I could not, freeing my time to focus on matters such as training. If there were internal conflicts they would have surfaced by now (after thirty years)."<sup>122</sup>

The second level is comprised of six districts, which are identical geographically with the six Military Districts of the Bundeswehr. The district manages regional affairs in close cooperation with the Federal Board, the Presidium and the Secretariat. They participate directly in DBV's opinion-building process, conduct district meetings, support and assist chapters, maintain contact with Bundeswehr commanders, and lobby state level representatives and political parties. To assist the district, sub-districts are created with the prime responsibility of enlisting new members from training centers and installations, assist chapters in their recruiting activities, and visit garrisons and provide feedback through their trip reports.<sup>123</sup>

The third level consists of the Federal Executive Board, providing the central management for DBV. Board members are elected active duty servicemen (unsalaried) with the exception of the Representative of Former Servicemen. Its mission and responsibilities are mainly directed by the resolutions of the general meeting (convention). A partial list of duties include disseminating information, promoting membership, studying issues, lobbying parliament, and doing public relations work.<sup>124</sup>

To assist the Federal Board, a non-voting Secretariat has a Managing Board, consisting of active duty servicemen and about 100 paid employees who handle the day to day operations. The

Managing Board has four divisions, they are: Organization, Household and Finance, DBV Policy and Law, and Press Information.<sup>125</sup>

The Federal Board also has Association Representatives, Committees, and Work Groups to support them. Association representatives are appointed by the Federal Board as liaisons to various organizations and governmental agencies. For instance, the representative for disabled military servicemen will often become involved in settling individual cases for servicemen by substantiating complaints and negotiating settlements.<sup>126</sup>

Committees are charged with the responsibility of preparing analyses, situational assessments, working papers and decision aids. Committee members are active duty and retired servicemen who have special knowledge, through their training or assignments, on the subject matter. These standing committees are:

- o Budget and Finance
- o DBV Organization Matters
- o Education and Training
- o Welfare and Social Care
- o Duty Related Problems
- o Matters Concerning Former Soldiers
- o Servicemen's Clubs
- o Press
- o Contact Committee to the German Civil Servants' Association<sup>127</sup>

Work Groups (study groups) are different from standing committees in that they are formed by the Federal Board on the Presidium for one specific assignment. Previous working groups were tasked to study such subjects as: problems of conscription equity; housing problems; reform of public service legislation; and problems of disabled military servicemen.<sup>128</sup>

The opinion-building process is the cornerstone of the DBV legitimacy. DBV developed the bottom-up process through a "differential and complex process based on the democratic rules of play - having every member participate as much as possible - to ascertain aims and wishes of its members." Motions are formulated by chapters and districts, and submitted to the General Meeting Committees that prepare non-bidding recommendations for approval by the delegates. Resolutions approved at the General Meeting by the delegates are binding on the Federal Executive Board and the DBV membership.<sup>129</sup>

The organizational structure and opinion-building process of the DBV is very functional but not unique to similar Armed Forces Associations in the United States. American servicemen on active duty as well as retired members are actively involved in numerous associations such as holding office, soliciting membership, conducting educational luncheons, attending conventions, symposiums and seminars.<sup>130</sup>

The principles and resulting policies governing DBV are self-imposed by its membership. This is significant since DBV is not bound or constrained in choosing the means of its policy. Several time honored policies are:

- o Religious and Political Party Neutrality
- o Non-Interference in Military Duty Matters
- o Rejection of Strikes as Means of Enforcing Demands
- o Independence from Employer (State)
- o Pluralistic Society is Inherent
- o Operational Readiness of the Bundeswehr is Vital
- o Defense Willingness of Society is Essential<sup>131</sup>

None of the described DBV policies would be incompatible with American Armed Forces Associations or the United States Armed Forces.

Many studies and attention have been focused on two key points, which should be discussed, they are collective bargaining and the right to strike.

DBV is the negotiating party to the government in preparing legislation pertaining to matters of public service and the National Servicemen's Act.<sup>132</sup> Neither DBV nor ÖTV enjoy collective bargaining rights since "pay and allowances, career status, health care, pensions, housing, promotions, working conditions, and all matters relating to military service are fixed by national legislation."<sup>133</sup> Only lobbying and strong public opinion can persuade Parliament. The United States Armed Forces share the same fate with Congress.

While the Bundeswehr seeks resources (i.e., pay increases, equipment, etc.) each year from Parliament, the military will not be openly public over disagreements, whereas, the DBV can be very vocal. DBV did state they are "actively engaged in the political arena and playing a decisive part in the shaping of defense policy."<sup>134</sup> The same is true for the American Armed Forces Associations who lobby on behalf of military interests in Congress.<sup>135</sup> Oberst i. G. Prause clearly stated, "The DBV is an extension of rather than a challenge to the leadership of the Bundeswehr."<sup>136</sup>

Negotiation, as a process, is becoming common among commanders in the American Armed Forces. For example, on an individual basis between commanding officer or a superior officer and a subordinate officer, an Officer Evaluation Report Support Form requires written and "face-to-face discussion of duties,

responsibilities, and performance objectives."<sup>137</sup> On a major command level, TRADOC Regulation 11-4, "Installation Contract System," provides a formal agreement between the commanding general of TRADOC and 45 subordinate installation/activity commanders regarding expenditures of allocated dollars and manpower resources. The principal philosophy of the system "is to have a binding agreement" between commanders on resource utilization.<sup>138</sup> Also, the United States Army Recruiting Command Regulation 601-73, "Personnel Procurement Mission Assignment," outlines a formal "adjudication process" in which commanders negotiate their mission from major general to sergeant.<sup>139</sup> A study concluded, "There is already a precedent for collective bargaining between Air Force personnel and local commanders. The only thing lacking was the formal union structure."<sup>140</sup>

As previously stated, DBV and ÖTV rejects strike action as a means of pressing demands. "It is false to assume that public service employees have no bargaining power without the right to strike. Other factors, such as political pressures, negotiating skills, public opinion, and psychological elements, may be important sources of bargaining power."<sup>141</sup> Mr. Clyde Webber, AFGE's President, warned:

If you treat people shabbily and give them no way to see hope in the future, they are going to do what they are going to do. And it doesn't matter if we have a law or we don't have a law; whether we have a union organization, or we don't have a union organization.<sup>142</sup>

Mr. Webber also said:

The military has had incidents which would be called 'wildcat strikes' if a union could be blamed for fostering them.<sup>143</sup>

Mr. Leo Pellerzi, AFGE's General Counsel concluded, "We didn't have a union in Vietnam, but we had strikes, in effect. Unions don't create the problems. If we ever get to the point of a military strike in this country, don't look to the union."<sup>144</sup>

The label of "union" is a sticky subject with DBV since the word is synonymous with, "confrontation with the employer, system of (paid) functionaries and lack of neutrality in matters of party politics. The term 'union' thus seems to have rather negative than positive associations and causes greater inclination toward the servicemen's association."<sup>145</sup> One could charge DBV is a "company union" with its self-imposed restrictions.

Even in the United States, the Air Force Sergeants Association has the "attributes of a trade union."<sup>146</sup> American military associations can and do:

- Provide another line of communications for the services to reach military personnel, active, Reserve and retired.
- Provide an alternative line of communication for their members to express their views and needs to the services.
- Provide support to the services in communicating policy and hardware needs to the American public.
- Provide support in the Congress for DoD sponsored legislation.
- Provide support, through their local units, for military community relations programs.
- Provide, through their efforts to enhance the public image of the military, support for service recruiting programs.
- Provide, at group rates and specifically tailored for their membership, benefits not available from the military services.<sup>147</sup>

On July 22, 1981, General Juergen Brandt, Vice-Chief of the German Army Staff transmitted a message entitled "Information for

Commanders" (No. 2/81), to German commanders. This message expounded upon a joint declaration of future cooperation between members of the Federal Executive Board of the Confederation of German Labor Unions and the Bundeswehr. General Brandt stated:

The contact between the Federal Armed Forces and organized labor must no longer be limited only to the leading representatives. It is particularly important to establish and improve contacts between soldiers and organized labor at the regional and local levels. This can only be achieved by approaching one another.

By intensifying such relations, mutual understanding, confidence, and respect are increased and strengthened to the advantage of all citizens - both in and out of uniform. Among others, the following possibilities offer themselves for this purpose:

- 1) Inviting representatives of organized labor to visit troop barracks/training areas and to attend swearing-in ceremonies at facilities of the Federal Armed Forces.

- 2) Developing relations based on partnership between firms and servicemen associations.

- 3) Visits to firms and training workshops.

- 4) Joint educational activities for the exchange of ideas.

- 5) Inviting labor union representatives to teach certain civics subjects within the Armed Forces.

I expect commanders to take the necessary initiative.<sup>148</sup>

The rapport among the Bundeswehr, DBV and Parliament has established the German Armed Forces second only to the United States as the best-trained, best-equipped conventional fighting force in the free world.<sup>149</sup> Since, the DBV would not be affected by Public Law 95-610 and has the attributes common to American Armed Forces Associations, what is the problem? As Dr. Hermann Giesen observed, (referring to the United States) "There is no

common 'roof' or representative organization for the military; the associations are headed by presidents."<sup>150</sup>

It is easier to understand Dr. Giesen's statement when reviewing a partial list of military-oriented organizations, as follows:

- Association of the United States Army
- Fleet Reserve Association
- Marine Corps Association
- Navy League of United States
- National Guard Association of the United States
- Retired Officers Association
- Naval Reserve Association
- The American Legion
- Veterans of Foreign Wars
- Disable American Veterans
- American Veterans
- Marine Corps Reserve Officers Association
- Non-Commissioned Officers Association of the United States of America
- Armed Forces Benefit and Aid Association
- Association of Regular Army Sergeants
- Air Force Sergeants Association
- Military Order of the World Wars
- Society of American Military Engineers
- Naval Enlisted Reserve Association
- The Marine Corps League
- National Association for Uniformed Services
- United States Submarine Veterans
- National Military Family Association
- Reserve Officers Association
- Retired Enlisted Association
- United States Army Warrant Officers Association<sup>151</sup>

It is very clear DBV represents the German Armed Forces and can focus attention on issues clearly, contrary to the numerous and segmented American Armed Forces Associations. A recent advertisement illustrates the point:

On January 20, 1986 twelve military associations urged readers of the Army Times to send a Western Union Mailgram to the President of the United States, stating Cost of Living Adjustments (COLA) have been received by Social Security and Veterans but not for 'federal retirees, military and civilian, and their survivors.' Charging,

'Congress has ignored the fact the military retirees are veterans, too.'<sup>152</sup>

If a single American Armed Forces Association emerged from the present narrow and segmented associations, it would be hard to believe Congress could ignore 6,248,168 plus<sup>153</sup> voters unified under one banner (as DBV is). A COLA adjustment would, in all probability, never get out of committee without military retirees being included.

The Retired Officers Association (TROA) conducted a study to expand their membership to include enlisted retirees. The idea was defeated by TROA membership: 80% against, 15% for and 5% had no opinion.<sup>154</sup> TROA met with officials of two enlisted associations, both were opposed to the idea of stating:

The very composition of our associations makes it impractical for us to merge into that theoretical, all-powerful lobby group. No matter which way you slice it, we are different groups, with different backgrounds and, at times, different problems.<sup>155</sup>

The other enlisted association said:

What is good for your members may not necessarily be good for our members. In fact, the problems of enlisted men in the different branches of service are often opposite. That is why (we) would not want to merge with other enlisted organizations.<sup>156</sup>

Association self-interest, even at the expense of its membership, appears to be the reason Congress can ignore them. Problems do exist but all are affected since pay and allowance, career status, medical benefits, retirement, housing, promotions, working conditions, and all matters relating to military service are fixed by national legislation; a private, sergeant or officer of all branches, either active, reserve or retired are affected

across the board. Congress has criticized the lack of unanimity among military associations.<sup>157</sup>

The Council of Military Organizations (COMO) was created to coordinate and reach a consensus on matters of common interest among various associations. Members of COMO, although selective, meet regularly to discuss issues (also narrow) related to personnel matters affecting active, reserve and retired. COMO has enhanced its relations with Congress while each association retains its own individual identity. The members are:

Council of Military Organizations  
(\*Registered Lobbyists)

Air Force Association  
Air Force Sergeants Association\*  
U.S. Coast Guard CPO Association  
U.S. Coast Guard CWO & WO's Association  
Disabled Officers Association  
Fleet Reserve Association\*  
Military Wives Association  
Naval Enlisted Reserve Association  
Naval Reserve Association  
Reserve Officers Association  
The Retired Officers Association  
U.S. Army Warrant Officers Association<sup>158</sup>

For the same reasons military-veteran associations bonded together calling themselves the "Ad Hoc Committee." They meet regularly to discuss legislation and policy impacts on the total force - active, guard and reserve. The members are:

Ad Hoc Committee  
(\*Registered Lobbyists)

Air Force Association  
Air Force Sergeants Association\*  
American Legion  
Association of the United States Army  
Disabled Officers Association  
Fleet Reserve Association\*  
National Association of the Uniformed Services  
National Guard Association  
Naval Reserve Association

Navy League of the United States  
Non-Commissioned Officers Association\*  
Reserve Officers Association  
The Retired Officers Association  
Veterans of Foreign War<sup>159</sup>

In answer to the third sub-question, the evidence supports the fact that the union policies of the German Armed Forces could be adopted by the American Armed Forces without adverse impact, and may serve to enhance national readiness.

CONCLUSIONS & RECOMMENDATIONS

Specific findings, developed intermittently throughout the report, support the conclusion: Congress should reconsider it's findings on Public Law 95-610, Union Organization - Armed Forces - Prohibition.

Thirty years of the Deutsche Bundeswehr-Verband has not been detrimental to discipline, morale, training or recruitment. The interaction of the DBV, Parliament and the Bundeswehr have created the best-trained, best-equipped conventional fighting force second only to the United States in the free world. The Officer Corps of the Bundeswehr welcome DBV as an extension of their authority rather than a challenge to it.

The evidence supports Department of Defense position on Public Law 95-610. DOD believed the problem of unionization could be dealt with more effectively through Departmental Directives and Regulations, rather than legislation which could be constitutionally challenged.

Congress passed Public Law 95-610 fearing unionization of the Armed Forces was inevitable, although numerous unions came and went. The American Federation of Government Employees actively sought to unionize the Armed Forces until the rank and file voted down the referendum, fearing the six million plus membership would dominate the union. It appears the most logical unionization effort would come from the forty plus Armed Forces associations or a new association encompassing all ranks,

branches, status, dependents, and retirees. Therefore, a serious unionization drive is not seen in the foreseeable future.

Congress did not outlaw associations which sought to improve the quality of life for military personnel through legislative lobbying. Key congressional leaders on the armed forces service committees are from strong military states. The Gramm-Rudman Act may be the catapult, if fifty percent of the budget deficit must be cut out of the military, that will surface the issue of unionization.

The policies of DBV, such as opinion-building process, servicemen representing servicemen rather than payed professionals, officers and enlisted united rather than management vs. employee confrontation, religious and political party neutrality, non-interference in military duty matters, and rejecting the strike, would be acceptable to the American Armed Forces Association or the United States Armed Forces.

Failure of Congress to define servicemen rights and benefits may be a contributing cause of why only 12% of the Armed Forces personnel stay in for twenty years. It is easier for servicemen to leave the service rather than seek reform.

The evidence supports the following recommendations.

1. Congress should reexamine it's findings, and rescind Public Law 95-610, 10 USC 956, before it is constitutionally challenged. This would avoid a Supreme Court decision, prevent a precedent from being established, and possible voiding of Department of Defense Directives and Regulations.

2. Department of Defense and Congress, the traditional protectors of military benefits, must regain the trust of servicemen through better understanding of the issues, improved communications, and greater recognition and support to Armed Forces associations.

3. Congress should decide on the form and nature of the military compensation system, thus eliminating the greatest unknown (fear) among servicemen - their future.

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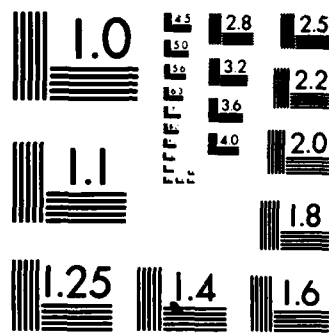
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